



Neutral Citation No. -
2026:AHC:189809

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/s 482 No. - 42310 of 2024

Lady Constable Shivani Joshi and 2 others

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Aditya Prakash Singh, Amit Kumar Dixit, Sushil Shukla
Counsel for Opposite Party(s)	:	G.A., Rajesh Kumar Singh

With

APPLICATION U/S 528 BNSS No. - 21927 of 2025

Sub-Inspector Dileep Kumar Mishra and another

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Amit Kumar Dixit, Sushil Shukla
Counsel for Opposite Party(s)	:	Rajesh Kumar Singh, G.A.

A.F.R.

Court No. - 81

HON'BLE MADAN PAL SINGH, J.

1. Heard Mr. Sushil Shukla, learned counsel for the applicants, Mr. I.K. Charturvedi, learned Senior Advocate assisted by Mr. Rajesh Kumar Singh, learned counsel for opposite party no.2 and the learned A.G.A. for the State in both the applications.

2. These two criminal applications under Section 482 Cr.P.C. and Section 528 B.N.S.S. have been filed challenging the order dated 27th September, 2024 whereby the trial court has rejected the discharge applications filed by the applicants in Special Sessions Trial No. 665 of 2023 (State Vs. Constable Sukhvir Singh & Others) under Sections 147, 148, 323, 504, 452, 354 and 395 I.P.C., Police Station Baberu, District-Banda.

3. Since the facts, issues and legal question of law involved in both the applications are similar, therefore, both the applicants have been clubbed together and they are being decided by means of this common judgment.

4. The case as set up on behalf of the accused-applicants is that FIR No. 360/2021 under Sections 147, 323, 504 and 506 IPC was registered at PS Baberu, Banda on the complaint of Himachal Prasad against Keshav Prasad Yadav (informant), his sons Dhanesh and Yogendra, and co-accused Foolchandra and Ramroop @ Tunnu. During investigation, the injured Narayan was found to have sustained a skull fracture. Consequently, Section 308 IPC was added to FIR No. 360/2021 vide GD No. 54 dated 28.04.2024. In connection with FIR No. 360/2021, SI Dilip Kumar issued notices under Section 41A CrPC to secure the cooperation of the accused in investigation. Four constables were deputed to Village Padari to serve the notices. At Village Padari, the accused persons and their family members allegedly abused and assaulted the police constables, tore/snatched the notices, threw brick-bats and allegedly snatched the mobile phone of Constable Sukhbir Singh. The injured constables took shelter in the house of Village Pradhan Himachal Prasad. The incident was immediately communicated to the police authorities, pursuant to which police force from PS Baberu and nearby police stations was dispatched to Village Padari for rescue of the injured constables and restoration of law and order. The injured constables were medically examined at CHC Baberu, where several injuries were found on their persons. On the written complaint of Constable Sukhbir Singh, FIR No. 158/2022 under Sections 147, 148, 149, 352, 332, 353, 394, 34 IPC

read with Section 7 of the Criminal Law Amendment Act was registered on 13.05.2022 against 14 named accused persons, including the informant, his sons and female family members. During investigation, statements of the injured constables were recorded and the names of Savitri Devi, Pooja, Prabha Yadav and Shikha Yadav were added as accused vide GD No. 56 dated 13.05.2022. On the night of 13.05.2022, four female accused persons were arrested. On 14.05.2022, four male accused persons, including the informant Keshav Prasad Yadav, were also arrested. On the same day, on production of all eight accused before the Magistrate, their request for examination by a Medical Board was accepted. The Medical Board subsequently examined them and found simple injuries. During investigation of FIR No. 158/2022, Sections 395 and 397 IPC were added by deleting Section 394 IPC. Charge-sheet No. 129/2022 was thereafter submitted against the accused persons. Meanwhile, on 14.05.2022, the informant submitted a complaint to the SP, Banda alleging illegal assault, molestation, custodial violence, looting and false implication by police personnel, including the present accused-applicants. On 21.05.2022, the informant moved an application under Section 156(3) CrPC, making further allegations against the police personnel, including allegations of custodial assault and use of petrol. Pursuant to the order on the Section 156(3) application, FIR No. 218/2022 was registered on 26.06.2022 against nine named and several unknown police personnel, including the present accused-applicants. Investigation of FIR No. 218/2022 culminated in Final Report No. 22/2023 dated 12.03.2023, wherein the Investigating Officer concluded that the FIR had allegedly been lodged to overawe the police personnel involved in FIR No. 158/2022. The informant filed a protest petition against the final report. On 18.10.2023, the Special Judge rejected the police conclusion, took cognizance against the police personnel and summoned them for offences under Sections 147, 148, 452, 323, 504, 354, 354-B and 395 read with Section 34 IPC. The summoned police personnel challenged the cognizance order before the High Court through Application under Section 482 CrPC No. 418/2024, but the issue of sanction under Section 197 CrPC was not raised at that stage. The application was withdrawn on 08.02.2024,

