



2026:AHC-LKO:35249

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 3474 of 2026

Sayed Mohammad Hamza

.....Applicant(s)

Versus

State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of
Home Lko. And Another

.....Opposite Party(s)

Counsel for Applicant(s) : Nadeem Murtaza, Yash Vardhan Gupta
Counsel for Opposite Party(s) : G.A.

Court No. - 16

HON'BLE SHREE PRAKASH SINGH, J.

Heard Mr. Nadeem Murtaza, Mr. Parth Anand and Mr. Yash Vardhan Gupta, learned counsel for the applicant, and Mr. Nirmal Kumar Pandey, learned counsel for the State.

Notice to opposite party no.2 is dispensed with.

Present application has been filed with the following prayers:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the entire as well as consequential proceedings of the Sessions Trial No. 27 of 2026, titled as 'State v. Sayed Mohammad Hamza, pending before the Court of Learned Additional District and Sessions Judge. Court No. 1, Ambedkar Nagar, under section 302 and 201 of IPC arising out of FIR bearing case crime no. 0139 of 2021 registered at Police Station Malipur. District Ambedkar Nagar.

It is further prayed that this Hon'ble Court may be pleased to quash the order dated 26.02.2026, passed by the Learned Additional District and Sessions Judge, Court no. 1, Ambedkar Nagar, in Sessions Trial No. 27 of 2026 (titled as 'State v. Sayed Mohammad Hamza'), whereby the Learned Trial Court has proceeded to frame charges against the Applicant under Section 302 and 201 of the IPC, annexed as Annexure No. 1 to the instant Application.

It is further prayed that this Hon'ble Court may graciously be pleased to quash the order dated 13.02.2026, passed by the Learned Additional District and Sessions Judge, Room No. 1, Ambedkar Nagar, in Sessions Trial no. 27 of 2026 (titled as 'State v. Sayed Mohammad Hamza'), whereby the Discharge Application preferred by the Applicant has been rejected, annexed as Annexure No. 2 to the instant Application.

It is further prayed that this Hon'ble Court may graciously be pleased to quash the order dated 03.02.2026 passed by the Learned Chief Judicial Magistrate, Ambedkar Nagar in Criminal Case No. 518 of 2026 arising out of FIR bearing case crime no. 0139 of 2021 lodged at Police Station Malipur, District Ambedkar Nagar, whereby the Applicant has been summoned as accused under sections 302 and 201 of the IPC, annexed as Annexure No. 3 to this Application.

It is further prayed that this Hon'ble Court may graciously be pleased to quash the Supplementary Charge Sheet bearing no. 149-A of 2021 dated 29.04.2023 submitted by the Investigating Officer whereby the Applicant has been accused under sections 302 and 201 of the IPC, annexed as Annexure No. 4 to this Application.

It is also prayed that this Hon'ble Court may kindly pass any other order/orders which it deems just and proper, considering the facts and circumstances of the case."

Submission of the learned counsels for the applicant is that an FIR was lodged, under sections 379 and 328 IPC, by opposite party no.2, which was registered as FIR No.0139 of 2021, and the charge sheet was filed against Rizwan Ali, one of the co-accused, under sections 379, 411, 413, 120B/34 IPC, and against the other accused persons, under sections 379, 328, 411, 302, 201, 120-B, 34 IPC. He submitted that it is notable that the applicant was not named in the FIR, and the charge sheet against the applicant was not filed, under section 302 IPC. He added that after filing of the charge sheet, cognizance was taken by the Magistrate vide order dated 24.12.2021, but, in the meantime, on 14.04.2022, the Superintendent of Police, Ambedkar Nagar, directed for further investigation, and thereafter, the charge sheet was filed, on 29.04.2023, against the present applicant, including one other accused person, under sections 302 and 201 IPC. He submitted that after the filing of the subsequent charge sheet, the Magistrate has again taken cognizance, on 03.02.2026, in the same case crime number, which is impermissible under law. He contends that, in fact, the police, without permission of the trial court concerned, could not have proceeded for further investigation.

In support of his contention, he has placed reliance on the judgment rendered by the Apex Court, in the case of **Pramod Kumar and others Vs. State of Uttar Pradesh and others**, reported in **2026 SCC OnLine SC 156**, and referred to paragraph 33 of the said judgment, which is quoted as under:-

"In light of the legal position as settled by this Court through the above judgments, it is safe to say that the power to direct further investigation in a Magistrate/Court

concerned. In the event, the police/investigating case rests solely at the discretion of the agency is of the opinion that further investigation is necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves. Once such an application is filed by the investigating agency, the Magistrate/Court would apply its judicial mind, in light of the facts and circumstances of the particular case and the reasons demonstrated by the investigating agency, in order to exercise its discretion for exercise of its power to decide whether or not further investigation is to be ordered under the purview of Section 173(8) of CrPC."

