

Court No. - 71

Case :- APPLICATION U/S 528 BNSS No. - 26298 of 2025

Applicant :- Kalva Urf Mohd. Rafee

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

Counsel for Applicant :- Narendra Kumar, Rabindra Bahadur Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application u/s 528 Bharatiya Nagarik Suraksha Sanhita (*hereinafter referred to as 'BNSS'*) has been filed for quashing of the entire proceedings, including charge-sheet dated 01.05.2022 as well as cognizance / summoning order dated 01.08.2022, of Case No. 1443 of 2022 (State Vs. Kalva Urf Mohd. Rafee and others), arising out of Case Crime No.23 of 2022, under Sections 380, 411, 457 IPC, P.S.- Bhagatpur, District- Moradabad, pending in the court of Judicial Magistrate, Thakurdwara, Moradabad.
3. It has been submitted by learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case. Applicant is not named in the first information report, which was lodged by the informant against unknown persons, regarding theft of his buffaloes. Nothing incriminating has been recovered from applicant. The involvement of applicant has been shown on the basis of statement of co-accused Furkan. Referring to facts of the matter, it was submitted that no *prima-facie* case is made out against applicant and thus impugned proceedings are liable to be quashed.
4. Learned AGA has opposed the application and submitted that in view of allegations made in first information report and materials on record, a *prima-facie* case is made out against applicant.
5. I have considered the rival submissions and perused the record.

6. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgement reported in AIR 1992 SC 605 **State of Haryana and others Vs. Ch. Bhajan Lal**, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. In this connection, a reference may also be made to the case of R. Kalyani vs. Janak C. Mehta and Others, 2009 (1) SCC 516, Rupan Deol Bajaj vs. K.P.S. Gill (1995) SCC (Cri) 1059, Rajesh Bajaj vs. State of NCT of Delhi, (1999) 3 SCC 259 and Medchl Chemicals & Pharma (P) Ltd vs. Biological E Ltd. & Ors, 2000 SCC (Cri) 615. It has been held that if a *prima facie* case is made out disclosing ingredients of the offence, court should not quash the charge sheet/complaint. It is equally well settled that at this stage questions of fact cannot be examined and a mini trial cannot be held.

7. In the instant matter the informant has lodged a first information report on 22.01.2022 regarding theft of his buffaloes. During investigation, a pick-up vehicle was intercepted by police and co-accused Furkan was apprehended at the spot and his companion has ran away from the spot. Co-accused Furkan has disclosed the identity of that person as applicant-accused Kalva Urf Mohd. Rafee. Three stolen buffaloes were recovered from the said pick-up vehicle. Merely because applicant has been successful in running away from the spot, it can not be said that no case is made out against applicant. The submissions raised by learned counsel for the applicant call for determination on questions of fact, which may adequately be discerned / adjudicated only by the trial court. Even the submissions made on point of law can also be more appropriately gone into by the trial court. Adjudication of

questions of facts and appreciation of evidence or examining the reliability and credibility of the version, does not fall within the arena of jurisdiction under Section 528 BNSS.

8. After considering arguments raised by learned counsel for the parties and perusing the impugned first information report and materials on record, no case for quashing of impugned proceedings is made out. Hence, the prayer sought above is hereby refused.

9. However, it is directed that in case applicant surrenders before the court concerned within a period of three weeks from today and applies for bail, his bail application shall be considered and decided expeditiously in accordance with settled law. For a period of three weeks from today or till the applicant surrenders before the court concerned, whichever is earlier, no coercive action shall be taken against the applicant in the aforesaid case.

10. With the aforesaid observations, the application u/s 528 BNSS is **disposed of**.

Order Date :- 31.7.2025

'SP'/-