



2026:AHC:65536

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 34598 of 2025

Sohan Lal And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Pradeep Kumar
Counsel for Opposite Party(s)	:	G.A., Sunil Kumar

Court No. - 81

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Pradeep Kumar, learned counsel for the applicants, learned A.G.A. for the State. None present for the opposite party no. 2.

2. The present application under Section 528 B.N.S.S. has been filed to quash the impugned summoning order dated 17.02.2023 passed by the learned Additional Chief Judicial Magistrate, Court No. 5, Allahabad and entire proceedings of Criminal Complaint Case No. 562 of 2022 (Lalli Devi Vs. Sohan Lal and others), under Section 365 I.P.C., Police Station Tharwai, District Allahabad, pending in the court of learned Judicial Magistrate -IIInd, Allahabad.

3. It is submitted by learned counsel for the applicants that the opposite party no. 2 filed an application under Section 156(3) Cr.P.C. before the learned Judicial Magistrate, Court No. 1, Allahabad against the applicants on totally false and fabricated facts that after death of complainant's husband in the year 2010, the applicants disappeared the son of the complainant in order to grab her landed property. The said application was allowed by the learned Magistrate and a first information report as Case Crime No. 27 of 2020, under Sections 323, 506, 420, 364 I.P.C., Police Station Tharwai, District Prayagraj against the applicants. During investigation, statements of the witnesses namely, Arun Kumar, Baccha Yadav, Kamlesh Kumar and Santosh under Section 161 Cr.P.C. were recorded in which they stated that Sanjeet son of Mohan Lal was weak-minded, his mother i.e. complainant took him to Phaphamau at her Maika before 10-12 years, from where Sanjeet (son of complainant) was

disappeared. The applicant no. 1 and other villagers searched him a lot but he could not be traced out. After recording the statements of the witnesses, police found no role of the applicants in the present case and police submitted final report on 09.03.2020. The opposite party no. 2 filed protest petition which was treated as complaint. The statement of opposite party no. 2 was recorded under Section 200 Cr.P.C. and statements of the witnesses were recorded under Section 202 Cr.P.C. Thereafter the applicants were summoned under Section 365 I.P.C. It is next submitted that no offence is made out against the applicants but the learned Magistrate has not taken in to consideration the statements of the witnesses and illegally summoned the applicants vide impugned order which is liable to be set aside.

4. *Per contra*, it is submitted by learned AGA that the learned Magistrate has not committed any illegality in passing the impugned order and the learned Magistrate has passed the summoning order considering the contents of the complaint and the statements of the complaint recorded under Section 200 Cr.P.C. and the witnesses under Section 202 Cr.P.C., therefore, the present application is liable to be dismissed.

5. As per facts of the case, the opposite party no. 2 filed an application under Section 156(3) Cr.P.C. before the learned Judicial Magistrate, Court No. 1, Allahabad against the applicants. The said application was allowed by the learned Magistrate and a first information report as Case Crime No. 27 of 2020, under Sections 323, 506, 420, 364 I.P.C., Police Station Tharwai, District Prayagraj against the applicants. During investigation statements of the witnesses namely, Arun Kumar, Baccha Yadav, Kamlesh Kumar and Santosh under Section 161 Cr.P.C. were recorded. After recording the statements of the witnesses, police found no role of the applicants in the present case and submitted final report on 09.03.2020. The opposite party no. 2 filed protest petition which was treated as complaint. After recording the statement under Section 200 Cr.P.C. and witnesses under Section 202 Cr.P.C., the learned Magistrate summoned the applicants vide impugned order.

6. From the perusal of material on record and the facts of the case, at this stage, it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relates to the disputed questions on

fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 528 B.N.S.S.. At this stage, only prima facie case to be considered in the light of the law laid down by ***Supreme Court in the case of RP Kapoor Vs. State of Punjab, AIR 1990 SC 66; State of Haryana Vs. Bhajan Lal, 1992 SCC (Criminal) 426; and State of Bihar Vs. P.P. Sharma, 1992 SCC (Criminal) 192.*** The disputed defence of the applicants cannot be considered at this stage.

7. Considering the facts and circumstances of the case, I do not find any ground to quash the aforementioned case, therefore, the prayer for quashing the same is hereby refused and the application is **dismissed**.

(Chawan Prakash,J.)

March 30, 2026

Rmk.