HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

CRIMINAL MISC. WRIT PETITION No. - 11207 of 2026

Mohd. Riyaz @ Riyaz Gazi

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Govt. Lko.
And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Ravi Kant Patel, Anurag Patel
Counsel for Respondent(s)	:	G.A.

Court No. - 11

HON'BLE ABDUL MOIN, J.
HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. Heard learned counsel for the petitioner and learned A.G.A. for the respondents-State.

2. Issue notice to respondent No. 4. Steps shall be taken within a period of one week.

3. The respondents may file their counter affidavit(s) within a period of four weeks, to which a rejoinder affidavit, if any, may be filed within the next two weeks.

4. Under challenge is the F.I.R. No. 371 dated 29.10.2026, lodged at Police Station Kotwali, District Hardoi, under Section 356 of the Bharatiya Nyaya Sanhita, 2023 (B.N.S., 2023) and Section 66D of the Information Technology Act, 2000 (as amended in 2008).

5. From a perusal of the F.I.R., it emerges that the petitioner is alleged to have shared from his Facebook wall a post uploaded by one Shri Dilshad Khan, which contained an audio clip stated to be AI-generated and edited, thereby allegedly tarnishing the image of the complainant and the political party. The complainant is stated to be the Mandal Adhyaksha of a political party, as detailed in the F.I.R.

6. The argument advanced by learned counsel for the petitioner is that by no stretch of imagination can the act of sharing a post be construed as an offence under the provisions of the Information Technology Act, 2000, as

amended in 2008 (hereinafter referred to as 'IT Act'). Further, insofar as Section 356 of the B.N.S., 2023, is concerned, it is contended that the authorities have acted maliciously in lodging the impugned F.I.R., which patently amounts to an abuse of the process of law. As such, the F.I.R. deserves to be quashed on these grounds alone.

7. On the other hand, learned A.G.A. submits that since the petitioner has shared an edited post from his Facebook wall, the offences indicated in the impugned F.I.R. are clearly made out against him and as such, there is no illegality in the registration of the F.I.R.

8. Having heard learned counsel for the parties and upon perusal of the record, it emerges that an F.I.R. has been lodged by respondent No. 4 under Section 356 of the B.N.S., 2023, and Section 66D of IT Act. The petitioner is alleged to have shared from his Facebook wall, an edited post/audio clip of one Shri Dilshad Khan.

9. So far as Section 356 of the B.N.S., 2023, is concerned, the Apex Court, in the case of ***Subramanian Swamy v. Union of India,*** reported in ***(2016) 7 SCC 221***, has categorically held that in cases of criminal defamation, neither can an F.I.R. be lodged nor can a direction be issued under Section 156(3) of the Cr.P.C. The proceedings are required to be initiated by way of a complaint filed by the person aggrieved.

10. It would also be pertinent to refer to Section 222 of the B.N.S., 2023, which categorically provides that no Court shall take cognizance of an offence punishable under Section 356 of the B.N.S., 2023, except upon a complaint made by some person aggrieved by such offence.

11. Thus, in the instant case, the impugned First Information Report could not have been lodged straightaway under Section 356 of the B.N.S., 2023. It is, therefore, apparent that the authorities have patently erred in law in lodging the impugned First Information Report insofar as the offence under Section 356 of the B.N.S., 2023, is concerned.

12. So far as Section 66D of the IT Act is concerned, the same, on reproduction, reads as under:

"66D. Punishment for cheating by personation by using computer

resource.—

Whoever, by means of any communication device or computer resource, cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to a fine which may extend to one lakh rupees."

13. Section 66D of the IT Act thus stipulates that whoever, by means of any communication device or computer resource, **cheats by personation**, shall be liable to punishment with imprisonment

14. From a bare perusal of the F.I.R., it does not emerge that the petitioner has cheated anyone by personation rather he is alleged to have merely shared from his Facebook wall an audio post originating from another source, which according to the complainant was AI-generated. Thus, upon a bare perusal of the provisions of Section 66D of the IT Act, it does not *prima facie* emerge that the petitioner has committed the offence under Section 66D of the IT Act.

15. Keeping in view the aforesaid discussion, *prima facie* a case for interference is made out. Accordingly, until further orders, the operation of F.I.R. No. 371 dated 29.10.2026 shall remain stayed.

16. Though the matter could have rested at this stage, yet we are constrained to observed that this Court is repeatedly coming across cases in which the authorities are jumping the gun by lodging F.I.Rs. under Section 356 of the B.N.S., 2023. This issue has been noticed earlier also by this Court in ***Criminal Misc. Writ Petition No. 8913 of 2026, In Re: Amit Yadav v. State of U.P. and Others***, vide order dated 08.09.2026, as well as in certain other cases. Despite the same, the spate of F.I.R.s being lodged under Section 356 of the B.N.S., 2023, continues unabated.

17. It appears that the authorities have no other work but to jump the gun and register F.I.Rs. straightaway under Section 356 of the B.N.S., 2023, despite the clear proposition of law laid down by the Hon'ble Supreme Court in the case of ***Subramanian Swamy (supra)*** way back in 2016 and despite a period of ten years having elapsed since then. It thus appears that the authorities do not even pay heed to the judgments passed by the Hon'ble Supreme Court, least to say about those passed by this Court.

18. In view of the aforesaid, we require the Additional Chief Secretary (Home), Government of U.P., to file his personal affidavit indicating as to why despite the law relating to defamation having been laid down by the Hon'ble Supreme Court way back in 2016 in the case of ***Subramanian Swamy (supra)***, F.I.Rs. continue to be registered straightaway under Section 356 of the B.N.S., 2023, which deals with the offence of defamation. He shall also indicate as to what action is proposed to be taken against such officials who continue to flout the specific judgment of the Hon'ble Supreme Court in this regard.

19. List this case on 15.12.2026 before appropriate Court.

20. In the event the personal affidavit is not filed by the next date fixed, the Additional Chief Secretary (Home), Government of U.P., shall appear in person before this Court along with records to assist the Court.

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)

November 17, 2026
prateek

Digitally signed by :-
PRATEEK ARORA
High Court of Judicature at Allahabad,
Lucknow Bench