

A.F.R.

Neutral Citation No. - 2025:AHC-LKO:34363

Court No. - 11

Case :- APPLICATION U/S 528 BNSS No. - 526 of 2025

Applicant :- Vinay And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Shashank Shukla, Prachi Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Rajnish Kumar, J.

1. Heard Sri Shashank Shukla, learned counsel for the applicants and learned AGA for the State and perused the record.

2. This petition under Section 482 Cr.P.C. now Section 528 B.N.S.S. 2023 has been filed challenging the summoning order dated 04.03.2025 passed in CIS No. 12917 of 2025 and the charge sheet No.01 dated 05.02.2025, arising out of Case Crime No. 420 of 2024 under Sections 115(2), 352, 351(2), 118(1), 109(1) Bharatiya Nyaya Sanhita (B.N.S.), 2023, Police Station-Katra Bazar, District-Gonda.

3. Learned counsel for the applicants submits that on the basis of identical set of facts a N.C.R. was registered on 28.11.2024 but no permission was sought for the investigation. He further submits that on the same set of facts, the FIR was lodged on 30.11.2024 and after investigation, the charge sheet has been filed, which could not have been done. He relies on a judgment and order dated 16.10.2023 passed by the High Court of Bombay at Goa in *Criminal Writ Petition No. 573 of 2023 (F) [Mr. Asif Khan Pathan vs. State Through PP, High Court of Bombay at Porvorim, Goa and Others]*.

4. Per contra, learned AGA submits that after registration of the N.C.R., a medical report was received, in which an injury in the head caused by sharp edged weapon was found, therefore, Section 118(1)

B.N.S., 2023 was added and accordingly, the N.C.R. was converted into the FIR and registered accordingly. Thus, the contention of the counsel for the applicants is misconceived and not tenable. He further submits that the petitioner No.1-Vinay had earlier filed a Criminal Misc. Writ Petition No. 387 of 2025 (Vinay vs. State of U.P. And 3 Others) before Division Bench of this Court and by means of order dated 22.01.2025, the Division Bench of this Court directed to the Investigating Officer to move an application before the Court concerned for permission to investigate into the FIR. In pursuance thereof, an application was moved by the Investigating Officer before the Court concerned, which has been allowed by means of order dated 03.02.2025 and thereafter, after completing the investigation, the charge sheet was filed on 05.02.2025 referring all the above facts. It is further submitted that the aforesaid writ petition has been withdrawn, which has been allowed by means of order dated 02.05.2025, without liberty to raise the aforesaid ground, therefore, the said ground is not available to the applicants now. Thus, the submission of learned counsel for the applicants is misconceived and lacks merits and this application is liable to be dismissed. In support of his argument, learned AGA placed reliance on the judgment and order dated 05.11.2019 passed by this Court in ***APPLICATION U/S 482 No. - 38936 of 2019 (Shavez And 2 Others vs. State of U.P. and Another)***.

5. Having considered the submissions advanced by the learned counsel for the parties, I have perused the documents placed on record of this application.

6. It is apparent that N.C.R. No. 0116 of 2024 was lodged on 28.11.2024 under Sections 115(2), 352 & 351(2) B.N.S., 2023 at Police Station-Katra Bazar, District-Gonda, in regard to incident, which took place on 28.11.2024 at 07:30 A.M. As borne out from the documents on record, a medical report dated 28.11.2024 was received, in which an injury in the head caused by sharp edged weapon was found.

Consequently Section 118(1) B.N.S., 2023 was added, which is cognizable and non-bailable, accordingly it was converted into FIR, which was registered. The Police is empowered to investigate the matter in a cognizable offence, thereafter the investigation was conducted thereafter.

7. Section 174 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as “B.N.S.S.”) provides information about non-cognizable cases and the investigation of such cases. Sub-section (2) of Section 174 of B.N.S.S. 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. Sub-Section (4) of Section 174 of B.N.S.S. provides that 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. Section 174 of B.N.S.S. is extracted here-in-under:-

"174. 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 by rules prescribe in this behalf, and,-

(i) refer the informant to the Magistrate;

(ii) forward the daily diary report of all such cases fortnightly 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."

