



2026:AHC:160066

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 27098 of 2026

Jagdish @ Jagdish Prasad And 5 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Pranshu Dwivedi, Ram Prakash Dwivedi
Counsel for Opposite Party(s)	: G.A., Pradeep Kumar Rai, Rajeshwar Prasad Sinha

AFR

Court No. - 79

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Sri Ram Prakash Dwivedi, learned counsel for applicants and Sri Rajeshwar Prasad Sinha, learned counsel assisted by Sri Pradeep Kumar Rai, learned counsel appearing on behalf of opposite party no.2 as well as learned AGA for the State.

2. The present application has been preferred seeking quashing of orders dated 06.05.2026 and 26.05.2026 passed by learned Additional Sessions Judge, Fast Track Court-I (Offences against Women), Mathura in Sessions Trial No.1919 of 2025, arising out of Case Crime No.245 of 2024, under Section 147, 427, 352, 323, 504, 506, 325, 308 IPC, P.S. Govardhan, District Mathura.

3. Brief facts of the present case are that opposite party no.2 lodged an FIR on dated 09.05.2024 against the applicants in pursuance of incident dated 06.05.2024 which was registered as Crime No.245 of 2024, under Section 147, 427, 352, 323, 504, 506 IPC. After registration of the FIR, investigation was conducted which culminated into submission of chargesheet on dated 22.05.2024 under Sections 147, 427, 352, 323, 504, 506, 325, 308 IPC against applicants. Section 325 and 308 IPC were added in the chargesheet by the concerned Investigating Officer on the basis of medico legal examination report of the injured. Learned Additional Chief Judicial Magistrate, Court No.1, Mathura took cognizance of offence over the said

chargesheet on dated 31.05.2024.

4. Before submission of the said chargesheet, applicant no.2. moved applications before District Magistrate, Mathura on dated 08.05.2024 and 16.05.2024 for conducting re-medical of the injured in the present case whereupon, District Magistrate, Mathura vide its order dated 31.05.2024 directed Chief Medical Officer, Mathura for conducting re-medical by way of constituting a Medical Board. In pursuance of the order dated 31.05.2024, a Medical Board was constituted who examined the injuries of injured, and vide its minutes dated 10.08.2024, opined that the injured have sustained no fracture in his ribs or any grievous hurt as observed earlier by the concerned doctor at the time of lodging of the FIR. Relying upon the opinion of Medical Board, applicant no.2 moved an application under Section 173(8) Cr.P.C. before Senior Superintendent of Police, Mathura seeking further investigation, whereupon, SSP, Mathura vide its order dated 07.11.2024 directed for further investigation. In pursuance of the order of further investigation, the concerned Investigating Officer conducted further investigation and after considering the report of Medical Board, found that offence under Section 325 and 308 IPC are not made out and submitted supplementary chargesheet on dated 19.11.2024, under Section 147, 427, 352, 323, 504, 506 IPC only. Thereafter, applicants moved discharge application on the basis of supplementary chargesheet before learned District and Sessions Judge/FTC-Ist, Mathura and while considering the same, learned court concerned rejected the discharge application along with supplementary chargesheet vide impugned order dated 06.05.2026 and also framed charges against applicants vide impugned order dated 26.05.2026.

5. Learned counsel for applicants submitted that applicants were implicated under Sections 325 and 308 IPC primarily on the basis of the medico legal examination of the injured conducted on 06.05.2024, on the basis of said medical examination, concerned Investigating Officer submitted chargesheet on 22.05.2024, and cognizance was taken by learned court concerned on 31.05.2024. Learned counsel submitted that the entire proceedings were carried out with undue haste, thereafter, applicant no.2 approached the concerned District Magistrate disputing the correctness of the medico legal examination report. On the said application, the District Magistrate passed an order dated 31.05.2024 directing the concerned Chief Medical Officer to constitute a fresh Medical Board for re-examination of the injured. Learned counsel further submitted that pursuant to the aforesaid order, the duly

constituted Medical Board conducted a fresh medical examination and submitted its final report, which has been annexed with the present application as Annexure No.13. In the said report, the Medical Board specifically opined that the injured had not suffered any fracture of the ribs or any other grievous injury, therefore, the subsequent medical opinion materially contradicted the basis on which Sections 325 and 308 IPC had initially been invoked against the applicants.

