



2026:AHC:8949

## HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 12575 of 2025

A F R

Reserved on : 28<sup>th</sup> November, 2025

Delivered on : 14<sup>th</sup> January, 2026

Judgment uploaded on : 14<sup>th</sup> January, 2026

Umme Farva

.....Applicant(s)

Versus

State of U.P. and  
Another

.....Opposite Party(s)

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|                                  |                             |
|----------------------------------|-----------------------------|
| Counsel for Applicant(s)         | : Manoj Kumar Pandey        |
| Counsel for Opposite<br>Party(s) | : G.A., Najam Uz Zaman Khan |

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### **Court No. - 77**

### **HON'BLE PRAVEEN KUMAR GIRI, J.**

1. Heard Mr. Satish Kumar Dubey, Advocate holding brief of Mr. Manoj Kumar Pandey, learned counsel for the applicant, Mr. Najam Uz Zaman Khan, learned counsel for O.P. No.2 and Sri Pankaj Kumar Tripathi, learned A.G.A. for the State.
2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS (Corresponding Section 482 Cr.P.C.) 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:-

*"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned Cognizance/summoning*

*order dated 23.10.2024 including the entire proceedings of Misc. Case No. 750/12//2024 (Dr. Mahmood Alam Khan vs. Umme Farva and others) pending in the Court of Chief Judicial Magistrate, Aligarh arising out of Case Crime No. 1004/2023, Under Sections 506, 507 IPC registered at Police Station-Kwarsi, District-Aligarh."*

4. **The brief facts of this case as per the First Information Report** is that the Informant/O.P. no.2 was working as a Research Professor in the year 2020 at Hanyang University, Seoul. Wife of informant (i.e. present applicant) was living in a live-in-relationship with one Afzan Khan, a resident of Chongiu University, Korea. When the informant came to know about this relationship, he complained to Korea Police on the one hand and also took exception to his wife, then she took divorce from the informant and as per Sharia, their relationship ended. In order to save the future and career of his elder child, the informant left his job and filed a case for guardianship in the Family Court, Aligarh under the Guardians and Wards Act on 05.02.2021, which is still pending. Further allegation in the FIR is that, wife of the informant and her live-in partner are using facebook for defaming the informant and his daughter by uttering unwarranted, uncalled for and filthy language towards them. The accused have also threatened the informant, not to come or live in India, otherwise he would be eliminated.

5. The opposite party No. 2 (Husband) lodge First Information Report as Case Crime No.1004 of 2023 under section 504, 507 IPC, Police Station-Kwarsi, District-Aligarh against the applicant-accused (wife).

6. **Learned counsel for the applicant submits** that the applicant, who happens to be wife of O.P. no.2, has never committed any offence, as alleged against her in the FIR, but she has been implicated in this case, as well as other cases due to malafide intention, just to harass her and no reason. He submits that marriage of the applicant was solemnized with O.P. no.2 according to Islamic rites and rituals on 14.04.2008 and just thereafter, O.P. no.2 has started harassing her and she was also subjected to various kinds of cruelty. He next submits that, even after birth of a son, within the wedlock, even then the behaviour of O.P. no.2 did not improve, so the applicant-wife was not happy with the husband i.e. O.P.

no. 2 . He submits, that O.P. no.2 even ousted the applicant from her in-laws' house, so she was left with no choice, but to reside in her parental house. He submits that, when the applicant started living at her parental home, the O.P. no.2 has filed several complaints against her, on the basis of false allegations and the present criminal proceedings is also outcome of one of those cases. He submits that during course of investigation, when no evidence was found showing involvement of the applicant in the alleged crime, the concerned Investigating Officer submitted final report (closure report) on 19.06.2024 before concerned Judicial Magistrate. Thereafter, O.P. no.2 filed a protest petition on 22.10.2024 and the concerned Magistrate allowed the protest petition and rejected the final report dated 19.06.2024 and took cognizance under section 190(1)(b) Cr.P.C. and proceeded as State case, vide order dated 23.10.2024, under section 504, 507 IPC, which has been challenged along with the entire proceedings of the case in this application. He submits that the learned Magistrate has failed to appreciate the evidence collected during course of investigation in its right perspective and has passed the cognizance-cum-summoning order, in an arbitrary manner and against the provision of law, which is liable to be quashed and set aside.

7. **Per contra, learned counsel appearing on behalf of O.P. no.2 submits** that, there is no illegality or infirmity in the cognizance-cum-summoning order passed by learned Magistrate and warrants no interference by this Court. He submits that O.P. no.2 has filed protest petition against the final report submitted by the concerned I.O. in the matter and the learned Magistrate, after appreciation of evidence collected during the course of investigation, has found, that a prima facie case is made out against the applicant and has passed the said order, which suffers from no illegality or impropriety in any manner whatsoever.

8. **Learned Additional Government Advocate** has adopted the arguments advanced by learned counsel for O.P. No.2 and argued more or less on the similar lines. He further submits that the learned Magistrate has passed the impugned order after properly appreciating the evidence

collected during the investigation and hence no interference is required by this Court in the ongoing criminal proceedings against the applicant.

9. Heard learned counsels appearing on behalf of both sides and perused the entire record, and took into consideration the provision of law as law laid down by Hon'ble Supreme Court and High Courts.

10. It has come on record that the O.P. No. 2, husband of the applicant, gave information to the police, regarding the incident dated 28.09.2023. The Station House Officer (S.H.O.) of Police Station- Kwarsi, District- Aligarh registered the First Information Report on 28.09.2023, as Case Crime No. 1004/2023, under Sections 504 and 507 I.P.C. (Corresponding Sections 352 and 351(4) BNS).

11. The law provides that under **Section 504 I.P.C.**, the maximum imprisonment is **two years** or fine or both, which is **non-cognizable**, bailable and triable by any Magistrate. So far as, **Section 507 I.P.C.** is concerned, that is also **non-cognizable**, bailable and triable by the First Class Magistrate. In **both sections**, the punishment is **upto two years**, therefore, it is a summons case rather than a warrant case. The S.H.O. of the police station, rather than treating it as non-cognizable report under Section 155 Cr.P.C., (Corresponding Section 174 BNSS) registered as First Information Report (F.I.R.) under Section 154 Cr.P.C., (Corresponding Section 173 BNSS) treating the same as cognizable offence, by misusing the process of law, right from the beginning of the case.

12. The police officer is under an obligation as per paragraph No. 97, 102 and 103 U.P. Police Regulations to register an F.I.R. or N.C.R. in accordance with law, as prescribed under the Code of Criminal Procedure. Otherwise, it will amount to violation of not only the provision mentioned in the Cr.P.C., but also the fundamental right, enshrined under Article 21 of the Constitution i.e. "no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law."

