2026:AHC:7821-DB

A.F.R.
Reserved on : 30.10.2025
Delivered on : 13.01.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Misc. Writ Petition No. 18905 of 2025

Sanjay Wahi .....Petitioners(s)

Versus

State of U.P. and 3 Others .....Respondents(s)

Counsel for Petitioners(s) : Devaang Salva, Sr. Advocate
Counsel for Respondent(s) : Mohit Singh, Rajan Mishra, G.A.

Court No. - 48

HON'BLE CHANDRA DHARI SINGH,J.
HON'BLE LAKSHMI KANT SHUKLA, J.

Per: Hon'ble Chandra Dhari Singh,J.

1. The instant writ petition has been filed by the petitioner seeking following reliefs :-

> *"(i) Issue an appropriate writ, order or direction quashing the impugned F.I.R. dated 03.08.2024 bearing Case Crime No. 311 of 2024, under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar), U.P.*
>
> *(ii) Issue an appropriate writ, order or direction commanding the respondents not to take any coercive measures against the petitioner in pursuance to the impugned F.I.R. dated 03.08.2024 bearing Case Crime No. 311 of 2024, under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar), U.P.*
>
> *(iii) Issue an appropriate writ, order or direction in the nature of Certiorari quashing the impugned charge-sheet dated 17.07.2025 as well as the impugned cognizance/summoning order dated 26.08.2025 passed by the Court of A.C.J.M.-Ist, G.B. Nagar in Criminal Case No. 8223 of 2025 (State vs. Sanjay Wahi) as well as entire proceedings arising out of Case Crime No. 311 of 2024, U/s 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., Police Station Beta 2, Greater Noida (Commissionerate Gautam Budh Nagar) U.P. and all subsequent proceedings thereof, during the pendency of the present writ petition. Otherwise, the petitioner shall suffer irreparable loss and injury."*

Brief Facts

2. As per the prosecution case, the petitioner and the complainant-respondent no. 2 were doing business together. Between the period 2018-19, the petitioner decided to purchase a piece of land for development and after getting the development of the said land, he wanted to sell subsequently. The wife of the respondent no. 2, namely, Deepika Gupta was interested to invest in the said piece of land. For this endeavour, the wife of the respondent no. 2 entered into a Partnership Agreement with the petitioner. In the year 2019, for the purchase of the said land, an agreement to sell was executed between the petitioner and accused nos. 3, 4 and 5. Thereafter, the Partnership Agreement was also extended by the wife to the complainant-respondent no. 2. In the year 2020, a Partnership Agreement was also entered into by the petitioner with one Sunit Kohli (Accused No. 3). On 16.03.2024, the complainant called the petitioner and asked him to meet at his house at D-18, Sector 47 Noida at 06:30 PM. The petitioner went to the house of the complainant at around 07:15 PM. The complainant, his wife Deepika Gupta along with other family members started misbehaving with the petitioner. The petitioner was also threatened, assaulted and forcefully restrained by the complainant and his family members in his house for several hours. They have also called the petitioner's wife and sons and threatened them of dire consequences.

3. It is alleged that the complainant and his wife Deepika Gupta made the petitioner forcefully signed on two cheques i.e. Cheque No. '000349' amounting to Rs. 3,50,00,000/- and Cheque No. '000352' amounting to Rs. 14,00,00,000/-

4. On the next day of this incident, the petitioner made a police complaint against the complainant-respondent no. 2 and his wife regarding the incident of assault, wrongful restrain, forceful signing and possession of cheques worth Rs. 17,50,00,000/-. On 20.06.2024, the complainant-respondent no. 2 had preferred an application under Section 156(3) Cr.P.C. against the petitioner and others. On 10.07.2024, the court

