# Shahabuddin Shaikh And 2 Others vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 3 June, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH Neutral Citation No. - 2026:AHC-LKO:40006 HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW APPLICATION U/S 528 BNSS No. - 2155 of 2026 Shahabuddin Shaikh And 2 Others .....Applicant(s) Versus State Of U.P. Thru. Prin. Secy. Home Lko. And Another .....Opposite Party(s) Counsel for Applicant(s) :

> Ankur Pandey, Prabhash Chandra Mishra Counsel for Opposite Party(s) :
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> G.A. Court No. - 11 HON'BLE PRAVEEN KUMAR GIRI, J. 1. Heard Shri Ankur Pandey, learned counsel for the applicant and Shri Vivek Gupta, learned AGA for the State.

2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application.

3. The relief which has been mentioned in the application is delineated below:-

> "For the facts reasons and circumstances stated in the accompanying affidavit it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the entire proceeding of the Session Case No.24/2026 "State V/s Shahabuddin Shaikh and others", arising out of Case Crime No. 0321/2025, Under section-119(1), 115(2), 352, 351(3), 3(5) B.N.S. (old section 327, 323, 504, 506, 34 IPC) and section 3(1)(da), 3(1)(dha), 3(2)(va), 3(1)(f) SC/ST Act P.S. Sirsiya, District-Shrawasti, Pending in the court of Additional Additional Sessions Judge/Special Judge SC/ST Act, Shrawasti and impugned charge sheet dated 14.10.2025 and impugned summoning order dated 08.01.2026, contained in Annexure no.1 and 2 to the accompanying affidavit, in the interest of justice.
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> It is further prayed that this Hon'ble Court may kindly be pleased to stay the further proceedings of the Session Case No.24/2026 "State V/s Shahabuddin Shaikh and others", arising out of Case Crime No. 0321/2025, Under section-119(1), 115(2), 352, 351(3), 3(5) B.N.S. (old section 327, 323, 504, 506, 34 IPC) and section 3(1)(da), 3(1)(dha), 3(2)(va), 3(1)(f) SC/ST Act, P.S. Sirsiya, District-Shrawasti, Pending in the court of Additional Additional Sessions Judge/Special Judge SC/ST Act, Shrawasti, during the pendency of the above noted petition under section 482 Cr.P.C. (now section 528 B.N.S.S.) in the interest of justice."

4. Learned counsel for the applicants submits that no such incident, as alleged in the F.I.R., has ever taken place and the Investigating Officer during investigation has not collected any evidence which may attract the Sections under which the charge-sheet has been submitted and the impugned

cognizance order has been passed.

5. Per contra, learned AGA, Shri Vivek Gupta, submits that it is settled proposition of law that FIR is not an encyclopaedia of the event and it is not expected to contain a complete, chronological account of every aspect of the incident, rather the main purpose of an FIR is to inform the police about the commission of a cognizable offence (a serious crime where police can arrest without a warrant) so that they can begin an investigation. To buttress his argument, he has placed reliance on judgments passed by Hon'ble Supreme Court in the cases of V.K. Mishra and another vs. State of Uttarakhand and another, (2015) 9 Supreme Court Cases 588, Latesh alias Dadu Baburao Karlekar vs. State of Maharashtra, (2018) 3 Supreme Court Cases 66, Amish Devgan vs. Union of India and others, (2021) 1 SCC 1.

6. Learned State Counsel further submits that recently Hon'ble Supreme Court in paragraph 25 of the case of B.N. John vs. State of U.P. and another, [2025] 1 S.C.R. 12 : 2025 INSC 4 has reiterated the aforesaid proposition of law as propounded in its earlier judgments. Relevant paragraph no.25 of B.N. John's case (supra) is delineated below, for ready reference :-

> ""25. In the FIR there is no allegation of use of criminal force or assault by the appellant so as to invoke the provision of Section 353 of the IPC. It is to be remembered that a criminal process is initiated only with the lodging of an FIR. Though FIR is not supposed to be an encyclopedia containing all the detailed facts of the incident and it is merely a document that triggers and sets into motion the criminal legal process, yet it must disclose the nature of the offence alleged to have been committed as otherwise, it would be susceptible to being quashed as held in Bhajan Lal?s case (supra) (vide clause 1 of Para 102 of the decision).
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> This Court in CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 observed as follows:
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> ?20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information?????????

