



2025:AHC:216429

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 31153 of 2025

Manish Tiwari

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

| | | |
|-------------------------------|---|-------------|
| Counsel for Applicant(s) | : | Ruby Goutam |
| Counsel for Opposite Party(s) | : | G.A. |

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for the parties.
2. Present application has been preferred with prayer to quash charge sheet dated 5.1.2025, cognizance and summoning order dated 3.7.2025 passed by learned Chief Judicial Magistrate, Sonbhadra along with proceeding of Case no. 7749 of 2025 arising out of Case Crime no. 213 of 2024 under sections 302, 353(2) of BNS, PS- Chopan, District Sonbhadra.
3. While assailing entire proceeding initiated against applicant, learned counsel for applicant submitted that opposite party no. 2/concerned Sub-Inspector, PS- Chopan, District Sonbhadra, lodged present FIR against the applicant, alleging therein that applicant made a post against Nabi Paigamber of Muslim community, over social media platform i.e. Facebook which has been resented by some people of muslim community, since the same is hurting religious sentiments of the said community. After conclusion of investigation, charge sheet has been submitted against the applicant whereupon cognizance of offence has been taken up against applicant vide order dated 3.7.2025 which has been challenged through instant application along with entire proceeding.
4. It is contended by learned counsel for applicant that learned Magistrate concerned without applying his judicial mind, took cognizance upon said charge sheet and as a result whereof, applicant is compelled to face trial. Applicant never made any comment against the Muslim religion and it seems that someone who is nearest to the applicant, made said comments

using mobile number of the applicant, now concerned police is falsely implicating him in aforesaid case and as such no offence is made out against the applicant and entire proceeding is liable to be quashed and set aside.

5. Per contra, learned AGA vehemently opposed the prayer sought through instant application and submitted that argument raised by learned counsel for applicant are entirely subject matter of trial.

6. From perusal of the material on record including the comment made by the applicant, this Court finds that the words employed in the post clearly, are ones made with deliberate and malicious intention of outraging the religious feelings of a particular section of the community or a class of citizens of the country. At this stage, it cannot be said that no offence is made out against the applicant. The assertions of false implication raised by the applicant are factual issues that requires proper adjudication by the trial court based on evidence and cannot be conclusively determined in proceedings under Section 528 BNSS. In proceeding u/s 528 BNSS, this Court is not inclined to hold mini-trial.

7. Moreover, at the stage of summoning, the Magistrate is only required to record a *prima facie* opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused. In judgment rendered by Hon'ble Apex Court in case of **S.W. Palanitkar and Others v. State of Bihar and Another; (2002) 1 SCC 241** it was held that the test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". In the case of **Nupur Talwar v. Central Bureau of Investigation and Another; (2012) 11 SCC 465**, it was reiterated that the limited purpose of consideration of material at the stage of issuing process being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

8. It is well settled that the inherent powers under Section 528 BNSS are to be exercised sparingly and with caution, primarily to prevent abuse of the process of the court or to secure the ends of justice. In the instant case, no sufficient ground have been made out to invoke the extraordinary

jurisdiction of this Court under Section 528 BNSS.

9. In view of the foregoing, the application under Section 528 BNSS is devoid of merits and is accordingly **dismissed**.

(Saurabh Srivastava,J.)

December 2, 2025

Shaswat