



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 1703 of 2026

Pratima Kushwaha

.....Petitioners(s)

Versus

State of U.P. and
Another

.....Respondents(s)

Counsel for Petitioners(s) : Raj Kumar Pandey

Counsel for Respondent(s) : G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. Learned counsel for the applicant submits that the present application has been filed under Section 528 of BNSS with the relief which has been mentioned in the prayer clause of the application. The prayer clause is being delineated below:-

"(i). Quash the Summoning order dated 10.09.2025 passed by Special Judge, S.CJ S.T. Act, Kushinagar at Padrauna, in Complaint Case No.- 26 of 2025 (Shatrudhan Prasad Versus Pratima Kushwaha and Others) Under Section-323, 504, 505 I.P.C. and Section- 3(1)(r) and 3(1)(s) S.C./ S.T. Act, P.S.- Turkpatti, District- Kushinagar; pending in the Court of Special Judge, S.C./ S.T. Act, Kushinagar at Padrauna, District-Kushinagar and/or

(ii). Quash the entire proceedings of the Complaint Case No. 26 of 2025 (Shatrudhan Prasad Versus Pratima Kushwaha and Others) Under Section-323, 504, 505 I.P.C. and Section 3(1)(t) and 3(1)(s) S.C./ S.T. Act, P.S.- Turkpatti, District-

Kushinagar, pending in the Court of Special Judge, S.C./ S.T. Act, Kushinagar at Padrauna, District- Kushinagar and/or

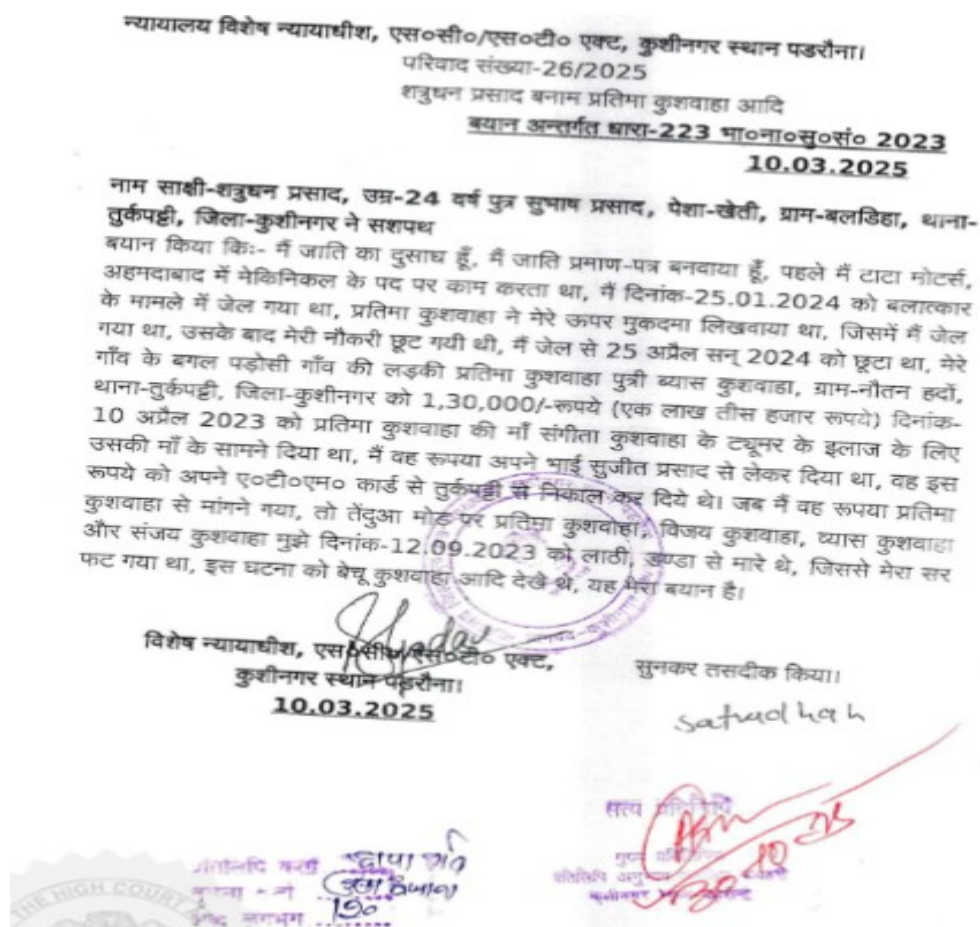
(iii). Stay further proceedings of the Complaint Case No.- 26 of 2025 (Shatrudhan Prasad Versus Pratima Kushwaha and Others) Under Section-323, 504, 505 I.P.C. and Section- 3(1)(t) and 3(1)(s) S.C./S.T. Act, P.S.- Turkpatti, District-Kushinagar, pending in the Court of Special Judge, S.C./ S.T. Act, Kushinagar at Padrauna, District-Kushinagar and/or