(emphasis added)"

7. Learned A.G.A. also submits that the material collected by the I.O. during investigation cannot be treated as evidence under the Bhartiya Sakshya Adhiniyam, 2023, until and unless the witnesses are examined in examination-in-chief on oath as well as cross-examined and the documents which have been provided, shall also be proved by the witnesses during trial of the case. He further submits that the impugned cognizance-cum-summoning order suffers from no irregularity, which may vitiate the criminal proceedings as per the provisions of Section 507 BNSS (corresponding Section 461 Cr.P.C.). The provisions of Section 507 BNSS are delineated below for ready reference :- "Section 507 - Irregularities which vitiate proceedings- If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:- (a) attaches and sells property under section 85; (b) issues a search-warrant for a document, parcel or other things in the custody of a postal authority; (c) demands security to keep the peace; (d) demands security for good behaviour; (e) discharges a person lawfully bound to be of good behaviour; (f) cancels a bond to keep the peace; (g) makes an order for maintenance; (h) makes an order under section 152 as to a local nuisance; (i) prohibits, under section 162, the repetition or continuance of a public nuisance; (j) makes an order under Part C or Part D of Chapter XI; (k) takes cognizance of an offence under clause (c) of sub-section (1) of section 210; (l) tries an offender; (m) tries an offender summarily; (n) passes a sentence, under section 364, on proceedings recorded by another Magistrate; (o) decides an appeal; (p) calls, under section 438, for proceedings; or (q) revises an order passed under section 491, his proceedings shall be void.

8. Learned A.G.A. further submits that the learned Special Court has taken cognizance in accordance with law as well as the law laid down by the Hon'ble Supreme Court in the case of State of Gujarat vs. Girish Radhakrishnan Varde; (2014) 3 SCC 659, in paragraph Nos. 13 and 14. The Paragraph No.13 and 14 are delineated below: "13. But if a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190(a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the chargesheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the chargesheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the magistrate cannot exclude or include any section into the chargesheet after investigation has been completed and chargesheet has been submitted by the police. 14. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before

whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or substract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.

(Emphasis supplied)"

9. Learned A.G.A. further contends that the court cannot add or subtract, exclude or include any Section mentioned in the charge-sheet at the time of taking of cognizance as the same is permissible at the time of framing of charge.

10. Learned A.G.A. lastly submits that offences mentioned under the Sections 119(1), 115(2), 352, 351(3), 3(5) B.N.S. and section 3(1)(da), 3(1)(dha), 3(2)(va), 3(1)(f) SC/ST Act are triable by Sessions Court and opportunity of hearing shall be given to the accused-applicant at the time of framing of charge as per Section 250 BNSS (corresponding Section 227 of Cr.P.C.).

11. For ready reference section 250 BNSS (corresponding Section 227 of Cr.P.C.) is being quoted below:

> "Section 250. Discharge - (1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232.
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> (2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. Learned State Counsel further submits that the Hon'ble Supreme Court has passed a judgment in the case of State of Gujarat vs. Afroz Mohammed Hasanfatta; (2019) 20 Supreme Court Cases 539 wherein the Court has categorically held that at the time of summoning, there is no need to record reasons in the summoning order. Further, the aforesaid judgment has been confirmed by the Hon'ble Supreme Court in paragraph 91 of its judgment passed in Pradeep S. Wodeyar vs. State of Karnataka, (2021) 19 Supreme Court Cases 62. The relevant paragraph No.91 passed in Pradeep S. Wodeyar (supra) is being quoted below for the sake of convenience:- "91.While distinguishing the

decision in Pepsi Foods Ltd. (supra) on the ground that it related to taking of cognizance in a complaint case, the court held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons: State of Gujarat v. Afroz Mohammed Hasanfatta (2019) 20 SCC 539 : (2020) 3 SCC (Cri.) 876-2 23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.

13. Learned State Counsel also submit that time and again Hon'ble Supreme Court has held that the High Court while exercising jurisdiction under Section 482 Cr.P.C. is not empowered to conduct a mini trial. In this regard, reference can be had to the judgments passed by Hon'ble Supreme Court in State of Uttar Pradesh and another vs. Akhil Sharda and others, (2023) 11 Supreme Court Cases 626, Central Bureau of Investigation vs. Aryan Singh and others, (2023) 18 Supreme Court Cases 399 and Naresh Aneja alias Naresh Kumar Aneja vs. State of Uttar Pradesh and another, (2025) 2 Supreme Court Cases 604.

14. In view of the facts and circumstances of the case as well as law laid down by Hon'ble Supreme Court, this Court finds no illegality or infirmity in the impugned cognizance-cum-summoning order, so as to grant any relief to the applicant at this stage. Moreover, this Court cannot adjudicate disputed questions of fact, while exercising inherent jurisdiction under Section 528 BNSS, as has been held time and again in catena of judgments by the Hon'ble Supreme Court.

15. Needless to state that the accused-applicant shall have an opportunity of being heard at the stage of framing of charge under Section 262(2) of BNSS (corresponding Section 239 of Cr.P.C.). The applicant may raise all their grievances at the stage of framing of charge before the trial court. The trial court shall evaluate all the materials collected by the I.O. and consider the case of the applicant at the time of framing of charge, strictly in accordance with law.

16. Accordingly, the application is disposed of.

(Praveen Kumar Giri,J.) June 3, 2026 K.Tiwari