of Additional Chief Judicial Magistrate-II, Gautam Budh Nagar had allowed the application under Section 156(3) Cr.P.C. of the complainant-respondent no. 2 and had directed to lodge an F.I.R. against the petitioner and others. On 03.08.2024, an F.I.R. bearing Case Crime No. 311 of 2024 for the offence under Sections 420, 406, 467, 468, 471, 120-B, 504 and 507 I.P.C., Police Station Beta 2, District Greater Noida (Commissionerate Gautam Budh Nagar) has been lodged against the petitioner and four others. Against the said F.I.R., the petitioner preferred an Anticipatory Bail Application before the Court of learned Additional Sessions Judge, Gautam Budh Nagar. The said anticipatory bail of the petitioner was rejected by the court concerned vide order dated 28.08.2024. Thereafter, the petitioner preferred an Anticipatory Bail Application no. 9551 of 2024 before the High Court at Allahabad, wherein, the Court was pleased to refer the matter to the Mediation and Conciliation Centre to settle the dispute vide order dated 26.09.2024. However, vide order dated 07.07.2025, the anticipatory bail application of the petitioner was granted till submission of the charge-sheet. The instant writ petition has been filed seeking quashing of the impugned F.I.R. dated 03.08.2024 registered at Police Station Beta 2, District Gautam Budh Nagar, U.P. After culmination of investigation, charge-sheet dated 17.07.2025, against the petitioner, has been filed before the competent court and the competent court has taken cognizance vide order dated 26.08.2025 against the petitioner. Thereafter, the applicant has filed an application for an amendment in the writ petition. The same was allowed vide order dated 04.09.2025 by the Co-ordinate Bench of this Court.

Submissions of learned counsel for the petitioner

5. Mr. Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Ms. Saumya Chaturvedi, learned Advocate; Mr. Dinesh Kumar Goswami, learned Senior Advocate assisted by Mr. Devaang Salva, Mr. Anuj Shukla and Mr. Yash Giri, learned counsel appearing on behalf of the petitioner submits that as per the complainant, his only grievance was

related to sharing of alleged profit made by the petitioner from the aforesaid project which unequivocally makes it a civil dispute, wherein rights and liabilities of contracting parties should have been decided. It is also submitted that other grievances of the complainant was that the petitioner should not have entered into any partnership deed with one Sunit Kohli, when it had an exclusive partnership with the wife of the complainant. Learned Senior Advocate next submits that there is no explicit law which prohibits one party to enter into a multiple partnership agreements. If, all these allegations are taken to be true, there is only a breach of contract, which shall be adjudicated upon by either arbitration or through a civil suit.

6. Mr. G.S. Chaturvedi, learned Senior Advocate vehemently submitted that the complainant must not be allowed to invoke the criminal justice system to settle civil dispute/liabilities, therefore, the impugned First Information Report dated 03.08.2024 is nothing but a gross misuse of process of law. The malicious prosecution has been instituted against the petitioner due to serious disputes of civil in nature between the parties only to settle personal score. It is also apprised to the Court that the partnership deed between the petitioner and the wife of the complainant has an explicit arbitration clause which ought to be used in case of any dispute regarding the sharing of profits.

7. Learned Senior Advocate, in support of his arguments, has relied upon the judgment in the case of **Sharif Ahmed and Others vs. State of U.P. and Others, (2024) 14 SCC 122** and submitted that Hon'ble the Supreme Court has held that *"effort to settle civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, should be deprecated and discouraged"*. He has also placed reliance upon the judgment in the case of **Vesa Holdings (P) Ltd. vs. State of Kerala, (2015) 8 SCC 293** and especially relied upon paragraph nos. 12 and 13 of the said judgment which reads as under :-

> *"**12.** …….. the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.*
>
> ***13.** It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court……."*

8. It is lastly submitted that the dispute between the petitioner and the wife of the complainant arises purely from a business transaction governed by a valid partnership which falls under civil law and does not attract any criminal offence. It is further submitted that plain reading of the F.I.R. does not discloses the commission of any offences under Sections 420, 406, 467, 468, 471, 120-B, 504, 507 I.P.C., therefore, the instant F.I.R. and the proceedings arise therefrom deserve to be quashed.

