



2026:AHC:52055

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 28695 of 2025

Mohd. Zeeshan Siddiqui and 2 others

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Arshi Abdy, Syed Mohammad Abbas Abdy
Counsel for Opposite Party(s)	: Ajad Singh, G.A., Shad Khan, Shailesh Kumar Pandey

Court No. - 84

HON'BLE SANJIV KUMAR, J.

1. Heard Shri S.M.A Abdy, learned Counsel for the applicants, Shri Ajad Singh, learned Counsel for the opposite party no. 2 and learned A.G.A for the State and perused the material on record.

2. This application under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (in short B.N.S.S.) has been filed by the applicants to quash impugned charge-sheet No.13 of 2024 dated 20.02.2024 and cognizance/ summoning order dated 21.03.2024 passed by Incharge Civil Judge (J.D.), Court No. 21, Allahabad in Criminal Case No.112 of 2024 (State Vs. Mohd. Zeeshan Siddiqui and Others) arising out of Case Crime No.128 of 2023, against applicant No. 1 under Sections 354Kha, 452, 352, 323, 504, 506 and 448 I.P.C. and against applicant nos. 2 and 3 under Sections 452, 352, 323, 504, 506 and 448 I.P.C., Police Station Kotwali Commissionerate, District Prayagraj.

3. Brief facts giving rise to this application are that opposite party no. 2 Prem Kumar Joel lodged an FIR on 9.8.2023 stating that the applicant no.1 was his driver and upon request, his wife permitted him to stay in a vacant room of his house for some period. Thereafter, he refused to vacate the room upon being asked, and started using the room in wrong way. The informant is 73 years old person. On 24.07.2023 at noon, the applicant and others entered in his house, misbehaved with him and when his daughter-in-law came for his rescue, she was also misbehaved and her clothes were torned. Mohd. Zeeshan Siddiqui and his one companion was captured by neighbours and locked in a room, police was informed and they were handed over to the police and the rest of his companions fled away. He had submitted an application the same day in Police Station- Kotwali. Upon this information, FIR was lodged and investigation was carried out and after investigation charge-sheet was filed against the applicants.

4. It is submitted on behalf of the applicants that the investigation was not conducted properly. There are material contradictions in statements of witnesses. Even the alleged robbery of Rs. 5,000/- from informant's daughter-in-law was not found correct. In fact there was a builders agreement between the first informant and the applicant no. 1 with regard to the House No. 18/9 Kamla Nehru Road, Tehsil- Sadar, Prayagraj, and in view of terms and conditions of said agreement, second party Julex Infra Estate Pvt. Ltd. Through Director Mohd. Zeeshan Siddiqui constructed two storied building over the land and thereafter the ground floor was occupied by Pramod Kumar Joel, and the first floor went to the builder. Thereafter, applicant no. 1 started his office at first floor and got separate electricity connection, which lasted for six years. Everything was smooth, however, the alleged owner with *mala fide* intention got the said electricity connection dis-connected.

5. In fact, on 24.07.2023 at about 11.30 a.m. *maarpeet* was committed by informant with applicant no. 1 and others as well as he was robbed of Rs.50,000/- cash and his CCTV cameras and DVR's were also damaged and taken away. In this regard, applicant had lodged an

FIR on 04.08.2023 against the first informant and his son and 10 unknown persons and after investigation charge-sheet has been filed in the competent court. The Julex Infra Estate Pvt. Ltd. Through Director Mohd. Zeeshan Siddiqui has also filed a Civil Suit No. 1096 of 2023 for Permanent Injunction in the competent court. It is submitted that in view of the above facts it is clear that the present criminal proceedings against the applicants are counterblast to the FIR lodged by applicant no. 1 against opposite party no. 2 and his son. The dispute is essentially civil in nature and civil suit is pending between the parties. The FIR was lodged on concocted and false facts, therefore, the entire proceeding deserves to be quashed.

6. On the other hand, learned Counsel for opposite party no. 2 has submitted that the applicants had committed the offence and in this regard the FIR was lodged on correct facts. After investigation charge-sheet has been filed. It is also submitted that in proceeding under Section 528 BNSS this Court cannot examine the evidence collected during investigation as it would amount to holding a mini trial. A cognizable offence is made out and so this application deserves to be dismissed.

7. Learned A.G.A has defended the impugned order and entire criminal proceedings.

8. Section 528 BNSS, 2023 envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite law that the inherent power of the High Court under Section 528 BNSS (corresponding Section 482 Code of Criminal Procedure, 1973) ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the Court or to otherwise secure the ends of justice and the Court possesses wide discretionary powers. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

An inherent jurisdiction can be invoked only to prevent abuse of process of court.

9. The Supreme Court in the case of *Madhu Limaye Vs State of Maharashtra, AIR 1978 SC 47*, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

"1. Power is not to be resorted to, if there is specific provision in code for redress of grievances of aggrieved party.

2. It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.

3. It should not be exercised against the express bar of the law engrafted in any other provision of the code."

10. In the landmark case *State of Haryana v. Ch. Bhajan Lal (1992 Supp. (1) SCC 335)*, a two-judge bench of the Supreme Court of India considered in detail, the provisions of section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

"1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

11. In view of the above legal position, as well as submissions of both the parties and material on record, if we look into the present case then admittedly, FIR was lodged against the applicants and unknown persons. The applicants are named in the FIR and from the contents of the FIR, *prima facie*, cognizable offence is made out and it is alleged that they entered into the house of the informant forcefully and mis-behaved with him and when his daughter-in-law came for rescue then they mis-behaved with her also and outraged her modesty, and tore her clothes. The Investigating Officer has recorded statements of informant and the victim and thereafter, after collecting the evidence has filed charge-sheet under Sections- 452, 354(kha), 352, 323, 504, 448 and 506 IPC before the competent court. The concerned court has taken cognizance of the offence.

12. It is submitted on behalf of learned counsel for the applicants that the dispute between both the parties are civil in nature as there was a builder's agreement between the first informant and the applicant no.1 for construction of the disputed house. It is also submitted that there are material contradictions in the statements of witnesses recorded by the IO during investigation which raises serious doubt over the prosecution case.

13. Admittedly, for an incident of the same date, the applicant no. 1 has also filed an FIR and in that case also charge-sheet has been filed. Therefore, both parties have lodged FIR against each other for offence of the same date, with different versions. Whether the present case is a counterblast of the FIR lodged by the applicant no. 1 or not, is a matter for the trial court to decide which requires evaluation of evidence and this Court cannot go through all this, in this proceeding, and form an opinion in this regard.

14. This Court in proceeding under Section 528 BNSS cannot evaluate the evidence, and form an opinion on the disputed facts raised on behalf of the applicant which is under the domain of the trial court. The effect of contradictions in statements of witnesses, if any, recorded by the Investigating Officer is also for the trial court to decide. *Prima facie* pendency of civil case also has no effect over this case. Overall, the allegations levelled against the applicants *prima facie*, discloses commission of cognizable offence and in view of the above, there is no good ground to exercise inherent power of this Court in the instant matter.

15. Accordingly, this application under Section 528 B.N.S.S. lacks merit and is accordingly, **dismissed**.

(Sanjiv Kumar,J.)

March 16, 2026

AdityaG