8. In view of above, it is apparent that if a case relates to two or more offences, of which, one offence is cognizable, the case shall be deemed to be a cognizable case, notwithstanding the fact that the other offences are non-cognizable.

9. Undisputedly, after receipt of medical report having an injury in head caused by sharp edged weapon, Section 118 (1) of B.N.S., 2023 was added, therefore, this case would fall under Section 174(4) of the B.N.S.S. as one of the offences is cognizable. Section 118 of B.N.S., 2023 being relevant is extracted hereinunder:-

"Section 118. Voluntarily causing hurt or grievous hurt by dangerous weapons or means.

(1) Whoever, except in the case provided for by sub-section (1) of section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

(2) Whoever, except in the case provided for by sub-section (2) of section 122, voluntarily causes grievous hurt by any means referred to in sub-section (1), shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than one year but which may extend to ten years, and shall also be liable to fine."

10. In view of above, the contention of the counsel for the applicants is misconceived. Even otherwise, petitioner No.1-Vinay had approached this Court challenging the aforesaid FIR and N.C.R. on identical grounds on which this application has been filed and the Division Bench by means of the order dated 22.01.2025 after recording the submissions of learned counsel for the applicants provided that let an

appropriate application be moved by the Investigating Officer concerned before the Court concerned within a week from today and the trial Court concerned shall pass appropriate order on the said application within a week thereafter. With similar prayers, petitioner No.2-Ved Wati had also approached this Court by filing Criminal Misc. Writ Petition No. 820 of 2025 (Ved Wati vs. State of U.P. And Others), which was connected with Criminal Misc. Writ Petition No. 387 of 2025 (Vinay vs. State of U.P. And 3 Others).

11. In compliance of the aforesaid order dated 22.01.2025, the Investigating Officer moved an application on 29.01.2025 before the Judicial Magistrate, IInd, Gonda under Section 174(2) B.N.S.S., which was allowed by means of order dated 03.02.2025 and thereafter, after completing the investigation the charge sheet was filed on 05.02.2025 giving reference to all aforesaid facts, in brief, in clause 16, which are extracted here-in-under:-

"श्रीमान जी निवेदन हैं कि मुकदमा उपरोक्त वादी की तहरीरी सूचना पर दिनांक 28.11.24 को थाना स्थानीय पर एनसीआर नं० 118/24 धारा 115(2), 352, 351 (2) बीएनएस पंजीकृत हुआ मजरूब मोहित कुमार पाठक के सिर में शार्प इज्ड इन्जरी मेडिकल रिपोर्ट में आने के उपरान्त अभियोग में धारा 118 (1) बीएनएस को बढ़ोत्तरी कर एनसीआर उपरोक्त को मु० अ० सं० 420/24 धारा 115(2), 352, 351(2), 118(1) बीएनएस तस्मीम कर पंजीकृत हुआ हस्व आदेश प्र०नि० महोदय के विवेचना मुझ उ०नि० को सुपुर्द हुई मुझ उ० नि० द्वारा विवेचना ग्रहण कर विवेचनात्मक कार्यवाही सम्पादित किया गया संकलित साक्ष्य से धारा 109 (1) बीएनएस का पर्याप्त आधार मिलने के उपरान्त अभियोग में उक्त धारा की बढ़ोत्तरी किया गया। अभियोग में नामित अभियुक्तगण 1. अजय कुमार; 2. सिद्ध कुमार उर्फ पहलवान पुत्रगण गुरुप्रसाद मिश्रा निवासी कन्धईपुरवा पूरे संगम मौजा बमडेरा थाना कटरा बाजार जनपद गोण्डा को दिनांक 12.01.2025 को गिरफ्तार हुआ जो वर्तमान समय में न्यायिक अभिरक्षा में जिला कारागार गोण्डा में निरुद्ध है तथा अभियुक्त विनय कुमार व अभियुक्ता वेदवती की गिरफ्तारी पर मा० उच्च न्यायालय इलाहाबाद खण्डपीठ लखनऊ द्वारा गिरफ्तारी पर स्थगन आदेश निर्गत किया गया है। अब तब की तमामी विवेचना बयान वादी, निरीक्षण घटनास्थल, बयान मजरूब, बयान गवाहान, बयान डाक्टर अवलोकन मेडिकल रिपोर्ट, अवलोकन सीटी स्कैन व एक्स रे रिपोर्ट, व अन्य साक्ष्य संकलित साक्ष्य से अभियोग में नामित अभियुक्तगण 1. विनय कुमार 2. अजय कुमार, 3. सिद्ध कुमार उर्फ पहलवान पुत्रगण गुरुप्रसाद मिश्रा 4. वेदवती पत्नी गुरुप्रसाद निवासीगण कन्धईपुरवा पूरे संगम मौजा बमडेरा थाना कटरा बाजार जनपद गोण्डा के विरुद्ध जुर्म धारा 115(2), 352, 351(2), 118(1), 109 (1) बीएनएस का अपराध बाखूबी साबित है। अतः अभियुक्तगण 1. विनय कुमार 2. अजय कुमार, 3. सिद्ध कुमार उर्फ पहलवान, 4. वेदवती उपरोक्त