Submissions of learned counsel for the Respondents

9. Mr. V.P. Srivastava, learned Senior Advocate assisted by Mr. Mohit Singh and Mr. Rajan Mishra, learned counsel for the respondents vehemently opposed the writ petition and submitted that this Court is sitting in the roster under Article 226 of the Constitution of India, therefore, this Court has no jurisdiction to adjudicate the cognizance order dated 26.08.2025 of the concerned Court. It is next submitted that the cognizance order passed by the concerned Magistrate may be challenged before the appropriate jurisdiction under Section 528 of the

Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'). It is vehemently submitted that the power of judicial review under Article 226 of the Constitution of India is not opened in criminal cases once cognizance has been taken by the court concerned. It is further submitted that the filing of the charge-sheet and taking cognizance thereupon mark a change in legal status of the case which limits the writ jurisdiction.

10. Learned Senior Advocate has placed reliance upon the judgment of **Pradnya Pranjal Kulkarni vs. State of Maharashtra and Another, 2025 SCC OnLine SC 1948**, wherein the Supreme Court has clarified on the interplay between constitutional writ powers and statutory remedies under BNSS. It draws a clear distinction between situations where investigation is still ongoing, permitting in writ intervention, and cases where the charge-sheet has culminated in cognizance, which must instead be addressed under Section 528 of the BNSS.

11. It is next submitted that as per the provisions contained in Chapter V Rule 2 of the Allahabad High Court Rules, 1952, the Applications under Section 528 BNSS (482 Cr.P.C.) are to be placed before a Single Judge Bench whereas the Criminal Writ Petitions, filed for quashing of the F.I.R., are to be placed before a Division Bench, therefore, taking into consideration of the High Court Rules as stated above, this Court has no jurisdiction to quash the cognizance order as challenged by the petitioner in the instant writ petition. He has also placed reliance upon the provisions contained in Chapter XXII Rule 1 of Allahabad High Court Rules. The instant writ petition is devoid of merit, and deserves to be rejected.

Analysis and Conclusion

12. Heard learned Senior Advocates appearing on behalf of respective parties, perused the contents made in the writ petition and other pleadings in the said writ petition.

13. In the instant case, it is an admitted fact that after completion of the investigation, charge-sheet has been filed on 17.07.2025 before the concerned Court and after taking into consideration the materials along with the impugned charge-sheet, the Court concerned found *prima-facie* case for taking a cognizance and accordingly taken cognizance thereupon vide order dated 26.08.2025 against the petitioner.

14. Primarily, the instant writ petition was filed for quashing of the F.I.R. but subsequently during the pendency of the said writ petition, the investigation has been concluded, charge-sheet has been filed and cognizance thereupon has also been taken, therefore, the petitioner has moved an application for amendment of the writ petition and the same was allowed vide order dated 04.09.2025 of the co-ordinate Bench of this Court. Accordingly, the instant writ petition was amended. In the amended writ petition, the impugned charge-sheet dated 17.07.2025 along with cognizance order dated 26.08.2025 have also been challenged. After taking into consideration the submissions raised by the learned counsel for the petitioner as well as respondents, the moot question to be decided is that *"whether this Court can quash a summoning or cognizance order of the Magistrate concerned in the jurisdiction under Article 226 of the Constitution of India?"*

15. Bombay High Court in the case of **Yousef and 8 others vs. The State of Maharashtra and 2 others (Criminal Application No. 3134 of 2019)** held as under:-

> *"In a plethora of judgments, the Hon'ble Supreme Court has laid down detailed guidelines to be followed while exercising jurisdiction under Article 226/227 of the Constitution of India or Section 482 Cr.P.C. The Hon'ble Supreme Court in* ***Radhey Shyam and another v. Chhabi Nath and others (2015) 5 SCC 423*** *has held that judicial orders are not ordinary amenable of writ jurisdiction under Article 226 of the Constitution and has clarified that supervising jurisdiction under Article 227 of the Constitution as well as the inherent jurisdiction under Section 482 Cr.P.C. is the appropriate forum in such cases. Even in the case of* ***M/s Pepsi Foods Limited and another v. Special Judicial Magistrate and others (1998) 5 SCC 749*** *the Hon'ble Supreme Court has reiterated that the High Courts may exercise its power under Article 226 of the Constitution of India or under Section 482 Cr.P.C. to quash criminal proceedings where abuse of process is*

