



2026:AHC:156942

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 35906 of 2025

Naushad Ali Alias Kari Naushad And 16 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Anurag Mishra
Counsel for Opposite Party(s)	:	G.A.

A.F.R.

Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State-opposite parties and perused the record.

2. The present application under Section 528 B.N.S.S. has been filed praying for quashing the charge-sheet dated 19th January, 2025, cognizance/summoning order dated 8th April, 2025 as well as the entire proceedings of Criminal Case No. 1617 of 2025 (State of U.P. Vs. Kari Naushad & Others), arising out of Case Crime No. 425 of 2024, under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, Police Station-Kotwali Dehat, District-Saharanpur pending in the Court of Additional Chief Judicial Magistrate-I, Saharanpur.

3. Learned counsel for the applicants submits that the impugned proceedings are wholly without jurisdiction and constitute an abuse of the process of law. It is submitted that the FIR under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections, was registered by the Head Constable of Police Station-Kotwali Dehat, District-Saharanpur on 6th October, 2024 on his own without there being any written complaint by the

4. Learned counsel for the applicants further submits that the very foundation of the prosecution is illegal inasmuch as an FIR under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections could not have been registered at the instance of the police without a written complaint of the competent public servant. The proceedings, therefore, are vitiated from their inception.

5. In support of his submissions, learned counsel for the applicants has placed reliance upon the judgment of this Court in Application U/S 482 No.18403 of 2021 (**Ramendra Sharma and 2 Others vs. State of U.P. and Another**) decided on 09.09.2022, the judgment of this Court in Criminal Misc. Writ Petition No.12772 of 2020 (**Yogeshwar Sood and Another vs. State of U.P. and Others**) and the judgment of the Hon'ble Supreme Court in Daulat Ram vs. State of Punjab, AIR 1962 SC 1206.

6. Besides the above, learned counsel for the applicants has also relied upon the judgment of the Apex Court in the case of Devender Kumar Vs. State (NCT of Delhi) & Another reported in 2025 SCC OnLine SC 1753, judgment of the Division Bench of this Court 8th January, 2024 passed in Criminal Misc. Writ Petition No. 17560 of 2023 (Sumit & Another Vs. State of U.P. & Others), judgment of the Coordinate Benches of this Court dated 26th September, 2024 passed in Application U/S 482 No. 5131 of 2024 (Sheel Prakash Gupta Vs. State of U.P. Thru. Prin. Secy. Home LKO & Another, and dated 12th November, 2025 passed in Application U/S 482 No. 9486 of 2025 (Sanjay Kashyap @ Sanjay Kumar Vs. State of U.P. & Others).

7. Per contra, learned counsel for opposite party no.2 and the learned A.G.A. could not dispute the legal position laid down in the judgments relied upon by the learned counsel for the applicants.

8. I have considered the rival submissions advanced by learned counsel for the parties and have perused the material available on record.

9. For adjudicating upon the aforesaid issue raised by the learned counsel for the applicants, it would be worthwhile to reproduce Section 215 (1) (a) B.N.S.S. which is quoted hereunder:

"215. Prosecution for contempt of lawful authority of public servants. for

offence; or(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

..."

10. The **Hon'ble Supreme Court in Daulat Ram vs. State of Punjab** reported in *AIR 1962 SC 1206* has categorically held that where the statute mandates a written complaint by the competent public servant, cognizance taken on the basis of a police report or charge-sheet is wholly without jurisdiction and the entire proceedings stand vitiated ab initio.

11. This Court in **Ramendra Sharma and Others (supra)**, after considering the provisions of Section 195 Cr.P.C. as well as the judgment of the Hon'ble Supreme Court in **Daulat Ram (supra)**, has held that an FIR registered by a police officer and the consequent charge-sheet under Section 174-A I.P.C. without there being a written complaint by the competent public servant are legally unsustainable and liable to be quashed.

12. The same principle was reiterated by this Court in **Yogeshwar Sood and Another (supra)** wherein it was held that registration of an FIR under Section 174-A I.P.C. prima facie amounts to an abuse of the process of law in view of the statutory embargo contained in Section 195 Cr.P.C.

13. The Apex Court in the case of **D.K. Rajendran and Ors. etc. etc. Vs. State of T.N.**, reported in *AIR 2010 SC 3718*, in *Para 25* has held as follows:

"25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction."

(Emphasis supplied)

13. In the recent judgment, the Apex Court in the case of **B N John Vs. State**

A bare perusal of Section 195 (1) of the CrPC clearly indicates that there is a bar on the court to take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of the IPC except on a complaint in writing made by the concerned public servant to the court. Therefore, if it is found as contended by the appellant that in respect of the offence under Section 186 of the IPC against him, no such complaint was filed by the concerned public servant as contemplated under Section 195 (1) (a) CrPC, the CJM could not have taken cognizance of the offence under Section 186 of the IPC.