with liberty to seek appropriate relief/bail. The accused-applicants thereafter moved a discharge application before the Trial Court, principally contending that the alleged acts were committed in the course of their official duties and that proceedings were barred in absence of sanction under Section 197 CrPC. The Special Judge rejected the discharge application, holding that the alleged offences could not be treated as acts committed in discharge of official duty and therefore Section 197 CrPC did not bar the prosecution. Aggrieved by the said order, the accused-applicants have approached the High Court under Section 482 CrPC and Section 528 B.N.S.S., seeking quashing of the order dated 27.09.2024 and discharge from the criminal proceedings on the ground that continuation of prosecution without requisite sanction under Section 197 CrPC amounts to abuse of the process of law.

5. The contention of the learned counsel for the applicants is that since the applicants were discharging their official duties in connection with FIR No. 360/2021 under Sections 147, 323, 504 and 506 IPC registered at PS Baberu, Banda on the complaint of Himachal Prasad against Keshav Prasad Yadav (informant), his sons Dhanesh and Yogendra, and co-accused Foolchandra and Ramroop @ Tunnu, requisite sanction to prosecute the applicants in the present criminal case as per Section 197 Cr.P.C. is mandatory and without the requisite sanction the applicants cannot be prosecuted. He further submits that even if it is alleged that the applicants were exceeding their limits in discharge of their official duties then in that circumstance also, the requisite sanction as per Section 197 Cr.P.C. is required and without the same, the applicants are entitled get protection to discharge.

In support of his case, learned counsel for the applicants has placed reliance upon the following judgments:

- (i). Abdul Wahab Ansari Vs. State of Bihar, (2000) 8 SCC 500;
- (ii). B. Saha Vs. M.S. Kochar, (1979) 4 SCC 177;
- (iii). Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan, (1998) 1 SCC 205;
- (iv). Gauri Shankar Prasad Vs. State of Bihar, (2000) 5 SCC 15;
- (v). Rakesh Kumar Mishra Vs. State of Bihar, (2006) 1 SCC 557;

- (vi). Sankaran Moitra Vs. Sadhna Das, (2006) 4 SCC 584;
- (vii). Om Prakash Vs. State of Jharkhand, (2012) 12 SCC 72;
- (viii). D.T. Virupakshappa Vs. C. Subhash, (2015) 12 SCC 231;
- (ix). D. Devaraja Vs. Owais Sabeer Hussain, (2020) 7 SCC 695; and
- (x). G.C. Manjunath & Others Vs. Seetaram, (2025) 5 SCC 390.

6. On the above premise, learned counsel for the applicants urges that since the aforesaid facts and law have not been considered by the trial court in rejecting the discharge application of the applicants and the trial court has committed both error of law and fact in rejecting the discharge application of the accused-applicants in terms of Section 197 Cr.P.C., the same is liable to be quashed by this Court in exercise of powers under Section 482 Cr.P.C./528 B.N.S.S. as the continuation of the impugned criminal proceedings against the applicants is a clear abuse of process of court.

7. Per contra, learned counsel for opposite party no.2 and the learned A.G.A. have opposed the submissions made by the learned counsel for the applicants by contending that there is no illegality or infirmity in the impugned order passed by the trial court rejecting the discharge application of the applicants which may warrant any interference by this Court in exercise of powers under Section 482 Cr.P.C./528 B.N.S.S.

8. Besides the above, learned counsel for opposite party no.2 submits that the acts committed by the applicants being police personnels against the informant, who is an advocate along with his 60-year-old wife, his daughters (aged 16 and 19 years), and other family members under the guise of investigation in FIR No. 360 of 2021, cannot by any means be termed as discharge of police duty; specifically, in pursuit of their objective, they took these individuals into custody, restrained them, and inflicted severe blows on their thighs, buttocks, and calves brutally, as is evident from their injuries, which clearly specified in their medical examination reports, which are at page nos. 135 to 159 of the paper book of Application U/S 528 B.N.S.S. No. 21927 of 2025. Such conduct cannot be classified as

police duty but rather as a crime, and the police personnel involved are not entitled to any protection such as that provided under Section 197 of the Cr.P.C. They have been rightly prosecuted. Such criminal acts done by the applicants being police personnels with the informant his family members can also not be said to be an excess duty being Police personnels and the same cannot be approved of in any manner.