evident. In the case of ***State of Haryana and others v. Bhajan Lal and others 1992 Supp (1) SCC 335*** *illustrative categories were laid down for quashing of criminal proceedings under Article 226 of the Constitution of India and Section 482 Cr.P.C. to prevent abuse of process of law. Continuing these lines of guidelines, the Supreme Court once again held in the case of* ***Neeta Singh and others v. State of U.P. and others 2024 SCC OnLine SC 5761****, that once a competent Court has taken cognizance, a petition under Article 226 of the Constitution simplicitor to quash an FIR may not survive. However, latest dictum in* ***Pradnya Pranjal Kulkarni v. State of Maharashtra and another 2025 SCC OnLine SC 1948****, the Supreme Court clarified that where the petition invokes the twin jurisdiction, one under Article 226 of the Constitution and the other under Section 482 Cr.P.C. which now corresponds to Section 528 B.N.S.S., the High Court retains its jurisdiction post cognizance to quash not only the FIR/charge-sheet but also the order taking cognizance, provided the pleadings are appropriately incorporated in the petition, and, most importantly, if the roster so permits."*

16. For ready reference, Chapter V Rule 2 of the Allahabad High Court Rules, 1952 reads as under:

"2. Jurisdiction of a single Judge :- Except as provided by these Rules or other law, the following cases shall be heard and disposed of by a Judge sitting alone, namely--

(i) a motion for the admission of a memorandum of appeal or cross objection or application or for ex parte interim order on an application;

[1][(ii) (a) a civil [2][***] Second Appeal from a decree,including an appeal arising out of a case instituted in a revenue court, in which the value of appeal for the purpose of jurisdiction does not exceed [3][one lakh] rupees;

[4][(aa) A Civil First Appeal instituted before [5][or after] the commencement of the [U.P. Civil Laws Amendment Act of 1991 (U.P. Act No. 17 of 1991)] from a decree including an appeal arising out of a case instituted in a revenue court in which the value of appeal for the purpose of jurisdiction does not exceed [five lakh] rupees;

---

1 Subs. By Noti No. 37/VIII-C-150, dated 18.2.1958, published in U.P. Gazette, Part II, dated February 22, 1958

2 Words "First or" deleted by Noti No. 360/IV-G-24, dated 22nd August, 1969, published in U.P. Gazette, Part II, dated 27th September, 1969, p. 173.

3 Subs. by C.S. No. 221, dated 31st May, 1991 published in U.P. Gazette, Part II, dated 24th August, 1991.

4 Added by Noti No. 360/Iv-G-24, dated 22nd August, 1979, published in U.P. Gazette, Part II, dated 27th September 1979, p. 173.

5 Ins by Noti No. 322/VIII-C-2, dated 2nd May, 1984, published in U.P. Gazette, Part II, dated 27th October 1984. C.S. NO. 215

(b) an appeal under Section 28 of the Hindu Marriage Act, 1955;

(c) any other civil appeal in which the value of the appeal does not exceed [6][two lakh] rupees :

[7][Provided that where an ad valorem court-fee has been paid such value shall be deemed to be the amount on which such court-fee has been paid;]

(iii) a civil revision;

(iv) an application for the withdrawal of an appeal or application, or for a consent decree or order, which is uncontested or which is made in a case which can be heard under these Rules by a Judge sitting alone;

(v) any other application which is not--

(a) an application [8][***] under Section 5 of the Limitation Act, 1963 in a case which cannot be heard by a Judge sitting alone;

(b) [9][***]

(c) an application 53[other than an application for interim order] to which Chapter XXII, Part IV applies;

(d) an application [10][other than an application for interim order] which by these Rules or other law is required to be heard by a Bench of two or more Judges;

(e) an application 53[other than an application for interim order] under Chapter IX, Rule 10; or

(f) [11][***]

(vi) a suit or a proceeding in the nature of a suit coming before the Court in the exercise of its ordinary or extraordinary original civil testamentary or matrimonial jurisdiction including a proceeding under the Indian Trusts Acts, 1882 55[the Companies Act, 1956] or the Indian Patents and Designs Act,1911;