13. The paragraphs 97, 102 and 103 of the U.P. Police Regulations are being quoted below:

*“97. Whenever information relating to the commission of a cognizable offence is given to an officer-in-charge of a police station the report will immediately be taken down in triplicate in the check receipt book for reports of cognizable offences (Police Form No. 341). The step will on no account be delayed to allow time for the true facts to be ascertained by a preliminary investigation. Even if it appears untrue, the report must be recorded at once. If the report is made orally, the exact words of the person who makes it, including his answers to any questions put to him should be taken down and read over to him; he must sign each of the three parts, or if he cannot write, he must make his mark or thumb-impression. If a written report is received an exact copy must be made, but the signature or mark of the messenger need not be taken. In all cases the officer-in-charge of the station must sign each of the three parts and have the seal of the station stamped on each. The triplicate copy will remain in the book; the duplicate copy will be given to the person who makes the oral or brings the written report; the original will be sent forthwith through the Superintendent of Police to the Magistrate having jurisdiction with the original written report (if any) attached.*

*The practice of delaying first information reports until they can be sent to headquarters attached to special or general diaries is contrary to the provisions of Criminal Procedure Code and is prohibited.*

*If there is an Assistant or Deputy Superintendent incharge of the subdivision, and stationed at a place other than the headquarters of the district, the original should be sent through him to the Magistrate.*

X      X      X      X

*102. When a report is made of a non-cognizable offence, the important portion of the report should be recorded in the check receipt book for reports of non-cognizable offence (Police Form NO. 347). The informant should be required to sign or affix his mark to each of the two copies. The duplicate copy should be given to him, the original remaining in the book. The substance of the report should be entered in the general diary, and, if the report is in writing, the proper containing should be attached to the diary. The informant should also be referred to the Magistrate, as required by Section 155 of the Code of Criminal Procedure, 1973 (2 of 1974).*

*103. The responsibility imposed on the officer-in-charge of police station by Section 154 and 155(1) of the Code of Criminal Procedure, 1973 (2 of 1974) or non-cognizable, will be enforced, and he must countersign all reports of either kind recorded.”*

14. In this case, the Investigating Officer, investigated the matter and found that, no case has been made out against the wife/accused-applicant under Sections 504 and 507 I.P.C., and thereafter, he prepared the **police report/final report (closure report)** on 19.06.2024 under Section 173(2) Cr.P.C. (Corresponding Section 193(3) BNSS) and submitted the report in the court of Magistrate, without a written complaint of offence committed under

Section 177 and 182 IPC (Corresponding Section 212 and 217 Bharatiya Nyaya Sanhita, 2023) in respect of furnishing false information, as provided under Section 195(1)(a) Cr.P.C. (Corresponding Section 215(1)(a) Bharatiya Nagarik Suraksha Sanhita, 2023).

15. **Sections 177 and 182 IPC** (Corresponding to sections 212 and 217 of B.N.S.) **cannot be made redundant**, that is to say that, in case any false information is furnished with intent to cause public servant to use his lawful power to injury of another person, the Investigating Officer shall also prepare a police report in form of complaint as provided/required under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS). Thus, giving a false information to police to lodge an **F.I.R. or N.C.R.** attracts offence provided under Section 177 and 182 IPC (corresponding Section 212 and 217 BNS) and if after investigation, the Investigating Officer finds that no such incident occurred as alleged in the F.I.R. or N.C.R., the Investigating Officer is under statutory obligation, not only to submit a final report/closure report but also to submit a report of offence of Section 177 and 182 IPC (corresponding Section 212 and 217 BNS) in form of complaint as provided, under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) of BNSS) for taking cognizance. Otherwise, the concerned police officers are liable for committing an offence as mentioned under Section 199 (b) BNS (corresponding Section 166A(b) of Cr.P.C.). The Section 199 BNS is delineated below :-

***Section. 199 Public servant disobeying direction under law.-***

*Whoever, being a public servant-*

*(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter; or*

*(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation; or*

*(c) fails to record any information given to him under sub-section (1) of section 174 of the Bhartiya Nagarik Suraksha Sanhita, 2023 in relation to cognizable offence punishable under section 64, section 65 section 66, section 67, section 68, section 71, section 73, section 76, section 122 or section 141 or section 142, shall be punished with rigorous imprisonment for a term which shall not be*

*less than six months but which may extend to two years, and shall also be liable to fine.*

16. The learned Judicial Magistrate shall not accept the Final Report, if the same is not accompanied with a written complaint, under Section 177 and 182 I.P.C. (corresponding Section 212 and 217 BNS). The proceedings can only be initiated upon the filing of a proper complaint, in line with the principle analogous to the Section 195(1)(a) CrPC. (Corresponding Section 215 (1) (a) BNSS). Section 177 and 182 of IPC (Corresponding Sections 212 and 217 BNS) and Section 195 (1) Cr.P.C. (Corresponding Section 215 (1) BNSS) are being reproduced below :-

***“ Section 177 I.P.C. Furnishing false information.—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;***

*or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

X X X X

***“ Section 182 I.P.C. False information, with intent to cause public servant to use his lawful power to the injury of another person-Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant-***

*(a). to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or*

*(b). to use the lawful power of such public servant to the injury or annoyance of any person,*

*shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

X X X X

***Section. 212 of B.N.S. Furnishing false information.-Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,-***

(a). shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b). where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

X X X X

**Section 217 of B.N.S.- False information, with intent to cause public servant to use his lawful power to injury of another person-** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant -

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him; or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.”

X X X X

**Section 195(1) Cr.P.C. No Court shall take cognizance—**

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such 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;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence **in a proceeding in any Court**, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

***Except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”***

X X X X

***Section 215 (1) BNSS - No Court shall take cognizance —***

(a) (i) of any offence punishable under sections 206 to 223 (both inclusive but excluding section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such 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;***

(b) (i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, ***any proceeding in any Court;*** or

(ii) of any offence described in sub-section (1) of section 336, or punishable under sub-section (2) of section 340 or section 342 of the said Sanhita, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court; or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

***except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.***

17. As per the judgment of the Hon’ble Supreme Court passed in **State of Punjab vs. Raj Singh and another, (1998) 2 Supreme Court Cases 391**, though under Section 173 of the B.N.S.S. (corresponding Section 154 of the Cr.P.C.) an F.I.R. can be registered under section 172 to 188 I.P.C. (Corresponding section 206 to 223 of B.N.S., excluding Section 209 B.N.S. (Corresponding Section 174A IPC) and thereafter investigation can be done but

chargesheet cannot be submitted in the above sections after conclusion of investigation, even if offence is made out against the alleged accused persons, while a written complaint shall be filed by the concerned police officer as required under Section 195 of the Cr.P.C. (corresponding Section 215 of the B.N.S.S.). The relevant paragraph of the said judgment is quoted below:-

*“2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195 (1) (b) (ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1) (b) Cr. P. C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr. P.C. The judgment of this Court in Gopal Krishna Menon and Anr. Vs. D. Raja Reddy [AIR 1983 SC 1053], on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr. P. C.”*

18. The offence is always against the State therefore, if the Investigating Officer is submitting police report/final report(closure report) under section 193(3) BNSS (corresponding Section 173(2) Cr.P.C.), he shall also submit police report in form of written complaint under section 212 and 217 BNS (Corresponding Sections 177 and 182 IPC), against the informant and witnesses. **The format of police report, in form of written complaint** under section 212 and 217 BNS (Corresponding Sections 177 and 182 IPC) as provided under Section 215(1)(a) BNSS (Corresponding Section 195(1)(a) Cr.P.C.), in case of false information, to police to use his lawful power to injury any person, **in Hindi language** as well as in **English language** are delineated below :-

प्रारूप

न्यायालय श्रीमान मुख्य न्यायिक मजिस्ट्रेट /विशेष न्यायालय, जिला .....

परिवाद संख्या ..... वर्ष 20...

