

(Supra), lays down the law correctly on the issue of maintainability of an application/petition under Section 482 Cr.P.C. for quashing of the proceedings under Section 12 of the D.V.Act at the stage of issuance of notice or it is the judgment in **Smt. Suman Mishra's case (supra)** lays down the law correctly?

V. Whether a notice issued by the Protection Officer for conducting a preliminary enquiry pursuant to a direction by the Magistrate under Section 12 of the D.V. Act, 2005 is amenable to section 528 BNSS (erstwhile section 482 Cr.P.C) or other proceedings like Article 226 or 227 of the Constitution of India?.

VI. Whether a Co-ordinate Bench of a High Court can frame an issue without considering the factum of another case rendered by another Co-ordinate Bench of this Court and hold a Judgment *per incurium* of another Co-ordinate Bench of equal strength, without first expressing its own view and then referring both the earlier Judgment and its own view, to a larger Bench, for reconciliation and restating the law for clarity, consistency and certainty?; and

VII. Whether the principle of stare decisis should be followed by a Co-ordinate Bench of equal strength and is to be respected and binding subject to right of the Bench of such co-equal quorum to take a different view and refer the question to a larger Bench ?.

(22) Let the matter be placed before Hon'ble the Chief Justice for requisite orders.

(23) As noted above, since the matter is being referred, in case the applicants/petitioners move an application for adjournment of the case before the trial Court, this Court hopes and trusts that it

shall be adjourned by the trial Court till final outcome of the reference.

(2025) 2 ILRA 153

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 24.02.2025

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482 No. 11952 of 2024

Brij Bhushan Sharan Singh ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicant:

Sushil Kumar Singh, Janardan Singh

Counsel for the Opposite Parties:

G.A.

(A) Criminal Law - Bharatiya Nyaya Sanhita, 2023 (Old Section 482 Cr.P.C.) - Section 528 - The Code of Criminal Procedure, 1973 - Sections 251, 252, 254 & 31 - Indian Penal Code, 1860 - Section 188 - Withdrawal of Prosecution & Cognizance - Disobedience to order duly promulgated by public servant , Section 341 - Punishment for wrongful restraint - Provisions of Section 195 Cr.P.C. are mandatory and non-compliance of it would vitiate the prosecution and other consequential orders - Cognizance of an offence under Section 188 I.P.C. without a complaint by a competent public servant is void ab initio and vitiates the entire proceeding including dependent offences like Section 341 I.P.C. - Plea of guilty must be made before the trial court under Section 251 Cr.P.C., not before the High Court, and must be clear, unambiguous, and unqualified. (Para -23,24)

F.I.R. lodged under Sections 341 and 188 IPC - Charge-sheet filed without complaint by public servant under Section 195 Cr.P.C. - application under Section 321 Cr.P.C. filed by Public

Prosecutor to withdraw prosecution - trial court rejected the application on the ground that the applicant had already pleaded guilty before the High Court - prosecution under Section 341 I.P.C. could not be withdrawn. (Para - 3, 5, 14-15)

HELD: - Since the charge-sheet relating to Section 188 I.P.C. had already been quashed and the Public Prosecutor had filed an application under Section 321 Cr.P.C. for withdrawal of prosecution in respect of the remaining Section 341 I.P.C., the Court, invoking its power under Section 528 B.N.S.S. (erstwhile Section 482 Cr.P.C.), held that there was no need to remand the matter to the trial court and accordingly treated the prosecution under Section 341 I.P.C. as withdrawn and the withdrawal application as allowed. **(Para - 27)**

Application allowed. (E-7)

List of Cases cited:

1. Israr Ahmad Vs St. of U.P. & anr., Application (U/S 482 Cr.P.C.) No.12525 of 2023
2. D.K. Rajendran & ors.etc. etc. Vs St. of T.N., AIR 2010 SC 3718
3. St. of Maha. Vs Sukhdev Singh & anr., (1992) 3 SCC 700

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Sushil Kumar Singh (S.K. Singh), learned counsel assisted by Sri Janardan Singh, learned counsel for the applicant and Sri Ran Vijay Singh, learned Additional Government Advocate for the State.