(iv). Pass any other and further order(s), which this Hon'ble court may deem fit and proper to secure the ends of justice for the applicant in the facts and circumstances of the case."

3. Learned counsel for the applicant submits that the applicant had lodged an F.I.R. against the opposite party no.2 under Sections 354, 504, 506, 376 IPC and Section 67 of Information Technology Act. Her statement was recorded under 164 Cr.P.C. Thereafter, charge-sheet was submitted under Sections 354, 504, 506, 376 IPC and Section 67 of Information Technology Act and at present the trial proceedings are pending against the opposite party No.2 under Section 376 IPC and other allied sections, in which the applicant is a victim.

4. Learned counsel for the applicant submits that, with a motive to pressurize for changing her statement before the trial court, Opposite Party No. 2 moved an application under Section 173(4) of the BNSS on 15.01.2025 seeking direction upon the concerned police authority to lodge an FIR in respect of an alleged incident dated 12.09.2023. It is further submitted that the said application was filed after an inordinate delay of approximately 15 months from the date of the alleged incident.

5. Learned counsel further submits that the learned Special Judge, SC/ST Act, recorded the statement of opposite party no.2 under Section 223 of the BNSS on 10.03.2025, wherein no allegation attracting the provisions of the SC/ST Act was made. The statement so recorded on 10.03.2025 is being reproduced herein below:-



6. It is also submitted that the learned Special Judge, SC/ST Act, recorded the statement of Bechu Kushwaha, who also did not make any allegation constituting an offence under the provisions of the SC/ST Act.

7. Lastly, learned counsel contends that in the cognizance order, there is no mention as to whether an affidavit was filed in support of the application under Section 173(4) of the BNSS, which is mandatory in view of Section 175(3) of the BNSS. Section 173 and 175 of the BNSS is reproduced herein below for ready reference :-

Section 173 BNSS. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given—

(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;

(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it,

and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,—

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

Section 175. Police officer's power to investigate cognizable case.

—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of

such station would have power to inquire into or try under the provisions of Chapter XIV: Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to—
(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.

8. Learned counsel for the applicant further submits that proceedings have been initiated under the provisions of the BNSS. It is contended that, in view of the **first proviso to Section 223(1) BNSS**, the applicant is entitled to an opportunity of hearing prior to the taking of cognizance. For ready reference, the provisions of Section 223(1) BNSS are being quoted herein below :-

"223. Examination of complainant.—(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless—

(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and

(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received."

9. It is further submitted that there is no medical evidence on record in respect of the alleged incident. In the absence of any such medical material, the impugned summoning order is stated to be contrary to law and liable to be set aside.

10. Per contra, learned A.G.A. submits that, considering the nature of allegations under the SC/ST Act, notice may be issued to Opposite Party No. 2 to enable him to file a reply.

11. Issue notice to Opposite Party No. 2, Shatrudhan Prasad, son of Subhash Prasad, Resident of Village – Baldiha, P.S. Turkaptti, District – Kushinagar.

12. The Chief Judicial Magistrate, Kushinagar is directed to communicate the order to the opposite party No.2. Learned A.G.A., Sri Pankaj Tripathi, is directed to communicate this order to Opposite Party No. 2 through the concerned police station.

13. List this case as fresh on 27.02.2026.

(Praveen Kumar Giri,J.)

February 12, 2026

DKS