In this regard, the appellant has specifically pleaded to which there is no rebuttal from the State that no such complaint was made in writing by a public servant as required under Section 195 (1) of the CrPC relating to the commission of offence by the appellant under Section 186 of the IPC.

.....

Under the circumstances, we are of the opinion that taking cognizance by the CJM, Varanasi, of the offences under Section 353 of the IPC and 186 of the IPC was not done by following the due process contemplated under the provisions of law, and accordingly, the same being contrary to law, all the orders passed pursuant thereto cannot be sustained and would warrant interference from this Court."

14. In the present case, the record reveals that the FIR dated 6th October, 2024 under Sections 221 and 223 B.N.S. (Sections 186 and 188 I.P.C.) along with other charging sections, was registered by the Head Constable of Police Station-Kotwali Dehat, District-Saharanpur on his own. No written complaint by the competent public servant, as required under Section 215 (1) (a) B.N.S.S./195(1)(a) Cr.P.C., has been brought on record. The prosecution was initiated solely on the basis of the police report, followed by submission of the charge-sheet and passing of the cognizance order dated 8th April, 2025.

15. Once the mandatory requirement prescribed under Section 215 B.N.S.S./195 Cr.P.C. has not been complied with, the learned Additional Chief Judicial Magistrate-I, Saharanpur could not have legally taken cognizance upon the police report. The impugned cognizance order therefore suffers

17. So far as the prayer made by the learned counsel for the applicants for quashing of the impugned charge-sheet and entire proceedings of the aforesaid criminal case is concerned, this Court has not doubted the law laid down by Apex Court and the judgments passed by this Court, which have heavily been relied upon by the learned counsel for the applicants referred to above, even though this Court always pays respects to the judgment passed by any Court of Law. However, on the issue for the quashing charge-sheet and the entire proceedings as opined in the aforesaid judgments, the opinion of this Court is otherwise. This Court is of the considered opinion that the Investigating Officer has submitted the impugned charge-sheet under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932. It has already been discussed above that out of the aforesaid Sections i.e. Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, only Sections 221 and 223 B.N.S. are barred by Section 215 (1) (a) B.N.S.S. and the concerned Trial Court has committed error in taking cognizance under Sections 221 and 223 B.N.S. along with other charging sections on the ground that trial court has taken cognizance to the said offence on the charge-sheet submitted by the Police without any complaint in writing of the public servant concerned.

18. The fault on the part of the Police to lodge the first information report and also to submit charge-sheet under Sections 221 and 223 B.N.S. along with other charging Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932 as well as the fault on the part of the trial court which has taken cognizance thereon including Sections 221 and 223 B.N.S. without any complaint in writing of the public servant concerned or of some other public servant, which hits the statutory provisions of Section 215 (1) (a) B.N.S.S., the alleged offence committed by the accused like the applicants under Sections 121 (1), 125, 126 (1), 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932 and under one of the aforesaid charging Sections, the maximum punishment to be awarded is upto 7 years, cannot be washed out by this Court only on the ground that the trial court has committed error in taking cognizance under Sections 221 and 223 B.N.S. along with other charging Sections against the applicants without any complaint in writing of

63, 64 and 310 B.N.S.) alongside offenses under Sections 206 and 223 B.N.S., and the Magistrate takes cognizance of all that Sections including Sections 206 to 223 B.N.S. without any submission of complaint as mandatory under Section 215 (1) (a) B.N.S.S., then in such a scenario, can the Court quash the entire charge-sheet and criminal proceedings because the concerned Magistrate has not complied the provisions Section 215 (1) (a) B.N.S.S., while washing out the alleged heinous offenses committed by the accused i.e. offences under Sections 109, 103, 80, 309, 63, 64 and 310 B.N.S.

20. In view of the deliberation and discussion made above, cognizance/summoning order dated 8th April, 2025 passed by the Additional Chief Judicial Magistrate-I, Saharanpur in Criminal Case No. 1617 of 2025 (State of U.P. Vs. Kari Naushad & Others), arising out of Case Crime No. 425 of 2024, under Sections 121 (1), 125, 126 (1), 221, 223, 190, 191 (2), 351 (3), 352 B.N.S. and Section 7 of the Criminal Law (Amendment) Act, 1932, Police Station-Kotwali Dehat, District-Saharanpur is hereby set aside. The prayer of the applicants for quashing the charge-sheet and entire criminal proceedings is refused.

21. The matter is remitted back to the court concerned to pass a fresh order on the question of taking cognizance, if required, in light of the law laid down by the Hon'ble Supreme Court as well as this Court referred to above.

22. Accordingly, the present application stands partly **allowed**.

July 29, 2026
Sushil/-

(Madan Pal Singh,J.)