9. Further, learned counsel for the opposite party no.2 submits that applicants/accused have filed discharge application at this stage without any legal provision to create delay in the disposal of the case. When the trial court has taken cognizance on the charge-sheet submitted against the applicants and summoned them vide order dated 18th October, 2023, they have approached this Court by means of Application U/S 482 No. 418 of 2024 (Dileep Kumar Mishra & 8 Others Vs. State of U.P. & Another) challenging the order of taking cognizance and summoning of the applicants dated 18th October, 2023. Before the Coordinate Bench, a submission has been made on behalf of the applicants that he may be permitted to withdraw the application with liberty to them to file bail application before the competent court of law. On the aforesaid submission, the said application has been disposed by a Coordinate Bench vide order dated 8th February, 2024 giving liberty to the applicants to appear before the concerned court and file appropriate application for bail.

10. It is then submitted by the learned counsel for opposite party no.2 that despite the aforesaid order and undertaking given on behalf of the applicants before the Coordinate Bench, the applicants-accused have grossly disregarded the aforementioned order of the Hon'ble High Court and the liberty/permission granted under it. The accused-applicants have not complied with the aforementioned order till date. As such, the order dated 18.10.2023 passed by the trial court regarding taking cognizance of the matter and summoning the applicant accused has become final. In view of the fact that despite the aforesaid order of the Coordinate Bench and the undertaking given on behalf of the applicants, neither they have surrendered before the concerned court nor they have obtained any order of bail till date, the

discharge application made by the applicants praying for protection as provided under Section 197 Cr.P.C. was not maintainable, as they have deliberately flouted and disobeyed the process of law.

11. Apart from the above, learned counsel for the opposite party no.2 submits that since one of the charging sections levelled against the applicants is Section 354 I.P.C., therefore, as per Explanation to Section 197 (1) Cr.P.C., no sanction is required in case of the applicants being police personnels.

12. On the above premise, learned counsel for opposite party no.2 submits that since the trial court has not committed any error in rejecting the discharge application of the applicants, both the present criminal applications are liable to be dismissed.

13. I have considered the facts and circumstances of the case, the submissions made by the learned counsel for the applicants, learned counsel for opposite party no.2 and the learned A.G.A. and also gone through the records of the both the applications including the impugned order.

14. Before coming to the legality or otherwise of the impugned order passed by the trial court, it would be worthwhile to reproduce the findings and conclusion drawn by the trial court in passing the same.

15. Under the impugned order, the trial court after referring to Section 197 Cr.P.C. has recorded that the actions committed by the accused do not, prima facie, constitute the discharge of official duties. In such a case, prior permission from the accused's appointing authorities is not required to prosecute the case in question. It is noteworthy that police forces may use normal force when arresting accused persons, etc., against them. They are legally exempt from this, and the use of such force is natural, resulting in minor injuries, which can be considered as an act committed in the discharge of official duties. It is further recorded that however, in the case in hand, the informant and his family members suffered serious injuries. These

injuries were discovered during a court-ordered re-medical examination. The court had ordered this re-medical examination when the police arrested them for other crimes and presented them before the court as accused. The nature of the injuries found on the bodies of the informant and his family members including the women in their household is unrelated. This clearly demonstrates that the injuries were intentionally inflicted by the police officers including the applicants. Their actions cannot be considered to be in the discharge of their official duties, and acts such as robbery during arrest, molestation of women, and obscenity, etc., cannot be considered official duties. It is also recorded that the above acts are not covered by Section 197 of the CrPC. It is noteworthy that the applicants had filed an application under Section 482 Cr.P.C. before the High Court, bearing No. 418/2024, which was subsequently withdrawn by the applicants/accused. Upon the request of the applicants' counsel, the High Court granted permission to withdraw the application/petition on the ground that the applicants could file bail applications in the competent court. The said order was passed by the High Court on February 8, 2024, but the applicants/accused took no action in compliance with the said order. Instead, on April 29, 2024, the discharge application has been filed. The said act of the applicants reflects the applicants' intent to delay the case. A such the application dated 29.04.2024 submitted by the applicants/accused under Section 197 of the CrPC is not acceptable on the basis of the above analysis.

16. The one and only legal question up for consideration before this Court is whether the applicants are entitled to get protection under Section 197 Cr.P.C. for discharge or not?