6. Learned counsel for applicants further submitted that in view of the subsequent medical opinion, a specific order dated 07.11.2024 was passed by the Senior Superintendent of Police, Mathura directing further investigation under Section 173(8) Cr.P.C, pursuant to the said direction, further investigation was conducted and a supplementary chargesheet dated 19.11.2024 was submitted before learned court concerned. Learned counsel submitted that after considering the material collected during further investigation, the Investigating Officer specifically dropped Sections 325 and 308 IPC and submitted the supplementary chargesheet only under Sections 147, 427, 452, 323, 504 and 506 IPC. Learned counsel for applicants further submitted that the said supplementary chargesheet was duly numbered as Charge-sheet No.210-A of 2024 and was submitted before learned court concerned on 19.11.2024. However, despite the filing of the supplementary charge-sheet pursuant to a specific order of the competent police authority and despite the fact that further investigation had resulted in deletion of Sections 325 and 308 IPC, learned trial court rejected the discharge application preferred at the behest of applicants vide impugned order dated 06.05.2026 and frames charges against the applicants under all the aforesaid sections, including Sections 325 and 308 IPC vide impugned order dated 26.05.2026.

7. It was, therefore, vehemently argued by learned counsel for applicants that once further investigation had been conducted in accordance with Section 173(8) Cr.P.C. and a supplementary charge-sheet had been submitted after considering the subsequent medical report, the material collected during such further investigation could not have been ignored while considering the discharge application. Learned counsel submitted that learned trial court was required to consider the entire material available on record, including the supplementary charge-sheet and the subsequent medical opinion, before framing charges. According to learned counsel, failure to consider the supplementary charge-sheet and mechanically framing charges under

Sections 325 and 308 IPC, despite their deletion by the Investigating Officer during further investigation, has resulted in serious prejudice to the applicants and render the impugned orders dated 06.05.2026 and 26.05.2026 unsustainable in the eyes of law.

8. Per contra, Sri Pradeep Kumar Rai, learned counsel appearing on behalf of opposite party no.2 vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel for applicants on the specific ground that after taking cognizance of offence over the initial chargesheet preferred by concerned Investigating Officer vide order dated 31.05.2024, the direction issued by concerned police authority for initiating further investigation is not tenable in the eye of law and there is hardly any right available in favour of accused for preferring application under Section 173(8) Cr.P.C. for seeking further investigation and as such, the charges so framed by learned trial court concerned is quite justified. In support of his submissions, learned counsel for opposite party no.2 placed reliance upon the judgment rendered by Hon'ble the Apex Court in the case of **Bohatie Devi (Dead) through LR Vs. State of U.P. and others [2023 LiveLaw (SC) 376]**.

9. It has also been submitted by learned counsel for opposite party no.2 that the power to direct further investigation in a case, rests solely at the discretion of the Magistrate/court concerned. In support of that submission, learned counsel for opposite party no.2 placed reliance upon the judgment rendered by Hon'ble the Apex Court in the case of **Pramod Kumar and others State of U.P. and others [(2026) 5 SCC 308]**.

10. Learned counsel for opposite party no.2 also submitted that the District Magistrate was having no authority to proceed over the application preferred at the behest of applicant for directing the concerned Chief Medical Officer for constitution of Medical Board for re-examination of the injured once the cognizance of offence has been taken up.

11. Learned AGA also seconded the arguments so raised by learned counsel for opposite party no.2 and submitted that the credible evidence whatsoever has been collected during course of investigation, has already been considered by learned trial court and cognizance of offence taken up and thereafter charges have been framed. He further submitted that since discharge application preferred by applicants has already been dismissed,

there is no scope available before this Court to interfere in the proceedings initiated in pursuance to framing of charges which has now culminated into summoning the witnesses to record their testimonies.

12. After having rival contentions raised by learned counsel for parties along with perusal of entire material available on record, this Court finds that the argument raised by Sri Pradeep Kumar Rai, learned counsel for opposite party no.2 in respect of there is hardly any right available in favour of accused for preferring application under Section 173(8) Cr.P.C. for seeking further investigation, seems to be justified and covering all the corners of pronouncement of Hon'ble the Apex Court in the case of **Bohatie Devi (supra)**. The ratio of the judgment relied upon by learned counsel for opposite party no.2 available at paragraph nos.7.1, 7.2 and 7.3 which are being reproduced hereinbelow:-

