



2026:AHC:129417

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 25498 of 2026

Radheshyam Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Anil Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 66

HON'BLE DINESH PATHAK, J.

1. Heard learned counsel for the applicant and the learned A.G.A. for the State-respondent.

2. The applicant has invoked the supervisory jurisdiction of this Court under Section 528 BNSS assailing the summoning/cognizance order dated 14.10.2025 passed by the Additional District & Sessions Judge/Special Judge, Court No.1 (Prevention of Corruption Act), Meerut, whereby cognizance has been taken and summons were issued against the present applicant under Sections 409, 420, 467, 468, 471, 120-B I.P.C. and Sections 13(1)d & 13(2) of the Prevention of Corruption Act, Police Station Highway, District Mathura, pending before the Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Court No.1, Agra.

3. It is submitted that pointing out certain irregularities and discrepancies in the distribution of food grains, an F.I.R. being Case Crime No.564 of 2010 has been lodged under Sections 409, 420, 467, 468, 471, I.P.C. and Sections 13(1) D (ii) read with Section 13(2) of the Prevention of Corruption Act. After due investigation, the Investigating Officer has submitted the charge-sheet no.7-A of 2024 dated 22.11.2024 against the present applicant under Sections 409, 420, 467, 468, 471 and 120-B I.P.C. Based on the said charge-sheet, learned Special Judge has taken cognizance and issued summons, vide impugned order dated

14.10.2025, under Sections 409, 420, 467, 468, 471, 120-B I.P.C. and Section 13(1) D (ii) read with Section 13(2) of the Prevention of Corruption Act. Subsequently, vide order dated 27.02.2026, the matter was transferred before the Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Special Court No.1, Agra, to deal with the matter relating to corruption under the Prevention of Corruption Act.

4. Record on board reveals that the Investigating Officer, after due investigation, has submitted the police report (charge-sheet) under Section 173 Cr.P.C. for the offence under Sections 409, 420, 467, 468, 471, 120-B I.P.C.; however, the summoning court has illegally issued summons and taken cognizance, vide order dated 14.10.2025, under Section 13(1)d & 13(2) of the Prevention of Corruption Act as well, in addition to the sections of the I.P.C. mentioned in the charge-sheet. It is no more res integra that the learned Magistrate/Special court concerned has no jurisdiction to take cognizance and issue summons beyond the realm of the charge-sheet wherein the accused has been arraigned for the offence. The Hon'ble Supreme Court in the case of **State of Gujarat v. Girish Radhakrishnan Varde** reported in **(2014) 3 Supreme Court Cases 659** has clearly elucidated that the learned Magistrate while taking cognizance and issuing summons have no jurisdiction to add or subtract the sections which are already mentioned in the charge-sheet. Relevant paragraph nos.13, 14, 15, 16 and 17 of the aforesaid judgment is quoted herein below :-

"13. But the instant matter arises out of a case which is based on a police report as a first information report had been lodged before the police at Deesa Police Station under Section 154 of the Cr.P.C. and, therefore, the investigation was conducted by the police authorities in terms of procedure prescribed under Chapter XII of the Cr.P.C. and thereafter charge-sheet was submitted. At this stage, the Chief Judicial Magistrate after submission of the charge-sheet appears to have entertained an application of the complainant for addition of three other sections into the charge-sheet, completely missing that if it were a complaint case lodged by the complainant before the Magistrate under

Section 190(1)(a) Cr.P.C., obviously the Magistrate had full authority and jurisdiction to conduct enquiry into the matter and if at any stage of the enquiry, the Magistrate thought it appropriate that other additional sections also were fit to be included, the magistrate obviously would not be precluded from adding them after which the process of cognizance would be taken by the Magistrate and then the matter would be committed for trial before the appropriate court.

14. 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(1)(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 charge-sheet 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 charge-sheet, 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 charge-sheet after investigation has been completed and charge-sheet has been submitted by the police.

15. 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 I.P.C. on which offence can be held to have been made out in spite of the facts disclosed in the F.I.R. 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 charge-sheet 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 charge-sheet 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 sections 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the charge-sheet 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 charge-sheet.

16. In the alternative, if a case is based on a complaint lodged before the Magistrate under Sections 190 or 202 Cr.P.C., the Magistrate has been conferred with full authority and jurisdiction to conduct an enquiry into the complaint and thereafter arrive at a conclusion whether cognizance is fit to be taken on the basis of the sections mentioned in the complaint or further sections were to be added or subtracted. Cr.P.C. has clearly engrafted the two channels delineating the powers of the Magistrate to conduct an enquiry in a complaint case and police investigation based on the basis of a case registered at a police station where the investigating authorities of the police conducts investigation under Chapter XII and there is absolutely no ambiguity in regard to these procedures.

17. In spite of this unambiguous course of action to be adopted in a case based on police report under Chapter XII and a magisterial complaint under Chapter XIV and XV, when it comes to application of the provisions of the Cr.P.C. in a given case, the affected parties appear to be bogged down often into a confused state of affairs as it has happened in the instant matter since the magisterial powers which are to deal with a case based on a complaint before the magistrate and the police powers based on a police report/FIR has been allowed to overlap and the two separate course of actions are sought to be clubbed which is not

the correct procedure as it is not in consonance with the provisions of Cr.P.C. The affected parties have to apprise themselves that if a case is registered under Section 154 Cr.P.C. by the police based on the FIR and the charge-sheet is submitted after investigation, obviously the correct stage as to which sections would apply on the basis of the FIR and the material collected during investigation culminating into the charge-sheet, would be determined only at the time framing of charge before the appropriate trial court. In the alternative, if the case arises out of a complaint lodged before the Magistrate, then the procedure laid down under Sections 190 and 200 Cr. P.C. clearly shall have to be followed."

5. Having considered the dictum of Hon'ble Supreme Court, in the given circumstances of the present case, I am of considered opinion that the Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Special Court No.1, Meerut has exceeded its jurisdiction in taking cognizance and issuing summons against the present applicant under sections 13(1)(d) & 13(2) of the Prevention of Corruption Act.

6. In this conspectus, as above, instant application succeeds and is **allowed**. Order dated 14.10.2025 passed by the Additional District & Sessions Judge/Special Judge, Special Court No.1, (Prevention of Corruption Act), Meerut, is hereby quashed. Accordingly, it is hereby directed that the learned Magistrate/Special court concerned shall, upon due and proper consideration of the charge-sheet and the material brought on record, pass a fresh order in accordance with law, expeditiously, preferably within a period of one month from the date of production of certified copy of this order.

7. Order of the date shall be transmitted to the concerned court below for necessary action.

June 29, 2026

VR

(Dinesh Pathak,J.)