

Narendra Kumar Mishra Alias Anokhey Lal ... vs State Of U.P. And Another on 1 May, 2025

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68839

Court No. - 52

Case :- APPLICATION U/S 528 BNSS No. - 5734 of 2025

Applicant :- Narendra Kumar Mishra Alias Anokhey Lal And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anand Mohan Pandey,Vipul Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

Criminal Misc. Withdrawal Application No.2 of 2025

1. Learned counsel for the applicants submits that he wants to withdraw the case with respect to applicant no.1 as he has already filed an application u/s 482 No.19411 of 2024 (Narendra Kumar Mishra @ Anokhey Lal).

2. In view of above, the withdrawal application is allowed.

3. Learned counsel for the applicants is permitted to delete the name of applicant no.1 during the course of the day.

Order On Application u/s 528 B.N.S.S.

1. Heard Mr. Vipul Kumar Mishra, learned counsel for the applicants and learned A.G.A. for the State and perused the material available on record.

2. The present application u/s 528 B.N.S.S. has been filed with prayer to quash the charge sheet dated 08.11.2022 as well as summoning order dated 14.06.2023 and the entire proceedings of Case No.13009 of 2023 (State Vs. Narendra Mishra and others), arising out of Case Crime No.206 of 2022, under Sections 420, 506 of I.P.C., P.S. Akbarpur, District-Kanpur Dehat, pending in the Court of Chief Judicial Magistrate, Kanpur Dehat.

3. Brief facts of the case are; an FIR has been lodged on 19.03.2022 at 23:56 hours, under Sections 342, 394, 420 and 506 I.P.C. by opposite party no.2 against three named accused and one unknown persons with the allegations that opposite party no.2, who is nearly 62 years old, resident of Village-Sangsiyapur, P.S. Akbarpur, District-Kanpur Dehat, on 23.10.2021 at about 12 O'Clock was going to take his medicine in his car No.HR36R4735, where the alleged accused Narendra Kumar Mishra was standing, who was going to Akbarpur for some work and requested the opposite party no.2 to take him along with him. As the opposite party no.2 recognized the alleged accused, who was resident of the same village, therefore, believing him, he permitted him to sit in the said car. When the opposite party no.2 reached Akbarpur, the alleged accused Narendra Kumar Mishra told that he has some work at Sahzadpur and requested the opposite party no.2 to drop him there. As the Sahzadpur and Akbarpur are service road, therefore, the opposite party no.2 took him there, where four persons were present on two motorcycles. Two persons got down from the motorcycle and sat in the car of opposite party no.2. The alleged accused Narendra Kumar Mishra snatched the key of the car and pointed a country made pistol on his chest and told the opposite party no. 2 to go and sit in the back seat of the car otherwise he would kill him. The opposite party no.2 being afraid, went and sat at the back seat of the car. The other two persons snatched the mobile phone and switched it off. They snatched the ATM card and showing the countrymade pistol asked him for the ATM code. They stuffed a cloth in his mouth and tied his hands and legs with a cloth. Narendra Kumar Mishra started driving the car and took towards Navipur Marg from there to Raipur and reached Koyla Nagar Rama Devi Chauraha at house no.414/17 Vishwa Bank Colony, they took him to the fourth floor of the house. Where they were talking to a boy namely Anshul Soni about killing an unknown person. It was about 7 P.M. After some time opposite party no.2 was taken to a broken house where two persons were present and they were talking about kidnapping and killing someone. After some time, they met with a boy namely, Himanshu, went to Phoda village, and then came back. Himanshu booked room no.16 between Bhognipur and Fatehpur at 2 O'clock in the night and stayed there till 12:00 in the day. The other details of the harassment done by the alleged accused persons have been detailed in the FIR. The gold chain and ring was also snatched from opposite party no.2. He managed to run from there and save himself, after which the FIR has been lodged. After investigation charge sheet has been submitted and the applicants have been summoned on 14.06.2023.

4. Learned counsel for the applicants submits that the present FIR has been lodged with false and frivolous allegations due to ulterior motive. The FIR has been lodged through an application u/s 156(3) Cr.P.C., after the delay without giving any plausible explanation for the same. All the charge sheet witnesses have not supported the version of the FIR. Several other submissions have been made on behalf of the applicants to demonstrate the falsity of the allegation made against them. The circumstances which, as per counsel, led to the false implication of the applicants have also been touched upon length.

5. Learned A.G.A. on the other hand submits that an application has been given on 09.11.2021 requesting for lodging of the FIR and when nothing was done, an application u/s 156(3) Cr.P.C. has been moved by the opposite party no.2, therefore, there is no delay on part of the opposite party no.2. All the charge sheet witnesses have spoken about opposite party no.2 being friend of Narendra Kumar Mishra, who was seen together on the date of incident, which also goes to support the version of the FIR as it has been stated in the FIR itself that opposite party no.2 had permitted Narendra Kumar Mishra to sit in his car as request was made by him. The charge sheet witnesses are not the eye witnesses to the incident and have spoken only about the alleged accused Narendra Kumar Mishra or the other incident as detailed in the FIR. All other submissions made by learned counsel for the applicants related to disputed questions of fact, which cannot be seen here. Even otherwise an application u/s 482 No.19411 of 2024 was filed by Narendra Kumar Mishra @ Anokhey Lal, where the prayer for quashing as prayed was dismissed as not pressed on the request of learned counsel for the applicants as is evident from order dated 07.08.2024 passed in Application u/s 482 No.19411 of 2024.

6. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present application.

7. This Court finds that the averments made in the application as well as grounds taken call for adjudication on pure questions of fact which may adequately be adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. The issue whether it is appropriate for this Court being the Highest Court to exercise its jurisdiction under Section 528 B.N.S.S. to quash the charge-sheet, cognizance and the proceedings at the stage when the Magistrate has merely issued process against the applicants and trial is to yet to commence only on the submission made by the learned counsel for the applicant that present criminal case initiated by opposite party no.2 is not only malicious but also an abuse of the process of law has elaborately been discussed by the Apex Court in the following judgments:-

(i) R.P. Kapur Versus State of Punjab; AIR 1960 SC 866,

(ii) State of Haryana & Ors. Versus Ch. Bhajan Lal & Ors.;1992 Supp.(1) SCC 335,

(iii) State of Bihar & Anr. Versus P.P. Sharma & Anr.; 1992 Supp (1) SCC 222,

(iv) Zandu Pharmaceuticals Works Ltd. & Ors. Versus Mohammad Shariful Haque & Anr.; 2005 (1) SCC 122,

(v) M. N. Ojha Vs. Alok Kumar Srivastava; 2009 (9) SCC 682,

(vi) Mohd. Allauddin Khan Vs. The State of Bihar & Others; 2019 o Supreme (SC) 454,

(vii) Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors.; 2020 o Supreme (SC) 45,

(viii) Rajeev Kaurav Vs. Balasahab & Others; 2020 o Supreme (SC) 143,

(ix) M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra; 2021 SCC Online SC 315.

8. In view of the aforesaid, this Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the aforesaid order or the proceedings against the applicants arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

9. The prayer for quashing the charge sheet as well as summoning order and the entire proceedings of the aforesaid case are refused, as I do not see any abuse of the court's process at this pre-trial stage.

10. The present application has no merit and is, accordingly, rejected.

Order Date :- 1.5.2025 Rahul.