"7.1 There cannot be any dispute that even after the chargesheet is filed, it is the right of the investigating officer to further investigate in respect of offence even after a report under sub-section (2) of Section 173 of Cr.PC forwarded to a Magistrate and as observed and held by this Court the prior approval of the Magistrate is not required. However, as per the settled position of law, so far as the reinvestigation is concerned, the prior permission/approval of the Magistrate is required. In the present case, the Secretary (Home) has passed an order for further investigation by CBCID and thereafter, the CBCID has sent the intimation to the learned Magistrate. No prior approval/permission as observed by the High Court has been accorded by the learned Magistrate. The High Court in the impugned judgment and order has observed that the further investigation is ordered with the concurrence of the Magistrate, which is factually incorrect. What is on record is only an intimation to the learned Magistrate which in any case cannot be said to be concurrence of the learned Magistrate.

7.2 In any case, as it is a case of reinvestigation, the same is not permissible and that too by another agency without the prior permission of the learned Magistrate even while exercising the powers under Section 173(8) of the Cr.PC. Under what authority of law, the Secretary (Home) has transferred the investigation to

another agency and/or ordered further investigation by another agency is not pointed out and that too at the instance of the accused on the grounds which as such can be said to be the defences of the accused which are required to be considered at the time of trial. The case on behalf of the accused that as the Secretary (Home) is the head of the department and the further investigation was ordered by another agency on administrative side and therefore, the Secretary (Home) is justified in ordering further investigation by CBCID cannot be accepted. So far as the investigation is concerned under the scheme of the Cr.PC, the Police Officer of the concerned Police Station, who is the investigating officer, has to investigate/further investigate the case under the supervision of Superintendent of Police. So far as the Secretary (Home) is concerned, he does not come into picture at all. If such powers are given to the Secretary (Home) in that case any accused who is already chargesheeted may approach the Secretary (Home) and may get an order of further investigation or reinvestigation by another agency and obtain the fresh report nullifying the earlier chargesheet and get himself discharged. If the accused is aggrieved by the chargesheet in that case, the remedy available to him would be either to file the quashing petition under Section 482 of Cr.PC and/or to move an appropriate application for discharge before the learned Magistrate and it is for the High Court and/or the learned Magistrate as the case may be, to quash criminal proceedings or discharge the accused. The Secretary (Home) and/or any accused who is already chargesheeted cannot be permitted to circumvent such provision. It is to be noted that in the present case, respondent No. 8 – accused earlier did file the quashing petition, but failed.

7.3 Now, so far as the submission on behalf of the accused relying upon Section 173(3) of Cr.PC is concerned, it provides how to submit/send a report to the Magistrate and who shall send the report to the Magistrate. It provides that where a superior officer of police has been appointed under Section 158, the report, shall be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge

of the police station to make further investigation. Therefore, Section 173(3) read with Section 158 does not permit the Secretary (Home) to order for further investigation/reinvestigation by another agency, other than the officer in charge of the concerned Police Station and/or his superior officer."

13. The abovementioned judgment is dealing with the legal remedy available for preferring application at the behest of accused, has been summarily denied and held that there is hardly any remedy available in favour of accused to prefer application under Section 173(8) Cr.P.C.

14. The other judgment rendered by Hon'ble the Apex Court in the case of **Pramod Kumar (supra)**, wherein it has been held that the power to direct further investigation in a case, rests solely at the discretion of the Magistrate/court concerned, if the chargesheet has been submitted and cognizance of offence has been taken up.

15. While considering the submissions extended by learned counsel for opposite party no.2 which are fully covered with the judgments rendered by Hon'ble the Apex Court, this Court notes that one material report has to be given credence at the same time and that is report submitted by Medical Board duly constituted by concerned District Magistrate, once the medico legal examination report which has been obtained by concerned Investigating Officer at the time of preferring initial chargesheet has already been put under challenge, whereupon the Medical Board specifically opined that there is hardly any fracture sustained by the injured as reported in the initial medico legal examination report and attraction of Section 325 and 308 IPC is based upon the fracture intimated in the medico legal examination report which has been appended as part of the case diary and presented before learned court concerned at the time of submission of chargesheet.