17. Qua the submission made by the learned counsel for the applicants that in connection with the investigation in respect of FIR No. 360/2021 under Sections 147, 323, 504 and 506 IPC registered at PS Baberu, Banda on the complaint of Himachal Prasad against Keshav Prasad Yadav (informant), his sons Dhanesh and Yogendra, and co-accused Foolchandra and Ramroop @ Tunnu, the applicants have only discharged their official duties in which the informant and his

family members have sustained injuries, therefore, protection as provided under Section 197 Cr.P.C. is applicable in the case of the applicants and on that ground alone, they are entitled to discharge, it is important for this Court to refer to the injuries sustained by the informant and his family members which are at page nos. 135 to 159 of the paper book of Application U/S 528 No. 21927 of 2025, which are being quoted here-under:

“1. Dhanesh

- “1. complaint of pain and tenderness on occipital region of skull.*
- 2. complaint of pain and tenderness on Lt side of chest.*
- 3. Contuse swelling 18 x 23 cm size on Lt buttock. Blueish in colour.*
- 4. Contuse swelling 13x11 cm size on Lt buttock. Blueish in colour.*
- 5. Contuse swelling 11x10 cm size on back filed Rt thigh blueish in colour.*
- 6. complaint of pain and tenderness on Rt knee.*
- 7. complaint of pain and tenderness on back side of Lt handed.”*

2. Kehav Prasad Yadav (informant/opposite party no.2)

- “1. complaint of pain and tenderness on occipital region of skull.*
- 2. Contuse swelling 2x 1 cm size on Ext aspect of Rt forearm. Blueish in colour.*
- 3. Contuse swelling 4x1 cm size on back of left side of chest. Blueish in colour.*
- 4. Contuse swelling 2x1 cm size on pinna of left ear blueish in colour.*
- 5. Redness of left eye(+)*
- 6. Contuse swelling 25 x 13 cm size on Right buttock. Blueish in colour.*
- 7. Contuse swelling 17 x 16 cm size on Lt buttock. Blueish in colour.*
- 8. complaint of pain and tenderness on left and right sole.*
- 9. complaint of pain and tenderness on scrotum.”*

3. Dev Prasad

- “1. complaint of pain and tenderness on occipital region of skull.*
- 2. Contuse swelling 2x1 cm size on left wrist. Blueish in colour.*
- 3. Contuse swelling 30x14 cm size on Right buttock. Blueish in colour.*
- 4. Contuse swelling 21x 14 cm size on Lt buttock. Blueish in colour.”*

4. Suneel

- “1. Contuse swelling 1x1 cm size on Lt Arm. Blueish in colour.*

2. complaint of pain and tenderness on occipital region of skull.

3. complaint of pain and tenderness on Rt leg."

5. Savitri (60 years old, wife of informant)

"1. Contuse swelling 29x 10 cm size on back filed Lt thigh blueish in colour.

2. Contuse swelling 15x 12 cm size on Lt buttock. Blueish in colour.

3. Contuse swelling 22x 12 cm size on Rt thigh blueish in colour.

4. Contuse swelling 14x 10 cm size on Rt buttock. Blueish in colour.

5. complaint of pain on lower abdomen.

6. contuse swelling 4 x 2 cm size on right leg."

6. Pooja @ Savita (26 years old)

"1. Contuse swelling 3x2 cm size on back side of left leg. Blueish in colour.

2. complaint of pain in lower abdomen H/O Amanoshena 1 and ½ month."

7. Prabha Yadav (17 years old, daugther of the informant)

"1. Contused swelling measuring 6 × 3 cm in size, bluish in colour, present on the posterior aspect of the left leg.

2. Contused swelling measuring 6 × 4 cm in size, bluish in colour, present 2 cm below Injury No. 1.

3. Contused swelling measuring 7 × 5 cm in size, bluish in colour, present on the posterior aspect of the right thigh.

4. Contused swelling measuring 6 × 2 cm in size, bluish in colour, present over the left gluteal region, and contused swelling measuring 10 × 5 cm in size present over the right gluteal region.

5. Contused swelling measuring 5 × 3 cm in size, present on the posterior aspect of the right thigh."

8. Shikha (16 years old, daughter of the informant)

"1. Contused swelling measuring 10 × 4 cm in size, bluish in colour, present on the right leg.

2. Contused swelling measuring 3 × 2 cm in size, bluish in colour, present over the left knee joint.

3. Abraded contused swelling measuring 4 × 5 cm in size, present on the anteromedial aspect of the left leg, with scab formation.

