



2026:AHC:65786

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 52010 of 2025

Ishwar Chandra And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Kali Charan Yadav
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Kali Charan Yadav, learned counsel for applicants and learned A.G.A. for the State.

2. The present application under Section 528 BNSS has been filed for quashing the entire proceedings of Complaint Case No.9061 of 2020 (Akhtarunnisa Vs. Ram Chandra & Others) as well as summoning order dated 5.55.2025 passed by Judicial Magistrate-II, Court No.13, Basti, under Sections 323, 504, 506 I.P.C., Police Station Gaur, District-Basti, pending in the court of Judicial Magistrate-II, Court No.13, Basti.

3. Learned counsel for the applicants submits that on 12.02.2020, opposite party No.2 moved an application under Section 156(3) Cr.P.C. against the applicants and other co-accused persons alleging therein that on 02.02.2020, accused Prakash started uprooting and throwing away the wooden fencing, whereupon, when opposite party No.2 objected, the accused persons namely Ram Chandar, Buddhiram, Kusum, Dauje and Ishwar Chandra started abusing her and assaulted her with fists and sticks. The learned Magistrate treated the said application as a complaint case. It is further submitted that the alleged incident is stated to have taken place on 02.02.2020, whereas the application was moved only on 10.02.2020. The learned court below treated the said application as a complaint case. It is further submitted that the complainant was examined under Section 200 Cr.P.C., and her witnesses, namely, Saida Hussain and Ram Prakash, were examined under Section 202 Cr.P.C. Thereafter, the learned Magistrate summoned the present applicants and others under

Sections 323, 504 and 506 I.P.C. It is next submitted that, in fact, on 02.02.2020, opposite party No.2/complainant was trying to make an encroachment upon the public pathway to the house of co-accused Ram Chandar, and when the said act was protested by Ram Chandar and his family members, Ram Chandar was assaulted by the complainant and her husband. In respect thereof, an N.C.R., being N.C.R. No. 07 of 2020, under Sections 323 and 504 I.P.C., was lodged at Police Station Gaur, District Basti, by the wife of Ram Chandra. It is next submitted that the present complaint case has been instituted by opposite party No.2 as a counterblast to the aforesaid N.C.R. and with the ulterior motive of harassing and pressurizing the applicants. It is submitted that opposite party No.2 has lodged a false and baseless complaint against the applicants, whereas no such incident, as alleged, ever took place. It is contended that prima facie no offence is made out against the applicants. The learned Magistrate failed to properly appreciate the facts and circumstances of the case and committed manifest illegality in passing the impugned summoning order without due application of judicial mind. Hence, the impugned order suffers from manifest illegality, and is liable to be set aside.

4. Per contra, learned AGA has opposed the submissions advanced on behalf of the applicants. It is contended that opposite party No.2 filed an application under Section 156(3) Cr.P.C., the same is treated as a complaint case. It is further submitted that the complainant has narrated the entire facts in the application and has supported the same in his statement recorded under Section 200 Cr.P.C., and her witnesses have also supported the prosecution version in their statements recorded under Section 202 Cr.P.C. On the basis of the application and the statements recorded under Sections 200 and 202 Cr.P.C., as well as the material available on record, the learned Magistrate has rightly summoned the applicants. Therefore, the present application is liable to be dismissed.

5. As per the facts of this case, it transpires that the allegation against the applicants is that on 02.02.2020, accused Prakash started uprooting and throwing away the wooden fencing, whereupon, when opposite party No.2 objected, the accused persons namely Ram Chandar, Buddhiram, Kusum, Dauje and Ishwar Chandra started abusing her and assaulted her

with fists and sticks. The learned Magistrate treated the said application as a complaint case. The complainant was examined under Section 200 Cr.P.C., and the witnesses, namely, Saida Hussain and Ram Prakash, were examined under Section 202 Cr.P.C. The learned Magistrate formed an opinion that a prime facie offence is made out against the applicants and summoned the applicants under Sections 323, 504 and 506 I.P.C.

6. From the perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the applicants. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**. The disputed defence of the accused 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.

8. Accordingly, the application is **dismissed**.

(Chawan Prakash,J.)

March 30, 2026

Md Faisal