(अंतर्गत धारा 2(1)(ज), 210 (1) (क), 215 (1) (क), 223, 225 भारतीय नागरिक सुरक्षा संहिता)

( समतुल्य अंतर्गत धारा 2(घ), 190(1)(क), 195 (1)(क), 200, 202 द० प्र० स०)

अभियोग अंतर्गत धारा 212 एवं 217 भारतीय न्याय संहिता , 2023 चलाने के संबंध में

(समतुल्य धारा 177 एवं 182 भा० द० स०)

प्रकरण में:

राज्य द्वारा, विवेचक अधिकारी के माध्यम से ..... (नाम; पद: थाना)

..... परिवादी / विवेचक

बनाम

अभियुक्त/सूचनाकर्ता एवं अन्य का नाम ( जिसने झूठी जानकारी उपलब्ध कराई ) एवं पूर्ण पता

..... प्रतिवादीगण / अभियुक्तगण / सूचनाकर्ता एवं साक्षीगण

महोदय,

अत्यंत विनम्र निवेदन है कि:

1. यह कि वर्तमान परिवाद पत्र/प्रार्थना पत्र प्रार्थी (विवेचक) द्वारा भारतीय न्याय संहिता की धारा 212 एवं 217 ( समतुल्य धारा 177 एवं 182 भारतीय दंड संहिता ) के अंतर्गत, प्रथम सूचना रिपोर्ट दर्ज कराने वाले वादी एवं अन्य व्यक्तियों के विरुद्ध विधिक कार्यवाही हेतु प्रस्तुत किया जा रहा है , क्योंकि वादी ने झूठी जानकारी/तथ्यों/प्रपत्रों के आधार पर प्रथम सूचना रिपोर्ट (F.I.R एवं N.C.R.)(मुकदमा अपराध संख्या \_\_\_\_\_,वर्ष \_\_\_\_, धारा \_\_\_\_\_, थाना \_\_\_\_\_, जनपद \_\_\_\_\_), दर्ज कराकर, उसमें वर्णित अभियुक्तगण के विरुद्ध पुलिस अधिकारी (लोक सेवक) से उसकी वैधानिक शक्तियों का दुरुपयोग कराकर क्षति पहुंचाया ।

2. यह कि उक्त प्रथम सूचना रिपोर्ट (संज्ञेय/असंज्ञेय अपराध) दिनांक \_\_\_\_\_ को मुकदमा अपराध संख्या \_\_\_\_\_ सन \_\_\_\_\_ अंतर्गत धारा \_\_\_\_\_ थाना \_\_\_\_\_ भारतीय न्याय संहिता के अंतर्गत श्री \_\_\_\_\_ एवं अन्य व्यक्तियों के विरुद्ध, प्रतिवादी/सूचनादाता द्वारा लगाए गए आरोपों के आधार पर पंजीकृत की गई थी, जो विवेचना उपरांत असत्य पाई गई। तदोपरांत उसमे अंतिम आख्या तैयार कर न्यायालय भेजी जा रही है ।

3. यह कि विस्तृत विवेचना उपरांत यह तथ्य स्पष्ट हुआ कि प्रतिवादी द्वारा लगाए गए समस्त आरोप पूर्णतः असत्य, निराधार एवं दुर्भावनापूर्ण थे, जिन्हें केवल नामजद व्यक्तियों को क्षति पहुंचाने के आशय से दर्ज कराया गया था। (तथ्य संलग्नित केस डायरी में उपलब्ध है )

4. यह कि विवेचना से निम्नलिखित तथ्य प्रतिपन्न हुए—

(i) प्रतिवादी द्वारा दिनांक \_\_\_\_\_ समय \_\_\_\_\_ बजे को स्थान \_\_\_\_\_ पर घटना ----- घटित होना नहीं पाया गया।

(ii) स्वतंत्र गवाहों के कथन प्रतिवादी/ सूचनाकर्ता के कथन को पूर्णतः अस्वीकार करते हैं।

(iii) विवेचना के दौरान संकलित अभिलेखीय साक्ष्य प्रथम सूचना रिपोर्ट में लगाए गए आरोपों का खंडन करते हैं।

(iv) प्रतिवादी की नामजद व्यक्तियों से पूर्ववर्ती शत्रुता थी, जो गवाहों के कथनों से स्पष्ट होता है।

(v) प्रतिवादी द्वारा दुर्भावनापूर्ण उद्देश्य से असत्य जानकारी के आधार पर प्रथम सूचना रिपोर्ट (FIR/NCR) दर्ज कराया गया।

5. यह कि उपर्युक्त तथ्यों के आधार पर, दिनांक .../.../20... को अंतिम आख्या (Closure Report) इस माननीय न्यायालय के समक्ष प्रस्तुत किया जा रहा है, जिसमें यह निष्कर्ष निकाला गया है कि प्रथम सूचना रिपोर्ट (F.I.R./N.C.R.) असत्य एवं दुर्भावनापूर्वक संस्थापित की गई थी।

6. यह कि प्रतिवादी का आचरण स्पष्ट रूप से भारतीय न्याय संहिता के प्रावधानों के अंतर्गत, धारा 212 एवं 217 (धारा 177 एवं 182 भारतीय दंड संहिता) के अंतर्गत अपराध की श्रेणी में आता है। उपरोक्त धाराएं निम्नवत उद्धृत किया जा रहा है :-

**भारतीय न्याय संहिता की धारा 212. मिथ्या सूचना देना**— जो कोई, किसी लोक सेवक को, ऐसे लोक सेवक के नाते, किसी विषय पर सूचना देने के लिए विधिक रूप से आबद्ध होते हुए, उस विषय पर सच्ची सूचना के रूप में ऐसी सूचना देता है, जिसका मिथ्या होना वह जानता है या जिसके मिथ्या होने का विश्वास करने का कारण उसके पास है— (क) वह सादा कारावास से, जिसकी अवधि छह मास तक की हो सकेगी, या जुर्माने से जो पांच हजार रुपए तक का हो सकेगा, या दोनों से, दंडित किया जाएगा;

(ख) वह सूचना, जिसे देने के लिए वह विधिक रूप से आबद्ध है, कोई अपराध किए जाने के विषय में हो, या किसी अपराध के किए जाने का निवारण करने के प्रयोजन से, या किसी अपराधी को पकड़ने के लिए अपेक्षित हो, तो वह दोनों में से, किसी भांति के कारावास से, जिसकी अवधि दो वर्ष तक की हो सकेगी, या जुर्माने से, या दोनों से, दंडित किया जाएगा।

**भारतीय न्याय संहिता की धारा 217— इस आशय से मिथ्या सूचना देना कि लोक अपनी सेवक विधिपूर्ण शक्ति का उपयोग दूसरे व्यक्ति को क्षति करने के लिए करे** — जो कोई, किसी लोक सेवक को कोई ऐसी सूचना, जिसके मिथ्या होने का उसे ज्ञान या विश्वास है, इस आशय से देता है कि वह उस लोक सेवक को प्रेरित करे या यह सम्भाव्य जानते हुए देता है कि वह उसको उसके द्वारा प्रेरित करेगा कि वह लोक सेवक—

(क) कोई ऐसी बात करे या करने का लोप करे जिसे वह लोक सेवक, यदि उसे उस संबंध में, जिसके बारे में ऐसी सूचना दी गई है, तथ्यों की सही स्थिति का पता होता तो न करता या करने का लोप न करता; या

(ख) ऐसे लोक सेवक की विधिपूर्ण शक्ति का उपयोग करे जिस उपयोग से किसी व्यक्ति को क्षति या क्षोभ हो,

वह दोनों में से, किसी भांति के कारावास से, जिसकी अवधि एक वर्ष तक की हो सकेगी, या जुर्माने से, जो दस हजार रुपए तक का हो सकेगा, या दोनों से, दंडित किया जाएगा।

