



2026:AHC:106181

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 7690 of 2026

Surendra Nath Rai

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Jai Raj
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for applicant and learned AGA for the State.
2. The instant petition has been preferred for quashing the impugned charge-sheet dated 25.08.1999 and cognizance/summoning order dated 10.09.1999 and the entire proceeding of Case no. 3454 of 1999 (State Vs. Amrendra Kant Singh and others), arising out of Case Crime no. 396 of 1992, under Sections 147, 504, 342, 323, 306 IPC, Police Station Vindhyachal, District Mirzapur, pending before the court of learned Chief Judicial Magistrate, Mirzapur.
3. While challenging the orders impugned, learned counsel for applicant submitted that impugned summoning order dated 10.09.1999 has been passed without due compliance of Section 197 Cr.P.C. since the applicant was a Government servant at the time of alleged incident. Learned counsel for applicant further submitted that applicant has falsely been implicated in the present case and he has not committed any offence as alleged. Learned court concerned passed the order impugned without complying the mandatory provisions of Section 197 Cr.P.C. and as such, impugned summoning order may be quashed.
4. In support of his contention, learned counsel for the applicant has relied upon paragraph 40 of the judgment of the Hon'ble Supreme Court in the case of **G.C. Manjunath & others vs. Seetaram reported in 2025 5 SCC 390**. Paragraph-40 of the said judgment is reproduced below:-

"In the present case, it is evident that the actions attributed to the accused persons emanate from the discharge of their official duties, specifically in connection with the investigation of criminal cases pending against the complainant. As previously observed, a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection mandated by law. The safeguard of obtaining prior sanction from the competent authority, as envisaged under Section 197 of the Cr.P.C and Section 170 of the Police Act cannot be rendered nugatory merely because the Act alleged may have exceeded the strict bounds of official duty. In view of the foregoing, we are of the considered opinion that the learned VII Additional Chief Metropolitan Magistrate erred in taking cognizance of the alleged offences against the accused persons without the requisite sanction for prosecution in the instant case. The absence of the necessary sanction vitiates the very initiation of criminal proceedings against the accused persons."

5. Per contra, learned AGA for the State vehemently opposed the prayer as made in the application and supported the orders impugned.

6. Precise query has been made before learned AGA that whether any sanction has been sought by the learned court concerned before summoning the applicant, the same has been replied that there is hardly any averment or material available with regard to grant of sanction under Section 197 Cr.P.C.

7. After hearing rival submissions extended by learned counsel for the parties, it is crystal clear that the allegation extended against the applicant, was of the time when he was discharging his duties as a Government servant and as such, as per the mandatory provisions defined under Section 197 of Cr.P.C, the sanction must be accorded and without receiving the same, summoning order has been passed against the applicant which is not sustainable in the eye of law and as such, the same is liable to be set aside.

8. In view of non-compliance of Section 197 Cr.P.C, impugned cognizance/summoning order 10.09.1999 passed in Case no. 3454 of 1999 (State Vs. Amrendra Kant Singh and others), arising out of Case Crime no. 396 of 1992, under Sections 147, 504, 342, 323, 306 IPC, Police Station Vindhychal, District Mirzapur, pending before the court of learned Chief Judicial Magistrate, Mirzapur, is hereby set aside only in respect of applicant

herein. Matter is remitted back to learned court concerned, who shall pass fresh order, if required, after due compliance of Section 197 Cr.P.C.

9. The instant application is **partly allowed** accordingly.

May 7, 2026
Ashish/-

(Saurabh Srivastava,J.)