



2026:AHC:9931

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 863 of 2026

Ajay Yadav

.....Petitioners(s)

Versus

State of U.P. and
Another

.....Respondents(s)

Counsel for Petitioners(s) : Amit Kumar Tiwari

Counsel for Respondent(s) : G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Amit Kumar Tiwari, learned counsel for the applicant and Shri Manish Kumar Yadav, learned State Law Officer for the State.

2. Learned counsel for the applicants submits that the present application has been filed under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The prayer clause is delineated below:-

"It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash/set aside the Impugned Cognizance/Summoning order dated 28.05.2025, passed by Special Judge SC/ST Act, Jaunpur as well as to quash/set aside the impugned charge sheet bearing

Charge Sheet No. A113/2025 dated 12.04.2025 and also to quash/set aside the entire proceedings of the Special Session Trial No. 207/2025 (State Vs. Akhilesh and others), under section 115(2), 352, 351(2), 117(2) B.N.S. and Section 3(2)(va) SC/ST Act, arising out of case crime no. 74/2025 Police Station-Mungra Badshahpur, District-Jaunpur, against applicant, which is pending in the court of learned Special Judge SC/ST Act, Jaunpur."

3. Learned counsel for the applicant submits that, in respect of the alleged incident dated 13.03.2025, as mentioned in the written information given by opposite party no. 2, an FIR was registered as Case Crime No. 74 of 2025 against five named accused persons, including the present applicant, and 10-12 unknown persons under Sections 191(2), 115(2), 352, 351(2) and 74 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS'), and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (for short 'SC/ST (PA) Act') as amended in 2015 at Police Station - Mungra Badshahpur, District - Jaunpur.

4. Learned counsel for the applicant further submits that the first information report was lodged after a delay of six days and no explanation whatsoever has been furnished by the informant for such inordinate delay. It is further submitted that opposite party no. 2 has alleged that he sustained several injuries in the incident, pursuant to which an injury report was prepared. The injury report mentions four visible injuries on the person of opposite party no. 2. In view of the nature of the injuries, opposite party no. 2 was referred to a radiologist, and an X-ray examination was conducted on 21.03.2025, wherein a fracture of the right clavicle lateral was reported (right shoulder region).

5. Learned counsel for the applicant further submits that the FIR does not disclose the place of occurrence where the alleged incident is stated to have taken place. It is further submitted that opposite party no. 2, in his statement recorded before the Investigating Officer under Section 180 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'), improved the version of the F.I.R. to strengthen the prosecution case, thereafter, the charge-sheet was submitted only under Sections 115(2), 352, 351(2) BNS, and Section 3(2)(va) of the SC/ST (PA) Act and Section 117(2) of BNSS.

6. Learned counsel for the applicant further submits that on the basis of the statement of opposite party no. 2, Sections 74 and 191(2) of the Bharatiya Nyaya Sanhita, 2023 were deleted by the Investigating Officer. It is further contended that the learned Special Judge has taken cognizance in a mechanical and routine manner, without due application of judicial mind, and has summoned the applicant and other co-accused persons by a cognizance-cum-summoning order dated 28.05.2025 under Sections 115(2), 352, 351(2) and 117 (2) of BNS, and Section 3(2)(va) of the SC/ST (PA) Act.

7. Per contra, learned State Law Officer, Sri Manish Kumar Yadav, submits that there is a satisfactory explanation for the delay in lodging the FIR, inasmuch as opposite party no. 2 had sustained a fracture in the right clavicle lateral (right shoulder region) and, therefore, the immediate priority of the injured was to seek medical treatment, thereafter the police was informed about the alleged incident. It is further submitted that an FIR is not expected to be an encyclopedia of all facts, and although the place of occurrence was not mentioned in the FIR,

the same has been disclosed in the statement of opposite party no.2 recorded under Section 180 of BNSS that the alleged incident occurred at the back side of the house.

8. Learned State Law Officer further submits that in the x-ray report, there is a fracture in right clavicle lateral (right shoulder region) and the same has also been supported by the Radiologist and the name of the applicant has been mentioned in the statement of other witnesses also. He further submits that on the basis of the material collected during investigation, the Investigating Officer submitted charge-sheet though there is mistake of mentioning BNS in respect of Section 117(2) as BNSS, while the same has been corrected by the Court of cognizance in cognizance-cum-summoning order dated 28.05.2025.