7. यह कि भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 215(1)(a), (समतुल्य धारा 195(1) (क) भारतीय प्रक्रिया संहिता) की धारा के अधीन, कोई भी न्यायालय उक्त अपराधों का संज्ञान तब तक नहीं लेगा, जब तक कि संबंधित लोक सेवक द्वारा लिखित रूप में शिकायत प्रस्तुत न की जाए।

भारतीय नागरिक सुरक्षा संहिता की धारा 215(1) को निम्नवत उद्धृत किया जा रहा है:-

भारतीय नागरिक सुरक्षा संहिता की धारा 215 (1) कोई न्यायालय, -

(क) (i) भारतीय न्याय संहिता, 2023 की धारा 206 से धारा 223 (जिनके अंतर्गत धारा 209 के सिवाय ये दोनों धाराएं भी हैं) के अधीन दंडनीय किसी अपराध का या

(ii) ऐसे अपराध के किसी दुष्प्रेरण या ऐसा अपराध करने के प्रयत्न का; या

(iii) ऐसा अपराध करने के लिए किसी आपराधिक षड्यंत्र का,

संज्ञान संबद्ध लोक सेवक के, या किसी अन्य ऐसे लोक सेवक के, जिसके वह प्रशासनिक तौर पर अधीनस्थ है या कोई अन्य लोक सेवक जो संबद्ध लोक सेवक द्वारा ऐसा करने के लिए प्राधिकृत है, लिखित परिवाद पर ही करेगा, अन्यथा नहीं;

(ख) (i) भारतीय न्याय संहिता, 2023 की निम्नलिखित धाराओं अर्थात् धारा 229 से धारा 233 (जिनके अंतर्गत ये दोनों धाराएं भी हैं), धारा 236, धारा 237, धारा 242 से धारा 248 (जिनके अंतर्गत ये दोनों धाराएं भी हैं) और धारा 267 से किन्हीं के अधीन दंडनीय किसी अपराध का, जब ऐसे अपराध के बारे में यह अभिकथित है कि वह किसी न्यायालय में की कार्यवाही में या उसके संबंध में किया गया है; या

(ii) उक्त संहिता की धारा 336 की उपधारा (1) में वर्णित या धारा 340 की उपधारा (2) या धारा 342 के अधीन दंडनीय अपराध का, जब ऐसे अपराध के बारे में यह अभिकथित है कि वह किसी न्यायालय में की कार्यवाही में प्रस्तुत किए गए या साक्ष्य में दिए गए किसी दस्तावेज के बारे में किया गया है; या

(iii) उपखंड (i) या उपखंड (ii) में विनिर्दिष्ट किसी अपराध को करने के लिए आपराधिक षड्यंत्र या उसे करने के प्रयत्न या उसके दुष्प्रेरण के अपराध का, संज्ञान ऐसे न्यायालय के, या न्यायालय के ऐसे अधिकारी के, जिसे वह न्यायालय इस निमित्त लिखित रूप में प्राधिकृत करे या किसी अन्य न्यायालय के, जिसके वह न्यायालय अधीनस्थ है लिखित परिवाद पर ही करेगा अन्यथा नहीं।

### गवाहों की सूची

निम्नलिखित व्यक्तियों को प्रतिवादी की मिथ्या एवं दुर्भावनापूर्ण मंशा को सिद्ध करने हेतु अभियोजन पक्ष के गवाह के रूप में स्वीकार किए जाने की प्रार्थना है—

1. पी० डब्ल्यू-1: श्री -----[विवेचक (परिवादी) प्रथम सूचना रिपोर्ट ] परिवादी स्वयं/विवेचना अधिकारी – अंतिम रिपोर्ट एवं संपूर्ण अन्वेषण श्रृंखला को सिद्ध करने हेतु।

2. पी.डब्ल्यू-2: श्री \_\_\_\_\_ (प्रथम सूचना रिपोर्ट में झूठा फँसाया गए अभियुक्तगण ।

3. पी.डब्ल्यू-3: श्री \_\_\_\_\_ (स्वतंत्र गवाह/पड़ोसी) – यह सिद्ध करने हेतु कि कथित घटना कभी घटित ही नहीं हुई।

4. पी.डब्ल्यू-4: श्री \_\_\_\_\_ (संबंधित अभिलेखीय दस्तावेजों के संरक्षक, जैसे – शासकीय अभिलेख/सीसीटीवी इत्यादि) – प्रतिवादी के कथन की असत्यता सिद्ध करने हेतु।

पी.डब्ल्यू-5: श्री \_\_\_\_\_ (सहायक पुलिस अधिकारी/अन्वेषण दल का सदस्य) – अन्वेषण कार्यवाही को सिद्ध करने हेतु।

(यह सूची उदाहरणार्थ है तथा आवश्यकता पड़ने पर अन्य गवाह भी जाँच/विचारण की कार्यवाही के दौरान प्रस्तुत किए जा सकते हैं।)

प्रार्थना

उपर्युक्त तथ्यों एवं परिस्थितियों के आधार पर, माननीय न्यायालय से विनम्र प्रार्थना है कि कृपया —

- 1. इस आवेदन को संपूर्ण केस डायरी सहित, भारतीय न्याय संहिता की धारा 212 एवं 217 (धारा 177 एवं 182 भारतीय दंड संहिता ) के अंतर्गत एक परिवाद (शिकायत) के रूप में ग्रहण किया जाए एवं धारा 210 (1) (क ) भारतीय नागरिक सुरक्षा संहिता, 2023 (समतुल्य धारा 190 (1 ) (क) द० प्र० स० ) में संज्ञान लेते हुए धारा 227 भारतीय नागरिक सुरक्षा संहिता, 2023 ( समतुल्य धारा 204 द० प्र० स० ) में तलब कर दण्डित किया जाय |
- 2. उपर्युक्त उल्लिखित साक्षियों की सूची अभिलेख पर लिया जाए तथा उपरोक्त गवाहों को धारा 223 एवं 225 भारतीय नागरिक सुरक्षा संहिता, 2023 के तहत गवाही से अवमुक्त किया जाय जैसा कि धारा 223 (second Proviso ) भारतीय नागरिक सुरक्षा संहिता, 2023 में वर्णित है
- 3. न्यायहित में इस माननीय न्यायालय को जो अन्य आदेश/आदेशावली उचित एवं आवश्यक प्रतीत हो, वह पारित करने की कृपा करें।

परिवादी

दिनांक :-----

( विवेचक अधिकारी

अ०स०.....सन .....धारा ..... )

नाम :-

पद :-

थाना :----- जिला :-----

मोबाइल :-

सत्यापन

मैं, श्री \_\_\_\_\_, पुत्र श्री \_\_\_\_\_, जनपद \_\_\_\_\_ वर्तमान में थाना \_\_\_\_\_, पर नियुक्त, इस बात का सत्यापन करता हूँ कि उपर्युक्त परिवाद पत्र के विषय तथ्य वस्तु मेरी व्यक्तिगत जानकारी , की गई विवेचना एवं संधारित अभिलेखों के आधार पर सही एवं सत्य है। इसमें कोई भी महत्वपूर्ण तथ्य गोपित नहीं रखा गया है।