का चालान अन्तर्गत धारा 115 (2), 352, 351 (2), 118(1), 109(1) बीएनएस में जरिये आरोप पत्र मा० न्यायालय प्रेषित किया जा रहा है। श्रीमान जी से निवेदन है कि सबूत तलब कर दण्डित करने की कृपा करें विवेचना जरिये आरोप पत्र समाप्त की जाती है।"

12. After filing of charge sheet, the cognizance has been taken by the Magistrate concerned and summoning order has been issued, which has been challenged in the present petition. After issuance of summoning order, the aforesaid writ petitions have been withdrawn by the petitioners which has been allowed by means of the order dated 02.05.2025 without liberty to raise the grounds raised in the said writ-petitions in case of challenge to the summoning order and proceedings, therefore, this Court is of the view that the ground taken by the applicants is also not available to the applicants now. Even otherwise, the aforesaid ground is not available, as discussed above, because once the N.C.R. was converted into an FIR on the basis of medical report on account of adding of a cognizable offence, the police was empowered to investigate the matter.

13. So far as the the judgment, relied upon by the counsel for the applicants, passed by the High Court of Bombay at Goa in the case of **Mr. Asif Khan Pathan (Supra)** is concerned, the same is not applicable on the facts and circumstances of the present case because in the said case, some additional information was supplied by the informant subsequently, on the basis of which, the N.C.R. was converted into FIR, therefore, the same is distinguishable in the facts and circumstances of the present case.

14. This Court in the case of **Shavez and Ors. vs. State of U.P. and Ors., MANU/UP/4929/2019** has held that conversion of NCR into FIR during investigation after finding the fact that accused person has caused serious injuries to victim and had thereby committed cognizable offence, is neither illegal nor impermissible. It has also been held that merely the fact that new crime number was assigned and a Chick FIR was also executed, does not necessarily adversely affect the proceedings in any vital manner nor the applicants can claim that they have prejudiced by the

FIR. It has also been held that this Court does not deem it proper and cannot be persuaded to have a pre-trial before the actual trial begins. On a perusal of FIR and the material collected by the Investigating Officer on the basis of which charge sheet has been submitted makes out a prima facie offence against the accused at this stage and there appear to be sufficient ground for proceedings against the applicants.

15. In view of above and considering overall facts and circumstances of this case, this Court does not find any illegality or error in the impugned proceedings against the applicants which may call for interference by this Court. The application has been filed on misconceived ground and lacks merits.

16. Accordingly, the application is **dismissed**.

Order Date :- 3.6.2025

Vinay/-