9. Learned State Law Officer submits that in view of the judgment of the Hon'ble Supreme Court in **State of Gujarat vs. Girish Radhakrishnan Varde; (2014) 3 SCC 659** the impugned order of taking cognizance and issuing summons is strictly in accordance with law as the Court of cognizance cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge. He has relied upon paragraph Nos. 13 and 14 of the judgment in **State of Gujarat vs. Girish Radhakrishnan Varde (Supra)**. The Paragraph No.13 and 14 are delineated below:

"13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to

*conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and **the magistrate cannot exclude or include any section into the chargesheet after investigation has been completed and chargesheet has been submitted by the police.***

*14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring **exclusion of** the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for **taking cognizance** after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report **cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C.** as the case may be which means that after submission of the chargesheet it **will be open for** the prosecution to contend before the appropriate trial court **at the stage of framing of charge** to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. **Simultaneously, the accused also has the liberty** at this stage to submit whether the charge under a particular provision should be framed or not and this is the **appropriate forum in a case based on police report** to determine whether **the charge can be framed** and a particular section can be **added or removed depending upon the material collected during investigation** as also the **facts disclosed in the FIR and the chargesheet.***

(Emphasis supplied)"

10. Learned State Law Officer, further submits that in view of the judgment of the Hon'ble Supreme Court in **State of Gujarat vs. Afroz Mohammed Hasanfatta; (2019) 20 Supreme Court Cases 539**, in paragraph Nos. 22 and 23 of the judgment, held that the order of issuance of process without explicitly recording reason for its satisfaction for issue of process does not suffer from any illegality. The paragraph No. 22 and 23 of judgment is are being delineated below:-

"22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "there is sufficient ground for proceeding..."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence...". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an

offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

11. He further submits that the evidence collected during investigation does not, by itself, fall within the category of proved evidence as contemplated under the Bharatiya Sakshya Adhiniyam, 2023. The same can be proved only when the witnesses are produced before the trial court and their statements are recorded on oath during examination-in-chief as well as cross-examination, and only thereafter the documents collected during investigation can be duly proved in accordance with law.

12. It is further submitted that non mentioning of time and place of occurrence are matters of appreciation of evidence and are required to be considered by the trial court under Section 234 BNSS (corresponding Section 211 of Cr.P.C.) at the stage of framing of charge.

13. Learned State Counsel further submits that as per Section 507 of BNSS (corresponding Section 461 Cr.P.C.), there is no irregularity which may vitiate the trial proceedings. For ready reference, Section 507 of BNSS is being quoted below:-

"Section 507 - Irregularities which vitiate proceedings- *If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:-*

- (a) attaches and sells property under section 85;*
- (b) issues a search-warrant for a document, parcel or other things in the custody of a postal authority;*
- (c) demands security to keep the peace;*
- (d) demands security for good behaviour;*
- (e) discharges a person lawfully bound to be of good behaviour;*
- (f) cancels a bond to keep the peace;*
- (g) makes an order for maintenance;*
- (h) makes an order under section 152 as to a local nuisance;*
- (i) prohibits, under section 162, the repetition or continuance of a public nuisance;*
- (j) makes an order under Part C or Part D of Chapter XI;*
- (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 210;*
- (l) tries an offender;*
- (m) tries an offender summarily;*
- (n) passes a sentence, under section 364, on proceedings recorded by another Magistrate;*
- (o) decides an appeal;*
- (p) calls, under section 438, for proceedings; or*
- (q) revises an order passed under section 491, his proceedings shall be void.*

14. Learned State Law Officer lastly submits that in view of Section 250 BNSS (corresponding Section 227 of Cr.P.C.), the accused shall be afforded an opportunity of hearing at the stage of framing of charge. For ready reference section 250 BNSS (corresponding Section 227 of Cr.P.C.) is being quoted below:

"Section 250. Discharge - *(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.*

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

15. This Court has gone through the entire submissions advanced on behalf learned counsel for the parties, decisions relied upon by the learned State Law Officer and perused the record.

16. The Hon'ble Supreme Court in the case of **Afroz Mohammed Hasanfatta** (Supra) held that in a case based upon the police report, the Magistrate is not required to record his reason on merit or demerit of the case for summoning the accused. This judgment has been confirmed by the Hon'ble Supreme Court its subsequent judgment passed in **Pradeep S. Wodeyar vs. State of Karnataka, (2021) 19 Supreme Court Cases 62**. The paragraph No.91 of this judgment is being quoted below for the sake of convenience :-

"91.While distinguishing the decision in Pepsi Foods Ltd. (supra) on the ground that it related to taking of cognizance in a complaint case, the court held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons: State of Gujarat v. Afroz Mohammed Hasanfatta (2019) 20 SCC 539 : (2020) 3 SCC (Cri.) 876-2

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the

Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

17. In view of the facts and circumstances of the case as well as law laid down by Hon'ble Supreme Court, this Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order. The objections raised by the applicant relate to disputed questions of facts, which cannot be adjudicated at this stage by this Court while exercising its jurisdiction under Section 528 of BNSS.

18. Accordingly, the present application is **dismissed** at this stage.

19. Needless to state that the accused-applicant shall have an opportunity of being heard at the stage of framing of charge under Section 250 BNSS (corresponding Section 227 of Cr.P.C.) .

(Praveen Kumar Giri,J.)

January 14, 2026

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