यह सत्यापन मैंने \_\_\_\_\_ में आज दिनांक \_\_\_\_\_ 20\_\_ को किया।

परिवादी /विवेचक

नाम: \_\_\_\_\_

पद: \_\_\_\_\_

थाना: \_\_\_\_\_ जिला: \_\_\_\_\_

परिशिष्टों की सूची

| क्र. सं. | अभिलेख का विवरण                                                                                        | परिशिष्ट संख्या |
|----------|--------------------------------------------------------------------------------------------------------|-----------------|
| 1.       | वाद अपराध सं० ..... थाना ..... का प्रथम सूचना रिपोर्ट (एफ.आई.आर.) की प्रतिलिपि संपूर्ण केस डायरी सहित। | परिशिष्ट-       |
| 2.       | विवेचक द्वारा दिनांक ..... को तैयार अन्तिम आख्या/समापन प्रतिवेदन                                       | परिशिष्ट-       |
| 3.       | अन्य कोई प्रासंगिक अभिलेख                                                                              | परिशिष्ट        |

**FORMAT:****In the Court of Chief Judicial Magistrate/ Special Court, District.....****Complaint Case No.....Year.....****(Under sections 2(1)(h), 210 (1) (a), 215 (1)(a), 223 B.N.S.S.)****(Corresponding to Sections 2(d), 190(1)(a), 195 (1), 200 Cr.P.C.)****(To Prosecute under section 212 and 217 OF B.N.S)****( Corresponding to Section 177 and 182 I.P.C )****In the matter of:****State Through Investigating Officer.....(Name; Rank;Police Station)****.....Applicant/Complainant****Versus****[Accused person/ Informant and others witnesses Name (i.e. furnished False informant) and full Address]****.....Respondents****SIR,****IT IS MOST RESPECTFULLY SUBMITTED:-**

1. **That** the present Complaint is being filed by the Complainant/Investigating Officer of the First information Report/Non-Cognizable report registered as Case Crime No.\_\_\_\_\_,Year\_\_\_\_, Under section \_\_\_\_\_,Police Station \_\_\_\_\_, District \_\_\_\_\_, against the opposite parties/informant and witnesses of the first information report for giving false information to the public servant /police to use his lawful power to cause injury to the alleged accused persons of the F.I.R.

2. **That** the FIR/NCR was registered on date \_\_\_\_\_ as case crime no.\_\_\_\_\_ year \_\_\_\_ under Sections \_\_\_\_\_ BNS, Police Station \_\_\_\_\_ District \_\_\_\_\_ against Shri \_\_\_\_\_S/o\_\_\_\_\_ Address\_\_\_\_\_ and others, based on allegations made by Shri\_\_\_\_\_, Shri\_\_\_\_\_(opposite parties/informant and witness)-, which was found false after investigation.

3. **That** upon thorough investigation, it was found that the allegations made in the FIR were false, frivolous and malicious, and lodged only with an intent to cause injury to the persons named in the FIR/NCR (The entire material is available in the annexed case diary).

4. **That** the investigation revealed the following material facts:

(i) The incident, as alleged by the respondent to have occurred on \_\_\_\_\_ at \_\_\_\_\_, which never took place.

(ii) The statements of independent witnesses clearly negate the version of the respondent/informant.

(iii) Documentary records collected during investigation contradict the allegations in the FIR.

(iv) The respondent had previous enmity with the named persons, which is evident from witness statements.

(v) The Respondents lodged FIR on the false information with ulterior motive.

5. **That** in view of the investigation, the Final Report/Closure Report dated --/--/20-- has been submitted before this Court, concluding that the FIR was false and maliciously instituted against the accused of the F.I.R.

6. **That** the conduct of the informant and witness squarely attracts the offence as provided under sections 212 and 217 of Bhartiya Nyaya Sanhita, 2023 (Corresponding sections 177 and 182 of the Indian Penal Code),: The Sections are quoted herein below:-

**Section 212 BNS. Furnishing false information.**—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,—

(a) shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both;

(b) where the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 217 BNS False information, with intent to cause public servant to use his lawful power to injury of another person-** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

7. That under Section **215(1)(a) B.N.S.S.** (Corresponding section 195(1)(a) (i) Cr.P.C. ), no Court shall take cognizance of the offences mentioned under sections 212 and 217 of BNS (Corresponding sections 177 and 182 of I.P.C.) **except on the complaint in writing of the public servant concerned.**

Section 215(1) B.N.S.S (Corresponding to section 195(1) of Cr.P.C.)is being quoted below:

**Section 215 (1) BNSS - No Court shall take cognizance —**

(a) of any offence punishable under **sections 206 to 223** (both **inclusive but**

**(i) excluding section 209**) of the Bharatiya Nyaya Sanhita, 2023; or

**(ii)** of any abetment of, or attempt to commit, such 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;

(b) of any offence punishable under any of the following sections of the

**(i)** Bharatiya Nyaya Sanhita, 2023, namely, sections **229 to 233** (both inclusive), **236, 237, 242 to 248** (both inclusive) and **267**, when such offence is alleged to have been committed in, or in relation to, **any proceeding in any Court**; or

**(ii)** of any offence described in sub-section (1) of section **336**, or punishable under sub-section (2) of section **340** or section **342** of the said Sanhita, when such offence is alleged to have been committed in **respect of a document** produced or given in **evidence in a proceeding in any Court**; or

**(iii)** of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

**except on the complaint in writing** of that **Court** or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

### **LIST OF WITNESSES**

The following witnesses may kindly be treated as prosecution witnesses for proving the falsity and malicious intent of the Opposite parties/Informant and witness.

1. **PW-1:** Shri \_\_\_\_\_ S/o \_\_\_\_\_ Address \_\_\_\_\_ implicated in the FIR with malice complainant/Investigating Officer himself –To prove the final report and entire chain of investigation.

2. **PW-2:** Shri \_\_\_\_\_ S/o \_\_\_\_\_ Address \_\_\_\_\_ (Independent Witness/ Neighbour) – To prove that the alleged incident never took place.

3. **PW-3:** Shri \_\_\_\_\_ (Custodian of relevant documentary records, e.g., official registers/ CCTV etc.) – To prove falsity of respondent's version.

4. **PW-4:** Shri \_\_\_\_\_ (Supporting Police Officer / member of investigation team) – To prove the investigation proceedings.

(The list is illustrative and more witnesses may be produced if required during inquiry/trial.)

### **Prayer**

Based on the above-mentioned facts and circumstances, it is respectfully prayed before this Hon'ble Court that:

1. This application, along with the complete case diary, may kindly be accepted as a complaint under sections 212 and 217 of BNS (Corresponding sections 177 and 182 of the Indian Penal Code). And pleased to take cognizance under Section 210(1)(a) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ( Corresponding Section 190(1)(a) of the Code of Criminal Procedure) and issue process under Section 227 of the BNSS, 2023 (Corresponding Section 204 of the CrPC), and summon and punish the accused.

2. The list of the above-mentioned witnesses and the accused persons be taken on record and exempt the witnesses to record their statements under

section 223 and 225 of BNSS ( Corresponding section 200 (proviso) Cr.P.C.) as provided under section 223 (second Proviso) of the BNSS and summon the accused, who gave false information to the police to use his lawful power to cause injury to the alleged accused of the F.I.R.

3. Pass such other and further order(s) as this Hon’ble Court may deem fit and proper in the interest of justice.

Date:\_\_\_\_\_

Complainant  
(Investigating Officer)  
Name: \_\_\_\_\_  
Rank: \_\_\_\_\_  
Police Station:\_\_\_\_\_District-----  
Mobile no.:\_\_\_\_\_

**VERIFICATION**

I, Shri \_\_\_\_\_, son of Shri \_\_\_\_\_, presently posted as \_\_\_\_\_ at Police Station \_\_\_\_\_, District \_\_\_\_\_, do hereby verify that the contents of the above complaint are true and correct to my personal knowledge, based on the investigation conducted and records maintained. Nothing material has been concealed.

