

A.F.R.

Reserved on:- 30.01.2026

Delivered on:- 13.02.2026



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

Application U/S 482 No.5062 of 2016

Shiv Pratap @ JokhuApplicant(s)

Versus

State of U.P. And Anr.Opposite Party(s)

Counsel for Applicant(s) : Ranvijay Singh
Counsel for Opposite Party(s) : Govt. Advocate, Amresh Singh, Shitla Prasad Tripathi

Court No. - 23

HON'BLE RAJEEV BHARTI, J.

1. Heard Shri Ranvijay Singh, learned counsel for the applicant, Shri S.P. Tripathi, learned counsel for opposite party no.2, Shri S.K. Pandey, learned A.G.A. and perused the material available on record.

2. By means of the present application under Section 482 Cr.P.C. the applicant has prayed for quashing of order dated 28.03.2014 passed by the learned Chief Judicial Magistrate, Ambedkar Nagar granting permission under Section 155(2) Cr.P.C., charge sheet dated 10.06.2015 and summoning order dated 21.11.2015, arising

out of N.C.R. No.30 of 2014, under Sections 352, 504 and 427 I.P.C., Police Station- Sammanpur, District- Ambedkar Nagar.

Factual Matrix of the case

3. An N.C.R. was lodged on 26.03.2014, thereafter the complainant moved an application before the learned Chief Judicial Magistrate seeking permission under Section 155(2) Cr.P.C. to investigate the matter. The learned Chief Judicial Magistrate allowed the application on 28.03.2014 pursuant thereto, investigation was conducted and charge sheet was submitted on which cognizance was taken and the applicant was summoned.

Submission made by learned counsel for the applicant

4. Shri Ranvijay Singh, learned counsel for the applicant submits that under Section 155(2) Cr.P.C., the permission for investigation could have been sought only by the police officer. Since the application was moved by the complainant, the permission granted by the learned Chief Judicial Magistrate is illegal. Consequently, the entire investigation and subsequent proceedings are vitiated.

5. Reliance has been placed upon the case of **Navin Chandra Pandey Vs. State of U.P.** reported in **1995 All LJ 1688** wherein this Court has held as under.

"3. The material difference in between the cognizable and non-cognizable offence is that in the former case the police starts investigation without any order of a magistrate but in non-cognizable case the police can start investigation only after an order of the Magistrate is passed allowing him to do

the investigation. So the responsibility lies with the police to obtain the order and not on the complainant."

6. Learned counsel for the applicant has also placed reliance upon the judgment of Karnataka High Court in the case of **Vijesh Pillai Vs. State of Karnataka** reported in **2023 LiveLaw (Kar) 229**, especially para nos.19 and 20 which read as under.

"19. Chapter V Rule 1 of Karnataka Criminal Rules of Practice, 1968 also deals with investigation of non-cognizable case. The said provision reads as follows:—

"INVESTIGATION AND PROSECUTION

**1. Report under Section 154.—(1) On receipt of the report of the Police Officer under Section 154 of the Code, the Magistrate shall make a note on the report of the date and time of the receipt thereof and initial the same. Before initialing, the Magistrate shall also endorse on the report whether the same has been received by the post or muddam.*

2. (1) When a Magistrate directs an investigation of a case under Sections 155(2), 156(3) or 202 of the Code, he shall specify in his order the rank and designation of the Police Officer or the Police Officers by whom the investigation shall be conducted."

20. Therefore, under Rule 1, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, Magistrate has to specify in his order the rank and designation of the Police Officer or the Police Officer by whom the investigation shall be conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr. P.C., and Rule 1 and 2 of Chapter V of the Karnataka Criminal Rules of Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

i) The Jurisdictional Magistrates shall stop hereafter making endorsement as 'permitted' on the police requisition itself. Such an endorsement is not an order in the eyes of law and as mandated under Section 155(2) of Cr.P.C.

ii) When the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received, either by post or by Muddam and direct the office to place it before him with a separate order sheet. No order should be passed on the requisition itself. The

said order sheet should be continued for further proceedings in the case.

iii) When the requisition is submitted to the Jurisdictional Magistrate, he has to first examine whether the SHO of the police station has referred the informant to him with such requisition.

iv) The Jurisdictional Magistrate should examine the contents of the requisition with his/her judicious mind and record finding as to whether it is a fit case to be investigated, if the Magistrate finds that it is not a fit case to investigate, he/she shall reject the prayer made in the requisition. Only after his/her subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he/she shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

v) In case the Magistrate passes the orders permitting the investigation, he/she shall specify the rank and designation of the Police Officer who has to investigate the case, who shall be other than informant or the complainant."

Submissions made by learned counsel for opposite party no.2 as well as learned A.G.A.

7. Per contra, learned counsel for opposite party no.2 and learned A.G.A. placed reliance on the judgment of **Brij Lal Bhar Vs. State of U.P. through Principal Secretary** reported in **2006 (4) ALJ 731** wherein this Court has held as under.