4. Contused swelling measuring 4 × 3 cm in size, bluish in colour, present over the dorsal aspect of the left hand.

5. The injured complained of pain in the lower abdomen.”

18. Perusal of the aforesaid injuries sustained by the above mentioned injured including the informant reveals that the above injured were subjected to repeated beatings while in police custody at the station by the Police personnel including the applicants, after their hands and feet have been tied by a rope and laid face down, with blows struck specifically on the buttocks, thighs, and calves. Such violence committed by the applicants cannot be termed a part of police duty, it can only be described as a heinous crime nor can it be argued that the police merely overstepped their limits slightly in the course of an investigation. In the opinion of the Court, such police personnel like the applicants are not entitled to any protection as provided under Section 197 Cr.P.C.

19. The mala fide intention of the applicants to commit such crime with the aforesaid injured in the garb of discharging their police duties is also clear from the General Diary Entry dated 14th May, 2022 prepared by the applicants, which is brought on record at page no. 125 of the paper book of Application U/S 528 No. 21927 of 2025, wherein it has been mentioned that upon falling to the ground during the arrest, the accused Keshav Prasad Yadav sustained a bleeding injury on the right side of his waist, while the accused Dhanesh, Devprasad, and Sunil sustained blunt-force injuries. It seems absolutely ridiculous; at the time of arrest, if all four fall and get injured, they will start bleeding. It was the trial court that ordered a medical board to conduct the medical examination of all eight injured persons, thereby bringing the aforementioned injuries to light; otherwise, accurate injury reports would never have been obtained, and only the false report prepared by the police would have remained on record, preventing the crime committed by the applicants against the injured parties from ever coming to light.

20. So far as the second submission made by the learned counsel for the opposite party no.2 that despite the order of the Coordinate

Bench of this Court dated 8th February, 2024 passed in Application U/S 482 No. 418 of 2024 filed by the applicants against the order taking cognizance and summoning them and also the undertaking given on behalf of the applicants before the Coordinate Bench, the applicants have neither surrendered before the trial court nor they have obtained any order of bail till date and deliberately have flouted the process of law, therefore, their discharge application is not maintainable is concerned, this Court finds substance in the said submission made by the learned counsel for opposite party no.2. After passing of the order dated 18th October, 2023 by the trial court whereby the trial court has taken cognizance and summoned the applicants, they have neither appeared before the trial court nor they have obtained any order of bail till date, despite the order of the Coordinate Bench of this Court dated 8th February, 2024 and the undertaking given on behalf of the applicants. Under such circumstances, this Court is of the considered opinion that the discharge application filed by the applicants before the trial court praying for protection as provided under Section 197 Cr.P.C. is not maintainable and such persons like the applicants, who have flouted the process of law deliberately, are not entitled to any relief from this Court in exercise of powers under Section 482 Cr.P.C./528 B.N.S.S.

21. Now this Court comes to the third submission made by the learned counsel for opposite party no.2 that since one of the charging sections levelled against the applicants is Section 354 I.P.C., therefore, protection as provided under Section 197 Cr.P.C. is not applicable in the case of the applicants as per Explanation to Section 197 (1) Cr.P.C.

22. For ascertaining the aforesaid submission, this Court refers to Explanation to Section 197 (1) Cr.P.C. which came into force in 2013.

23. For ready reference, Explanation to Section 197 (1) Cr.P.C. is quoted here-under:

**"Section 197(1) in The Code of Criminal Procedure,
1973**

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a).....

(b).....

.....

[Explanation. - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, [section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB,] [Inserted by Criminal Law (Amendment) Act, 2013] “

(Emphasis supplied)

24. It is admitted position that the charge-sheet has been submitted against the applicants under Sections 147, 148, 323, 504, 452, 354 and 395 I.P.C. to which cognizance has been taken and the applicants have been summoned by the trial court. One of the charging sections levelled against the applicants is Section 354 I.P.C. As such, in view of Explanation to Section 197 (1) Cr.P.C. no sanction is required in the case of the applicants, who is a public servant accused.

25. In view of the aforesaid discussions and deliberation, this Court holds that the trial court has not committed any error in rejecting the discharge application filed by the applicants under the order impugned whereby the applicants have prayed for protection as provided under Section 197 Cr.P.C. The judgments relied upon by the learned counsel

for the applicants are clearly distinguishable in the facts of the present case.

26. Consequently, the impugned order passed by the trial court dated 27th September, 2024 cannot be said to be illegal and is liable to be affirmed. It is ordered accordingly.

27. Both the criminal applications are devoid of merits and are, accordingly, **dismissed**. There shall be no order as to costs.

(Madan Pal Singh,J.)

September 09, 2026
Sushil/-