Verified at place\_\_\_\_\_ on this \_\_ day of \_\_\_\_\_, 20.

Date:-

Complainant  
(Investigating Officer)  
Name: \_\_\_\_\_  
Rank: \_\_\_\_\_  
Police Station:\_\_\_\_\_District-----

**INDEX OF ANNEXURES**

| Sr. No. | Particulars of Document                                                         | Annexure.No. |
|---------|---------------------------------------------------------------------------------|--------------|
| 1.      | True copy of FIR of Case Crime No.--/--, P.S.----- along with entire case diary | Anx. A.      |
| 2.      | Final Report/Closure Report dated ----20---- prepared by the I.O.               | Anx. B.      |
| 3.      | Any other relevant documents                                                    | Anx. C.      |

19. Under Section 173(2) Cr.P.C. (corresponding section 193(3) of the BNSS), neither the word 'charge-sheet' nor 'final report' or 'closure report' is mentioned, only the term 'Police report' is mentioned after the completion of investigation.

20. The term "police report" used in the CrPC as well as the BNSS refers to the report submitted after completion of investigation under Section 173(2) (corresponding Section 193(3) of the BNSS). If the police report discloses the commission of an offence, then, as per **U.P. Police Regulation, Paragraph 122**, it shall be treated as a chargesheet, to be submitted in Form No. 339. However, if the report does not disclose the commission of any offence, it shall be treated as a final report under Paragraph 122 and submitted in Form No. 340 of the U.P. Police Regulations. **Paragraph 122** of U.P. Police Regulations is quoted below:-

***"122. Completion of Investigation and submission of final report or charge sheet should be as soon as possible.- (i) An investigation should be completed as soon as possible and when complete the investigating officer must comply with the provisions of Section 161-171 and 173 of the Code of Criminal Procedure, 1973 (2 of 1974). The report prescribed by Section 173 must under that section be submitted by the officer incharge of the police station under intimation to the Superintendent of Police and should be in the form of chargesheet (Police Form No. 339), if the case is sent for trial and in the form of final report (Police Form No. 340), if the case is not sent for trial. The charge-sheet with the final diary in the cases shall be submitted to the Court through the Circle Officer and the Public Prosecutor and should reach the Court within four weeks of the date of lodging of the first information report in summons and warrants cases and eight weeks in Sessions cases. None of the Circle Officer and the Public Prosecutor should normally retain the charge-sheet for more than a week and the latter should submit it to the Court concerned within the time-limit prescribed. The prescribed time-limit should not be allowed to exceed except for very special reasons.***

*(ii) As soon as possible but in any case not later than a month of the expiry of each quarter, the Superintendent of Police shall submit to the District Magistrate, in the prescribed form and in duplicate, a quarterly list of cases in which charge-sheet could not be submitted within the prescribed time-limit of 4/8 weeks. The District Magistrate will forward it to the Range Deputy Inspector General of Police endorsing the other copy with his comments to the Commissioner of the Division. The Range Deputy Inspector General of Police will thereupon compile in the prescribed form, a statement of delayed cases and submit it to the*

*Inspector General of Police who will forward the same to Government in Home Department (Police A) with his comments.*

*(iii) The **final report** must in **all cases** be submitted through the **Superintendent of Police**.*

*(iv) The information as the **result of investigation** must, as required by Section 173 (i) (b), Criminal Procedure Code, 1973 (2 of 1974) **be sent by the officer in charge of the police station to the complainant** if any in **Police Form No. 47**, at the time he **submits the charge-sheet** or the **final report**, as the case may be.*

21. In case of false first information report, if a written complaint against the informant and witness under section 215(1)(a) BNSS (corresponding section 195(1) (a) Cr.P.C.) is not filed by the Investigating Officer, under section 212 and 217 BNS (corresponding section 177 and 182 of I.P.C.) for giving false information to the police then it will amount that the Investigating Officer, Station House Officer, Circle Officer of the area and the prosecuting officer concerned are not discharging their official duty and liable to departmental proceedings as well as contempt proceedings.

22. Thus, the expressions “chargesheet” and “final report” originates from the U.P. Police Regulations, and not from the CrPC or the BNSS.

23. In this case, the O.P. no.2 (husband of the applicant) filed a protest petition on 22.10.2024 before the court of Chief Judicial Magistrate, Aligarh. The learned Chief Judicial Magistrate accepted the protest petition and took cognizance on the final report (closure report) treating it as a chargesheet of cognizable offence, as well as a State case under Section 190(1)(b) Cr.P.C. (Correspondent Section 210(1)(b) BNSS), while offence under section 504 and 506 I.P.C. is a non-cognizable offence attracts provision of Section 2(d) **Explanation** Cr.P.C., the same has also been mentioned in the cognizance-cum-summoning order dated 23.10.2024. The operative portion of the order dated 23.10.2024 is delineated below:

*"प्रार्थी डा० महमूद आलम खान का प्रोटेस्ट प्रार्थना पत्र स्वीकार किया जाता है। विवेचक द्वारा प्रस्तुत अन्तिम आख्या 225/2024, दिनांकित 19-06-2024 निरस्त की जाती है। अभियुक्तगण उम्मे फारवा व अफजल खान के विरुद्ध धारा 190 (1) (बी) दं०प्र०सं० के अधीन भा०द०सं० की धारा 504, 507 के अन्तर्गत विचारण हेतु संज्ञान लिया जाता है। प्रकरण स्टेट केस के रूप में चलेगा। अभियुक्तगण के लिये नकलें तैयार*

*करायी जायें। अभियुक्तगण जरिये सम्मन नियत दिनांक के लिए तलब हो। पत्रावली वास्ते हाजिरी दिनांक 09-12-2024 को पेश हो।"दिनांक :- 23.10.2024.*

24. Learned Chief Judicial Magistrate has taken cognizance on 23.10.2024 under Section 190(1)(b) Cr.P.C. (Corresponding Section 210(1)(b) BNSS to prosecute the applicant/accused-wife under Sections 504 and 507 I.P.C. as a State case rather than complaint as the offence is non-cognizable covered by Section 2(d) **Explanation** of Cr.P.C. (corresponding section 2(1)(h) **Explanation** BNSS) and summoned also without providing opportunity of hearing to the accused as provided under section 223 First Proviso of the BNSS as held by a Division Bench of this Court in paragraph 16(iii) of the judgment of **Deepu and Ors. v State of U.P. and Ors., (2024) 8 ILRA 903 (Crl. Misc. Writ Petition No.12287 of 2024)** that the cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS.

25. As per the provisions of the Code of Criminal Procedure or BNSS, in a case of non-cognizable offence, first of all an N.C.R. is registered under Section 155(1) Cr.P.C. (corresponding section 174(1) BNSS) and as per Section 155(2) Cr.P.C. (corresponding section 174(2) BNSS), the police officer cannot investigate the matter without an order of the Judicial Magistrate of the concerned district. After investigation in an N.C.R., if a charge-sheet is submitted again, under a non-cognizable offence, then as per Section 2(d) **Explanation** of Cr.P.C. [Corresponding Section **Explanation** to Section 2(1)(h)], the charge-sheet shall be treated as a complaint and the Investigating Officer shall be treated as the complainant and the learned Judicial Magistrate, then has to take cognizance under Section 190(1)(a) Cr.P.C. [Corresponding Section 210 (1)(a)] as a complaint case, rather than as a police case under Section 190(1)(b) Cr.P.C. [Corresponding Section Section 210 (1) (b)] In the present matter, the learned Chief Judicial Magistrate, Aligarh has not followed the provisions of law and treated a non-cognizable offence as a cognizable offence. This Court earlier in the matter of **Prempal and others v. State of U.P. and another, Application U/S 528 BNSS No.1624 of 2025**, passed an order on 26.11.2025 giving a detailed

direction on Section 2(d) Explanation Cr.P.C. (*corresponding Section 2(1)(h) Explanation of B.N.S.S.*).