---

6 Subs. By C.S. No. 221, dated 31st May, 1991, published in U.P. Gazette, Part II, dated 24th August, 1991.
7 Added by Noti. No. 138/VIII-C-150, dated 1.6.1959, published in U.P. Gazette, Part II, dated April 9, 1960.
8 The words “for the appointment of a receiver or for an injunction or for security for costs or for leave to appeal in forma paupris or” omitted by Noti. No. 20/VIII-C-150, dated 18.8.1977, published in U.P. Gazette, Part II, dated 27.8.1977. p. 58
9 Deleted by Noti. No. 261/VIII-C-17, dated 29.4.75. published in U.P. Gazette, dated 24.1.76
10 Ins. By Noti. No. 20/VIII-C-150, dated 18.8.1977, published in U.P. Gazette, Part II, dated 27.8.1977, p. 258
11 Deleted by ibid.

(vii) a criminal appeal, application or reference except-

(a) an appeal or reference in a case in which a sentence of death or imprisonment for life has been passed [12][from the stage of admission including consideration of bail onwards];

[13](b) "an appeal under section 378 of the code of Criminal procedure, 1973 from an order of acquittal [14][in respect of an offence for which the maximum punishment is either life imprisonment or death".

(c) [15](***)

(d) a case in which notice has been issued under 58[Section 401 of the Code of Criminal Procedure, 1973] to an accused person to appear and show cause why his sentence should not be enhanced;

(e) [***]

(f) an application to which Chapter XXI, Part IV applies;

(viii) a case coming before the Court in the exercise of its ordinary or extraordinary original criminal jurisdiction;

(ix) an appeal or revision from an order passed [16][under Sections 340, 341 or 343 of the Code of Criminal Procedure, 1973] :

Provided that:-

(a) the Chief Justice may direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a Bench of two or more Judges [or that any case or class of cases which may be heard by a Bench of two or more Judges, by a Judge sitting alone;]

(b) a Judge may, if he thinks fit, refer a case which may be heard by a Judge sitting alone or any question of law arising therein for decision to a larger Bench; and

(c) a Judge before whom any proceeding under the Indian Trusts Act, 1882, [the Companies Act,1956] or the Patents and Designs Act, 1911, is pending may with the sanction of the Chief Justice,

---

12 Ins. By Noti. No. 140/VIII-C-2, Correction Slip No. 236 dt. 16.05.2006 published in the U.P. Gazette Part II dt. 27.05.2006 (w.e.f. 27.05.2006)
13 Substituted by Noti. No. 680/VIII-C-1, dated 26.11.80. published in U.P. Gazette, dated 11.4.1981, p. 27. C.S. No.204
14 Added by Noti. No. 552, dated 22.11.1995, published in U.P. Gazette, Part 4, Sec. (Ka), dated 29.11.1995.
15 Clauses (c) and (e) deleted by Noti. No. 680/VIII-C-1, dated 26.11.80. published in U.P. Gazette, Part II, dated 11.4.1981, p. 27. C. S. No.204
16 Substituted by Noti. No. 680/VIII-C-1, dated 26.11.80. published in U.P. Gazette, Part II, dated 11.4.1981, p. 27. C. S. No. 204

> obtain the assistance of one or more other Judges for the hearing and determination of such proceeding or of any question or questions arising therein."

17. Chapter XXII Rule 1 of the Allahabad High Court Rules, 1952 reads as under:

> ***Direction, Order or Writ under Article 226 (and Article 227) of the Constitution other than a writ in the nature of Habeas Corpus***
>
> ***"1. Application.*** *– (1) An application for a direction or order or writ under Article 226 [and Article 227] of the Constitution other than a writ in the nature of habeas corpus shall be made to the Division Bench appointed to receive applications or, on any day on which no such Bench is siting, to the Judge appointed to receive applications in civil matters. In the latter event the Judge shall direct that the application be laid before a Division Bench for orders……."*

18. As per the aforesaid Rules, the application under Section 528 BNSS (482 Cr.P.C.) by which the Court has inherent power to quash the cognizance order or any judicial order passed by the concerned Court are to be placed before a Single Judge Bench but the Criminal Writ Petitions for quashing of the F.I.R. are to be placed before the Division Bench. The Division Bench ordinarily amenable of the writ jurisdiction under Article 226 of the Constitution of India.