Placing reliance on the above said judgment, he submits that the Hon'ble Apex Court has categorically held that prior permission is must while proceeding for further investigation by the police and the aforesaid ratio also says that, as soon as such application will be moved by the police/Investigating Officer, the Magistrate/trial court would apply its judicial mind in the light of the facts and circumstances of the particular case and, while demonstrating the reason regarding the exercise of discretion, would direct for further investigation.

Further submission is that, so far as the present case is concerned, it is an admitted position that on the order of the Superintendent of Police, Ambedkar Nagar, dated 14.4.2022, the Investigating Officer proceeded for further investigation and has filed the charge sheet, which is faulted and is against the settled proposition of law as is held in case of Pramod Kumar (**supra**). In addition, he argued that the cognizance taken by the Magistrate, on 03.02.2026, is the second cognizance, for the subsequent charge sheet though the same is also impermissible.

Concluding his argument, he submitted that once the discharge application has been filed by the applicant while raising all these factual matrix and reasons, the same has been considered by the trial court, and it has rejected the discharge application of the applicant. Therefore, submission is that the direction for further investigation by the police authority to the Investigating Officer and subsequently filing of charge sheet and the cognizance taken thereof, are erroneous and unlawful, thus, those proceedings are unsustainable in the eyes of law. The emphasis has also been drawn on non-application of judicial mind while passing the order on discharge application.

On the other hand, learned counsel for the State has opposed the contention aforesaid but he has failed to substantiate that there was any prior permission or order of the trial court, directing the Investigating Officer for further investigation. He has admitted the position that the further investigation has been conducted on the direction made by the Superintendent of Police.

Upon considering the submissions of the learned counsel for the parties and after perusal of the record, it emerges that the present applicant is not named in the FIR, and the charge sheet was filed against the present applicant, except for the offence, under sections 302 and 201 IPC. The further investigation has been conducted by the Investigating Officer, on the direction issued by the Superintendent of Police, Ambedkar Nagar and the charge sheet, in furtherance to the direction made by the Superintendent of Police, has been filed and subsequent thereof, the Magistrate took cognizance, on the later charge sheet.

It is trite law that further investigation can be undertaken only when the prior permission is granted by the trial court concerned. In fact, as soon as an application for prior permission of further investigation is moved by the Investigating Officer, it is incumbent upon the Magistrate/trial court to apply its discretion and record the reasons for directing the further investigation. The law has been settled and reiterated by the Apex Court, in the case of Pramod Kumar (**supra**), and it has been held in paragraph 33 that prior permission of the trial court is mandatory, while proceeding with the further investigation, and that permission must include the reasons recorded by the trial court, for direction of the further investigation.

This Court examines another question, which was raised during the course of argument by the learned counsel for the applicant, that taking cognizance again in one case crime number is impermissible. So long as the present case is concerned, the trial was in motion and the charges were framed, and the subsequent charge-sheet was filed before the Magistrate, who later on took cognizance and committed the matter to the sessions court, which, in fact, is not permissible in light of the prevalent laws. This Court finds that for one case crime number, cognizance cannot be taken twice by Magistrate/trial court. So far as the present case is concerned, the cognizance is taken twice that too, during the motion of the trial, which goes contrary to the law.

Having gone through the order passed on the discharge application, this Court finds that the reasons and the legal questions raised by the applicant were not considered by the trial court. There is not a single whisper regarding the illegality committed and the grounds taken, in the application for discharge.

Consequently, this Court finds that the charge sheet dated 29.04.2023, filed by the Investigating Officer, in furtherance of the direction made by the Superintendent of Police, Ambedkar Nagar, as well as the cognizance order dated 03.02.2026, is unlawful and erroneous. Therefore, the subsequent charge sheet and the second cognizance order, are quashed.

It is also apparent that while rejecting the discharge application, there was no application of judicial mind, thus, the order passed on the discharge application dated 13.02.2026, is also set aside.

The present application is allowed accordingly.

However, it is open to the trial court as well as the Investigating Officer to proceed, in accordance with the law.

May 15, 2026
Ram Murti

(Shree Prakash Singh,J.)