26. Before taking cognizance under Section 190 Cr.P.C. (Corresponding Section 210 B.N.S.S.), the learned Judicial Magistrate is under obligation to look into the matter, whether the case is time-barred as per Section 468 and 469 Cr.P.C. (Corresponding Section 514 and 515 BNSS) or not. After taking cognizance under Section 190(1)(a) [Corresponding Section Section 210 (1)(a)], the learned Judicial Magistrate has to proceed with the case as a complaint case and if the complainant is a public servant then there is no need of recording the statement of the complainant as well as witness as provided under section 200 first proviso of Cr.P.C. (corresponding section 223 second proviso BNSS) and the learned Judicial Magistrate may also proceed as per the provisions of Section 202 Cr.P.C., (Corresponding Section 225 BNSS) either to conduct an inquiry or to direct for investigation to verify the facts of the case for dismissing the complaint under Section 203 Cr.P.C. (Corresponding Section 226 BNSS) as well as summoning under Section 204 Cr.P.C. (Corresponding Section 227 BNSS) and also provides opportunity of hearing to the accused before passing any order of cognizance or summoning the proposed accused as provided under section 223 first proviso of BNSS w.e.f. 01.07.2024

27. Both Sections 504 and 507 I.P.C. (Corresponding Section 352 and 351(4) of B.N.S.) are punishable up to two years, therefore, as per Section 2(w) Cr.P.C., (Corresponding Section 2(1)(x) BNSS) it is a summons case and not a warrant case. As per Section 2(x) Cr.P.C., (Corresponding Section 2(1)(z) BNSS) a warrant case means an offence punishable with death, imprisonment for life, or imprisonment for a term exceeding two years. Thus, since the punishment in the present matter is only up to two years, the case shall be proceeded as a summons case, if prima facie case is made out of the offences.

28. In a summons case, if the complainant does not appear before the Court, the complainant may be acquitted under Section 256 Cr.P.C. (Corresponding Section 279 BNSS) due to absence of the complainant or in case of

his death and there is also provision for **withdrawal** of complaint under Section 257 Cr.P.C. (Corresponding Section 280 BNSS).

29. This is the case, where prima facie, there is an abuse of the process of the court as well as the code by which fundamental right provided under Article 21 of the Constitution of India has been violated as no procedure has been adopted by the learned Chief Judicial Magistrate, Aligarh, who passed the impugned cognizance order on the protest petition and proceeded as police case in non-cognizable offences rather a complaint.

30. In the present matter, an FIR was initially registered even though the allegations disclosed only a non-cognizable offence, for which only an NCR ought to have been registered. Despite this, the Investigating Officer proceeded to investigate the matter and has submitted a Final Report (Closure Report). In terms of the Explanation to Section 2(1)(h) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (corresponding Section 2(d) Explanation of Cr.P.C.), when a report is submitted by a police officer in relation to a non-cognizable case, such report is required to be treated as a complaint, and the officer submitting it, is deemed to be the complainant. Accordingly, the Final Report filed in the present case must, as a matter of legal procedure, be treated as a complaint if offence is made out.

31. If after perusal of entire case diary, a cognizable offence is made out, then the judicial magistrate shall treat the final/closure report as a chargesheet and take cognizance under section 190 Cr.P.C. (Corresponding Section 210 of the BNSS ) to check the arbitrariness of the I.O. If it is treated as final report i.e. not disclosing any offence then :-

- (i) either direct for further investigation,
- (ii) or invite protest petition from the informant and after perusal of protest petition-
  - (a) either treat it as complaint in case of extraneous material u/s 190(1)(a) Cr.P.C. (Corresponding Section 210(1)(a) of the BNSS ),or
  - (b) direct for further investigation for recovery of any item

etc. which cannot be done in a complaint proceeding at initial stage.

(c) In case of acceptance of Final/Closure report and rejection of the protest petition, proceed for taking cognizance under section 177 and 182 IPC (Corresponding Section 212 and 217 BNS) in accordance with law.

32. If the learned Judicial Magistrate or Court finds that there is no proper investigation, then may direct for further investigation.

33. If after perusal of entire case diary, the learned Magistrate finds that no offence is made out, treat the charge-sheet as final report (closure report) and thereafter either direct for further investigation or invite protest petition and thereafter either direct for further investigation or treat the protest petition as complaint, if any extraneous material comes/appears to have come on record.

34. If after investigating, a final report (closure report) is prepared by the I.O. in favour of the accused of the FIR to submit in the Court, he shall also file a complaint along with the final report (closure report) against the informant and witnesses for giving false information to the police under section 177 and 182 of I.P.C. (Corresponding Sections 212 and 217 BNS) and if a protest petition is also filed, for which the proceedings under Sections 177 and 182 of the I.P.C. (Corresponding Sections 212 and 217 BNS) is initiated by the police, the proceedings of section 177 and 182 I.P.C. (corresponding section 212 and 217 of the BNS) shall be kept in abeyance till the acceptance of the final/closure report or rejection of the protest petition/application. Thus, if the protest petition is dismissed/rejected by the Magistrature or court, the Magistrate or court shall proceed with the complaint filed under section 177 and 182 I.P.C. (corresponding section 212 and 217 of B.N.S).

35. As per the judgment of **Bhagwant Singh vs. Commissioner of Police and Another, (1985) 2 SCC 537**, the law laid down by the Hon'ble Supreme Court is that if a final report is prepared exonerating the accused person, the informant must be informed about the final report that the accused has been exonerated. In the present case it is not clear, whether

the learned Judicial Magistrate has issued any notice to the informant regarding the closure report/final report exonerating the alleged accused. However, the informant, i.e., Opposite Party No. 2, filed a protest petition against the final report which exonerated the alleged accused-wife. In BNSS, as per Section 193(3)(ii), it has been mentioned that the Investigating Officer shall inform to the informant about progress of the investigation as well as completion of investigation, though there is no concept of protest petition in BNSS also.

36. Although the BNSS has come into force on 1 July 2024 and the alleged offence took place prior to the date of its enforcement, it is a settled principle of law that the procedure, that is more beneficial to the accused must be adopted. In case of **Deepu (Supra)**, the Division bench of this Court in paragraph no.16 (iii) held that on or after 01.07.2024, the procedure mentioned under the Bhartiya Nagarik Suraksha Sanhita, 2023 shall be applicable on offences committed under the Indian Penal Code or other Special Act. The paragraph No. 16 is delineated below:

*“16 .On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:*

*(i) If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.*

*(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;*

*(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or appeal would be conducted as per the procedure of BNSS.*

*(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.*

*(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.*

*(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C.”*

37. After completion of investigation, if the Investigating Officer submits a police report under Section 173(2) CrPC (Corresponding Section 193(3)(i) BNSS) stating either, that an offence is made out or no offence is made out against the accused, then under Section 193(3)(ii) BNSS, the police officer, within a period of ninety days, shall inform the informant about the progress of investigation and also about the filing of the police report under Section 193(3)(i) BNSS, ensuring timely opportunity to object/protest the closure report (final report), while under the Cr.P.C., there is no specific time-frame for informing the informant/victim about the progress of investigation. The provisions mentioned under Section 193(3)(ii) BNSS is being delineated below :-

*“Section 193(3) (ii). The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim.”*

38. Section 193(3)(ii) of BNSS ensures the principles laid down by the Hon’ble Supreme Court in ***Bhagwant Singh(Supra)*** affording opportunity of hearing to the informant to file protest petition in case of police report, exonerating the accused is filed by the Investigating Officer after completion of investigation before the Judicial Magistrate/Court competent to take cognizance.

