



2026:AHC:99795

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 12863 of 2026

Jubair Ansari And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Deepak Kumar Singh, Shishir Kumar Singh, Vinanjay Kumar Patel
Counsel for Opposite Party(s) : G.A.

AFR

Court No. - 77

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Sri Deepak Kumar Singh, learned counsel for applicants and learned AGA for State.
2. Present application has been preferred with prayer to quash entire proceeding of Criminal Case no. 12299 of 2025 (State vs. Sabbir Ansari and others) arising out of Case Crime no. 78 of 2025 under sections 353(2), 196(1)(a), 3(5), 352 and 351(2) of BNS, PS- Anapara, District Sonbhadra and also quash charge sheet dated 13.5.2025 as well as cognizance/summoning order dated 15.11.2025 passed by learned Additional Civil Judge (J.D.) Court No. 3, Sonbhadra.
3. Brief facts of the case are that opposite party no. 2/informant lodged FIR bearing Case Crime no. 78 of 2025 under sections 353(2), 196(1)(a) and 3(5) of BNS against applicants and another co-accused alleging therein that applicants have posted anti-national posts along with objectionable post against Prime Minister of India with derogatory remarks. The posts are alleged to be shared/circulate from Facebook ID of a Pakistani Youtuber. The Facebook account of accused persons shows that almost every post are anti-national, against Prime Minister of India and Rashtriya Swayamsewak Sangh(RSS).
4. After conducting detailed investigation, charge sheet submitted against the applicants on dated 13.5.2025, whereupon cognizance of offence has been taken up vide impugned order dated 15.11.2025 passed by learned Chief Judicial Magistrate, Sonbhadra.

5. Learned counsel for applicants contended that from perusal of FIR and Case Diary, no specific date and time of alleged incident has been mentioned. Informant has lodged the present FIR only with mala fide intention and ulterior motive. Allegations made in the FIR are vague and without substantial evidence and the FIR is a result of malicious intent to harass the applicants. Without looking into the facts and circumstances of the case, learned Magistrate concerned has passed the order impugned in a mechanical manner without application of judicial mind which is illegal, unjust and against the principles of law and as such entire proceeding initiated against the applicants are liable to be quashed and set aside, since basically allegation has been fastened only on the basis of a post on Facebook.

6. Per contra, learned AGA vehemently opposed the prayer sought through instant application and submitted that entire arguments raised at the behest of applicants are subject matter of trial which involves appreciation of evidence and the same cannot be adjudicated at this stage, hence no interference is required.

7. After hearing rival submissions extended by learned counsels for the parties and perusing the records, this Court notes that Social Media has caught the imagination of People. People express their views on the social networking site. They now access social media through various application and devices. People invariably post information and express their opinion freely and openly on the Social Media. However sometimes the line is crossed when such information is posted without understanding the consequence of such instances. One way, if we consider life has become very easy and easily accessible where people can get together and express their views on certain issues. It is one way very good where the views of the people are known to everyone. But sometimes the Social Media is misused where people post such comments which hurts the feelings of others and triggers disharmony on a large scale.

8. The Information technology Act, 2000, categorically makes one liable on any illegal content posted on Social Media. Section 66(A) of Information Technology Act, 2000 defines the punishment for sending “offensive” messages through a computer or any other device like a mobile phone or a tablet. However the Supreme Court declared Section 66(A) of Information and Technology Act, 2000 as unconstitutional. It has observed that the section has been widely misused. It laid down that it actually amounts to restraining citizens to exchange their views. This section has been misused by the police in various states to arrest innocent persons for posting critical comments about social and political issues and political leaders on social networking sites. The Court had said such a law hit at the root of the liberty and freedom of expression, the two cardinal pillars of Democracy. It said that it hit and went against the freedom of speech and expression which has been enshrined in the Constitution. The Court however upheld the validity of Section 69(B) of the Act of 2000

and the 2011 guidelines for the implementation of the Information and Technology Act, that allowed the Government to block websites, if their content had the potential to create communal disturbance, social disorder or affect India's relationship with other countries.

9. The Supreme Court delivered the above judgement on the bunch of petition filed over the misuse of the Penal provisions by the Government authority. A Public Interest Litigation was filed by a Delhi student, Ms. Shreya Singhal taking into account the law, it was held that the phrase of the section 66(A) of the Information Technology Act, 2000 is so wide and vague and incapable of being so judged objectively. It also stands unconstitutional to some extent as it falls against the article 14, 19(1)(a) and 21 of the Constitution.

10. Social Media is actually to express the views and opinions about any issues. Such rights should not be misused or overused. It is a duty or responsibility of every individual towards the society before posting anything in such social networking sites. In 2012, one of the early cases of misuse of Social Media came to the Government's attention, when morphed pictures and videos of earthquake victims began to go viral on the Social Media. Miscreants were morphing these images to show that these women were Muslim victims of civil riots in Assam and Burma. This was done to provoke further riots by vested interest and it did bring a reaction.

11. Another drawback of the Social Media is the evolution of adult videos or porn videos which are so easily accessible by minors, which is resulting in the changing behaviour of the society. Accessing the internet has become so easy these days that it is difficult to draw the line of restriction.

12. Section 196(1)(a) of the Bharatiya Nyaya Sanhita (BNS), 2023—which replaced Section 153A of the Indian Penal Code (IPC)—is attracted to a Facebook post when the content deliberately promotes enmity, hatred, or ill-will between different groups based on religion, race, place of birth, residence, language, caste, or community. Under this section, a post can lead to a cognizable offence (meaning police can register an FIR and arrest without a warrant), if it disrupts public harmony.

13. The key aspects attracting Section 196(1)(a) BNS are as under:

a. **Intent (Mens Rea):** The post must show a clear, deliberate intention to create disharmony, not just a vague statement.

b. **Targeting Groups:** The content must target a specific group (caste, religion, community), rather than merely criticizing a policy or Government.

c. **Impact:** The post is deemed likely to provoke breach of peace or cause enmity between communities.

Examples of Prohibited Content: Mocking a community using derogatory terms, promoting hatred based on religion, or attempting to cause violent conflict between groups.

Reasonable Person Test: The court assesses whether a "reasonable, strong-minded, firm and courageous" person would be swayed by the post to commit disorder, rather than focusing on a "weak and vacillating mind"

14. Through the post initiated by the applicant over Facebook amounted to a "deliberate and malicious attempt" to outrage religious feelings. "...on the face of it, the conduct of the applicant in depicting the Rashtriya Swayamsewak Sangh(RSS), which is a organization rendering its services to the various sections of society with its allied organization for last 100 years, along with the Prime Minister of this country who is indirectly elected by the majority of citizen of our country who invoked their right to vote for a particular political party.

15. The allegations fastened upon the applicants are corroborated with the evidence collected during investigation *prima facie* up to the satisfaction of learned Court concerned to take cognizance of offence in pursuance to Section 3(5), 196(1)(a), 351(2), 352 & 353(2) of BNS. This Court is of the opinion that 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".

16. From perusal of the material on record, at this stage, it cannot be said that no offence is made out against the applicants. The assertions of false implication raised by the applicants 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.

17. 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. There is hardly any infirmity in the order dated 15.11.2025 passed by learned Court of Additional Civil Judge (J.D.) Court No. 3, Sonbhadra and as such no case of seeking interface by this Court is made out by learned counsel for applicants.

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

April 29, 2026

Shaswat

(Saurabh Srivastava,J.)