19. In the case of **Neeta Singh and Others vs. State of U.P. and Others, 2024 SCC OnLine SC 5761**, the Supreme Court in paragraph nos. 3, 4, 13, 14 and 15 has held as under:-

> *"**3.** We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in Radhey Shyam v. Chhabi Nath [17]. While disapproving the view expressed*

17 (2015) 5 SCC 423

in Surya Dev Rai v. Ram Chander Rai [18], it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226[19]. We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32.

4. *The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra[20] and Rupa Ashok Hurra v. Ashok Hurra[21], as well as the decision of a bench of three Judges in Sadhana Lodh v. National Insurance Co. Ltd.[22]*

13. *In Pepsi Foods (supra), the relevant high court was approached with a petition under Articles 226 and 227. Interference was declined by the high court on the ground that the petitioners could not have invoked the jurisdiction under Article 226. However, this Court was of the view that the petition, filed in the high court under Articles 226 and 227, could well be treated solely under Article 227 of the Constitution and decided. The observation that nomenclature is not relevant was made on the logic that if the high court otherwise does possess jurisdiction to decide, nomenclature would not debar the court from exercising its jurisdiction unless there is a special procedure prescribed which procedure is mandatory.*

(emphasis supplied)

14. *Bearing the aforesaid dictum in mind, it would be useful at this stage to refer to the decision of a Division Bench of the High Court at Calcutta in Sohan Lal Baid v. State of West Bengal[23]. Speaking through Hon'ble P.D. Desai, CJ., the Division Bench held that adjudication of a matter by a learned Judge without allocation made of such matter to such Judge by the Chief Justice would be void. The*

18 (2003) 6 SCC 675
19 Para 29 of Radhey Shyam
20 AIR1967 SC 1
21 (2002) 4 SCC388
22 (2003) 3 SCC 524
23 AIR 1990 Cal 168

aforesaid view was approved by this Court in State of Rajasthan v. Prakash Chand[24]*. Upon survey of a number of precedents, it was held by this Court as follows:*

"59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

*(5) ****

(6) That the puisne Judges cannot 'pick and choose' any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

****"*

15. *In view of the decision in Prakash Chand (supra), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A Judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by*

24 (1998) 1 SCC 1

this Court in the opening sentence of paragraph 26 of Pepsi Foods (supra) to be of extreme significance."

20. In the case of **Pradnya Pranjal Kulkarni (Supra)**, the Supreme Court has clarified that where the petition invokes twin jurisdiction, one under Article 226 of the Constitution and other under Section 528 BNSS (482 of Cr.P.C.), the High Court retains its jurisdiction post cognizance to quash not only the FIR/Charge-sheet but also the order taking cognizance, provided the pleadings are appropriately incorporated in the petition, and, most importantly, if the roster so permits.

21. As per the discussions in foregoing paragraphs, it is also settled that A judge of a High Court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice, if he finds that petition filed under Article 226 of the Constitution should have ideally been filed under Article 227/528 BNSS, treat that petition as one under Article 227/528 BNSS and proceed to hear and decide it, unless the Chief Justice has also assigned to the Judge, to hear and decide the petitions under Article 227/528 BNSS. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227/528 BNSS for being placed before the learned Judge having assignment.

22. This Court is having only jurisdiction under Article 226 of the Constitution of India. The roster is prepared by the Chief Justice of the High Court and it is not open to be overstepped by the any Court. The roster system is based on Constitutional Convention and Rules of this Court / Supreme Court.

23. It is an admitted fact that this Court is not having twin jurisdiction one under Article 226 of the Constitution and other under Article 227/528 BNSS, therefore, this Court has only jurisdiction under Article 226 of the Constitution of India as assigned by the Chief Justice.

24. Taking into consideration the aforesaid principle of law, clarification of Hon'ble the Supreme Court and the facts and materials available on

record, we are of the opinion that the instant writ petition is not maintainable.

25. Accordingly, the instant writ petition is ***dismissed as not maintainable***.

26. The petitioner is at liberty to move an appropriate application or petition before the appropriate Courts to quash the cognizance order.

(Lakshmi Kant Shukla) (Chandra Dhari Singh,J.)

January 13,2026
Saurabh