"6. Now I deal with issue no.2. According to the provision of Section 155 Cr.P.C. only officer-in-charge or any police officer of a police station concerned can move an application to obtain the order for investigation from the magistrate concerned of a non-cognizable case and there is no legal bar for moving such application by the first informant, Section 155(2) Cr. P.C. also envisages that no police officer shall investigate a non-cognizable case without the 'order' of magistrate, here the word 'order' as mentioned above, it is relevant to deal with issue no. 2, in the wording of the provision of Section 155(2) the word 'without order' is used. Therefore, the order may be passed by the magistrate concerned on the application of police officer concerned or on the application of the first informant also. According to the provisions of Section 154 Cr. P.C. also the case is registered

on the information given to the officer in-charge of a police station, relating to the commission of a cognizable offence. In default, the first informant may move an application under Section 156(3) for passing the 'order' for doing investigation, it provides a right to the first informant to move an application on this analogy the first informant is also a competent person to move an application under Section 155(2) Cr.P.C."

Analysis

8. After hearing the submissions advanced by learned counsel for the parties, the following issue for determination has been made:-
 - (i) Whether permission under Section 155 (2) Cr.P.C. for investigation of a non-cognizable case can be granted by the Magistrate on an application moved by the complainant or aggrieved person?
9. After perusal of the above case laws, this Court perused the statutory provision of Section 155 (2) Cr.P.C., which is hereby reproduced for a ready reference.

"155. Information as to non-cognizable cases and investigation of such cases. - (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a

cognizable case, notwithstanding that the other offences are non-cognizable."

10. Section 155(2) Cr.P.C. provides that "*no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial*". The provision restricts the power of investigation, but it does not specify the person who may approach the Magistrate. In **Navin Chandra Pandey (supra)**, it was held that police cannot investigate a non-cognizable case without Magistrate order. Responsibility lies with the police to obtain such permission, however, the judgment does not lay down that the complainant is barred from moving application before the Magistrate. In **Brij Lal Bhar (supra)**, the later Co-ordinate bench held that there is no legal bar for the first informant to move an application under Section 155(2) Cr.P.C. The Magistrate may pass the order on the application of police or the informant, the provision only requires an order of a Magistrate and not a specific applicant.

11. Both the aforesaid decisions are by Co-ordinate Benches. It is a settled principle that a Bench of equal strength is bound by decision of a Co-ordinate Bench. However, in case of divergence, the later decision should ordinarily be followed, unless the matter is referred to a larger bench. Reference may be made to a judgment of the Hon'ble Supreme Court in the case of **State of Bihar Vs. Kalika Kuer @Kalika Singh & Ors.** reported in **(2003) 5 SCC 448** and **Union of India & Another Vs. Raghbir**

Singh (Dead) By LRs. Etc. reported in **(1989) 2 SCC 754**, the Hon'ble Supreme Court has emphasized that certainty and consistency are essential for judicial discipline. Since the later decision in **Brij Lal Bhar (supra)** examines the statutory scheme in detail and clarifies the legal position, this Court respectfully follows the same.

12. The reliance placed upon by the learned counsel for the applicant in the case of **Vijesh Pillai (supra)** is misplaced, as the said rules are based on Karnataka Criminal Rules of Practice, 1968, which have no application in the State of Uttar Pradesh. In the State of Uttar Pradesh, the requirement under Section 155(2) Cr.P.C. is only that Magistrate should apply his judicial mind and pass an order permitting investigation. There is no statutory requirement to follow the procedural formality as provided under Karnataka Criminal Rules of Practice, 1968. There is no specific rules in the State of Uttar Pradesh equivalent to Karnataka Criminal Rules of Practice, 1968.
13. The Hon'ble Supreme Court has repeatedly held that procedural provisions relating to investigation should be interpreted to advance justice and not to frustrate legitimate prosecution.
14. A reference may be made in the case of **Sakiri Vasu Vs. State of U.P. & others**, reported in **2008 (2) SCC 409**, wherein it has been held by Hon'ble the Supreme Court that *the Magistrate has vide power to ensure proper investigation*. This decision indicates that

procedural technicalities should not invalidate proceedings unless jurisdictional illegality or miscarriage of justice is demonstrated.

15. Section 155(2) Cr.P.C. imposes a restriction only on the police officer and it does not prohibit the complainant from approaching the Magistrate. The object of the provision of Section 155(2) Cr.P.C. is to ensure judicial supervision over investigation, not to restrict access to justice. Once the Magistrate has applied his judicial mind and granted permission, the investigation conducted pursuant thereto cannot be held illegal merely because the application was moved by the complainant.
16. Interference under Section 482 Cr.P.C. is warranted only where proceedings are without jurisdiction or there is an abuse of process or continuation would result in miscarriage of justice. No such circumstances is made out in the present case. The issue raised in the present case is purely technical and does not affect the jurisdiction of the Magistrate.
17. In view of the law laid down in **Brij Lal Bhar (supra)** and the settled principle of judicial discipline, this Court holds that permission under Section 155(2) Cr.P.C. may be granted by the Magistrate on an application moved by the complainant or any aggrieved person, and the investigation conducted pursuant thereto is not vitiated.
18. In view of the foregoing reasons, no ground for interference in this application under Section 482 Cr.P.C. is made out. The

application u/s 482 Cr.P.C. is hereby **dismissed**. Interim order, if any, stands vacated.

(Rajeev Bharti, J.)

Order Date :- 13.02.2026
Anand