39. As per the judgment of Hon’ble Supreme Court in ***Vishnu Kumar Tiwari, (2019) 8 SCC 27*** and in ***Mukhtar Zaidi v. The State of Uttar Pradesh and Another, (2024) 4 S.C.R. 655*** if a protest petition fulfils the requirements of a complaints, Magistrate may treat as a complaint and deal with the same as required under sections 200 and 202 of Cr.P.C.

40. It is a well settled law that in the case of non-cognizable offence, the learned Judicial Magistrate is under obligation to take cognizance under Section 190(1)(a) Cr.P.C. [corresponding section 210(1)(a)] and proceed the case as a complaint case and not as a police case and the procedure of

complaint case shall be adopted to summon and try the alleged accused person.

41. Having gone through the record of this case, the Court finds that the impugned cognizance-cum-summoning order is not passed in accordance with law/procedure, therefore, it is a case of violation of Article 21 of the Constitution of India.

The Article 21 is quoted below:-

*“Article 21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

42. Based on the foregoing deliberations, this court, now proceeds to examine the validity and correctness of the impugned order, in the case at hand, the Judicial Magistrate erroneously passed cognizance-cum-summoning order under Section 506 and 507 IPC for a non cognizable offence in derogation of the provisions of Cr.P.C. In essence, the Judicial Magistrate has neither converted the police report disclosing ‘non cognizable offence’ into ‘complaint’ as per the provision of Explanation to Section 2(d) of Cr.P.C. nor took cognizance under Section 190(1)(a) Cr.P.C. to proceed as ‘trial of summons-case’ instituted on complaint, but took cognizance under Section 190(1)(b) Cr.P.C. and summoned the applicant without affording him an opportunity of hearing provided under First Proviso of Section 223 BNSS, and also erroneously proceeded as trial of summons-case instituted on police report rather than complaint.

43. It is pertinent to mention here that this Court has considered an identical issue in **Application U/S 528 BNSS No.1624 of 2025, Prempal and others v. State of U.P. and another**, and given directions therein, while disposing of the said application vide order dated 26.11.2025.

44. In view of the foregoing discussion, the impugned cognizance-cum-summoning order dated 3.10.2024 passed by learned Judicial Magistrate is hereby **quashed and set aside**. The matter is remanded to the learned Judicial Magistrate, who shall pass a fresh order in accordance with law as well as observation made by this Court, after providing opportunity of

hearing to the accused. This exercise shall be done within three months from the date of the order in accordance with law.

45. Apart from the above directions, this Court also directs all the Judicial Magistrates or Courts that in case a final report i.e. closure report is submitted in favour of alleged accused, the learned Judicial Magistrates/Courts shall receive the entire case diary along with documents and final report i.e. closure report, but the Judicial Magistrates/Courts shall also direct the Investigating Officer/Police for submitting **written complaint** against informant, as well as witnesses of the FIR as provided under section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS) **in respect of furnishing false information with intent to cause public servant to use his lawful power to the injury of the alleged accused persons**, whose names are mentioned in the first information report as well as during investigation, for committing offences of Section 177 and 182 of the Indian Penal code, 1860 (corresponding Section 212 and 217 of Bhartiya Nyay Sanhita).

46. It is further directed that, the learned Judicial Magistrates/ Courts, first of all while taking cognizance of the offences after perusal of entire case diary and documents, if prima facie appears otherwise, invite protest petition from the informant and after hearing the informant, if finds that offences is made out, take cognizance either under Section 190(1)(a) or 190(1)(b) Cr.P.C. (corresponding Section 210(1)(a) or 210(1)(b) BNSS) and if no offence is made out, then proceeds on the written complaint, which is submitted by the Investigating Officer under Section 195(1)(a) Cr.P.C. (corresponding Section 215(1)(a) BNSS) in respect of offence of Section 177 and 182 IPC (corresponding Section 212 and 217 of BNS) for furnishing false information against the alleged accused of the FIR to use the police his lawful power to cause injury to the alleged accused persons.

47. The Director General of Police, U.P. is directed to instruct all police officers within the State that, while completing the investigation, if a final report (closure report) exonerating the accsed is submitted in the court, then in every case, where the police machinery has been misused by furnishing false, frivolous, or misleading information, a written complaint

as per Section 215(1) BNSS (corresponding Section 195(1) Cr.P.C.) must be filed before the competent Magistrate/Court of offence mentioned under Section 212 and 217 BNSS (corresponding Section 177 and 182 IPC) against the informant and witnesses of the case crime. Failure to do so will render the purpose of Section 212 and Section 217 BNS (corresponding Section 177 and 182 IPC) redundant and is likely to defeat the legislative intent behind these provisions.

48. It is further directed that the Director General of Police, U.P., Commissioner of Police, Senior Superintendent of Police, Superintendent of Police to direct all the Investigating Officer, Station House Officer and Forwarding Officer i.e. Circle Officer, Additional S.P., S.P. and Public Prosecutor that in case of final report/closure report filed under section 193 of BNSS (corresponding Section 173 Cr.P.C.), the police shall also submit a report in the **form of complaint** as prescribed Section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.) referred hereinabove in paragraph no.18 of this order/judgment to the concerned Judicial Magistrate/Court for taking cognizance of offences provided under section 212 and 217 BNS (corresponding sections 177 and 182 of IPC) against informant and witness in case the final report/closure report is accepted and the protest petition is rejected.

49. Further direction is given to the police authority that if an Investigating Officer does investigation and ultimately found that no offence is made out, he is not only under obligation to submit final report, as per paragraph 122 of the U.P. Police Regulations, but he is also duty bound to submit a written complaint for giving false information to the police under Section 212 and 217 of BNS (corresponding Sections 177 and 182 of IPC) for taking cognizance as provided under section 215(1)(a) BNSS (corresponding Section 195(1)(a) Cr.P.C.) otherwise, the Investigating Officer, Station House Officer and Forwarding Authority i.e. Circle Officer and Public Prosecutor shall be liable of committing offence as mentioned under Section 199(b) BNS (corresponding Section 166A(b) of IPC).

50. If the observation made by this Court is not followed in letter and spirit, it would amount to contempt of court, and the aggrieved person

may approach this Court for appropriate action against such contemptuous conduct of the police authorities as well as the judicial officers. All the exercise shall be done within 60 days from the date of this order by the police authorities as well as the judicial officers to regulate judicial proceedings in accordance with law.

51. With the aforesaid observations, and directions the present application under section 528 BNSS stands **disposed of**.

52. The explanation submitted by the Judicial Magistrate was perused by the court and after going through the same, it appear to be satisfactory to some extent. The observations made in this order shall not affect future service or career prospects of the concerned Magistrate.

**(Praveen Kumar Giri,J.)**

**January 14, 2026**

Manish Himwan