16. Once, the credibility of evidence is itself put under question and the specific determination has been drawn by competent Medical Board, it is having higher authority than the doctor who examined the injured and reported fracture, the same aspect has to be taken into consideration for implication of applicants who have already been put to try after framing of charges. Although the stage of placing defence is altogether available during trial after completion of recording testimony and its examination in shape of

chief and cross but the same shall be determining effect over the continuation of trial either before learned court of Sessions or before Magistracy. If Section 308 and 325 IPC is added, which is already taken into cognizance by learned court concerned, the matter has to be committed for Sessions trial but in case, the determination drawn by the Medical Board over the issue that there was no fracture sustained by the injured in respect of the incident as narrated through FIR, the trial will be commenced by Magistracy only. Putting the applicants or any person to try in respect of gravity of offence, is the determining factor through sections in which the accused has been implicated and the charges have been framed. There is a dispute in respect of consideration of credible evidence in shape of medico legal examination report which later on in shape of determining the injuries sustained by the injured as simple in nature and the same has been counter-signed by three doctors who are the competent authority to override the impression or examination made by a single doctor at the time of examination of injured culminated into preparation of medico legal examination report appended along with the case diary presented before learned court concerned while preferring chargesheet.

17. The discharge application so preferred and dismissed by learned court concerned on the basis that the cognizance of offence has already been taken up and thereafter the illegality involved in the procedure adopted by concerned police authorities by way of directing the concerned Investigating Officer for further investigation and that too without seeking prior permission mandatory as per the procedure, the further investigation has been conducted by way of appending fresh medico legal examination report which was determined by the Medical Board of doctors duly constituted by concerned Chief Medical Officer over the specific direction issued by concerned District Magistrate.

18. The part of the procedure for conducting further investigation is hereby held as bad in the eye of law in light of decision in case of **Pramod Kumar (supra)**, but at the same time, constitution of Medical Board by concerned Chief Medical Officer over the specific direction issued by concerned District Magistrate, is a proceeding which clearly does not contain any overriding provision available in the procedure. The subsequent medico legal examination report as determined by the Medical Board of doctors, is permissible to be brought to the notice of learned court concerned at the time of preferring discharge application at the behest of applicants, but

unfortunately, the discharge application preferred by applicants is relying upon the proceedings of further investigation and determination of injuries as drawn by Medical Board of doctors who opined that there was no fracture sustained by the injured.

19. The jurisprudence specifically defines that although the process of law adopted by a person seeking justice might be wrong but the essence of procedure determining the law in shape of rendering justice has to be taken into consideration by a judge. If the further medico legal examination report expressed by Medical Board of doctors will not be taken into consideration by learned court concerned, that would be a gross injustice to both the parties irrespective of extension of favour to anyone and as such, order dated 06.05.2026 through which application for seeking discharge was dismissed along with order of framing charge, is liable to be set aside.

20. Insofar as the said argument raised by learned counsel for opposite party no.2 that District Magistrate was having no authority to proceed over the application preferred at the behest of applicant for directing the concerned Chief Medical Officer for constitution of Medical Board for re-examination of the injured once the cognizance of offence has been taken up, is concerned, this Court notes that the District Magistrate proceeded for issuing direction for constitution of Medical Board vide order dated 31.05.2024, is the date on which cognizance of offence was taken up, meaning thereby, the order of taking cognizance of offence was not in the knowledge of the District Magistrate concerned, moreover, there is hardly any riding proviso available in the procedure for not issuing any such direction for constitution of a Medical Board if any application is preferred at the behest of accused and as such, the said argument is having no force. This Court also notes that the proceeding, whatsoever has been initiated at the behest of applicants by way of preferring application before concerned District Magistrate over which direction was issued to concerned Chief Medical Officer, whereupon Medical Board was constituted and the said Medical Board reversed the opinion of the concerned doctor who examined the injured and prepared medico legal examination report which has been part of the case diary, does not come under the ambit of further investigation.

21. In view of the aforesaid facts and circumstances and discussions, orders dated 06.05.2026 and 26.05.2026 passed by learned Additional Sessions Judge, Fast Track Court-I (Offences against Women), Mathura in Sessions

Trial No.1919 of 2025, arising out of Case Crime No.245 of 2024, under Section 147, 427, 352, 323, 504, 506, 325, 308 IPC, P.S. Govardhan, District Mathura, are hereby set aside.

22. Applicants are hereby extended liberty to prefer fresh application for seeking discharge by way of appending conclusion drawn by duly constituted Medical Board over the examination conducted upon the injured, within three weeks from today. In case, such application is preferred at the behest of applicants within the said period, the same shall be decided by learned court concerned within a period of four weeks thereafter after providing due opportunity of hearing to all concerned.

23. Accordingly, the instant application stands **partly allowed**.

July 31, 2026
Vivek Kr.

(Saurabh Srivastava,J.)