2. Learned counsel for the applicant has filed Supplementary affidavit, today in the Court, the same is taken on record.

3. By means of this application/petition filed under Section 528

of Bharatiya Nyaya Sanhita, 2023 (Old U/S 482 Cr.P.C.), the applicant has prayed for the following relief:-

"For the facts, reasons and circumstances, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash and set aside the impugned order dated 31.07.2024, passed by the learned Additional Civil Judge, Magistrate Court Room No.1, (Special Court MP/MLA), Gonda in Crime No.348 of 2014, under Section 341 I.P.C., Police Station-Kotwali Nagar, District-Gonda and further be pleased to allow the applicant for withdrawal of prosecution dated 03.11.2020, under Section 321 Cr.P.C., moved by the State of U.P. through Additional DGC (Crl.), Gonda in the interest of justice."

4. This is the second application on the same prayer as the first application was dismissed being withdrawn vide order dated 27.09.2024 (Annexure No.1) passed in Application (U/S 482 Cr.P.C.) No.8632 of 2024; Brij Bhushan Sharan Singh vs. State of U.P. & another, giving liberty to the applicant to file a fresh application. □ Pursuant to that order, the present application has been filed.

5. Before advertng to the contentions of learned counsel for the applicant, I find it appropriate that the order dated 20.08.2022 passed by this Court in Application (U/S 482 Cr.P.C.) No.3167 of 2022; Brij Bhushan Sharan Singh vs. State of U.P. and another, be reproduced here-in-below inasmuch as the purported genesis of the impugned order dated 31.07.2024 passed by the learned Additional Chief Judicial Magistrate, Court No.1/ Special Magistrate MP/MLA, Gonda is based on the aforesaid order dated 22.08.2022

(supra). The order dated 22.08.2022 reads as under:-

"1. Heard learned counsel for the parties.

2. Present petition under section 482 Cr.P.C. has been filed seeking quashing of the Chargesheet no. 77/2014 dated 30-04-2014 submitted by the police against the petitioner for the offences under sections 341, 188 I.P.C. relating to Case Crime No. 348 of 2014, Police Satation-Kotwali Nagar, district-Gonda as well as summoning order dated 22-01-2018 passed in Case No. 120 of 2018, State Versus Brij Bhushan Singh including further proceedings pending before Additional Chief Judicial Magistrate-I, Gonda.

3. Sri Janardan Singh, learned counsel for the petitioner submits that under section 195 Cr.P.C., there is a bar for taking cognizance for the offence under section 188 I.P.C. except on a complaint made by public servant. He has further submitted that neither any F.I.R. could have been registered for the offence under section 188 I.P.C. nor any chargesheet could have been filed.

4. It has further been submitted by the learned counsel for the petitioner that order of taking cognizance and initiating further proceedings are against the express provisions of section 195 Cr.P.C., therefore, they are void ab-initio.

5. It has further been submitted that lodging of the F.I.R. and filing of the chargesheet and taking cognizance on the said chargesheet are wholly illegal and against the bar created under section 195 Cr.P.C.

6. Sri Rao Narendra Singh, learned A.G.A. does not dispute the fact that there is a bar created under section 195 Cr.P.C.

7. Considering the aforesaid position and taking into consideration the provisions of Section 195 Cr.P.C., this court is of the view that no cognizance could have been taken on the chargesheet submitted by the Investing Agency in F.I.R. under section 188 I.P.C. Thus, it is held that the impugned proceedings for offence under section 188 I.P.C. are void ab-initio inasmuch as they are against the provisions of section 195 Cr.P.C.

8. In view thereof, the present petition is partly allowed.

9. The Chargesheet no. 77/2014 dated 30-04-2014 submitted by the police against the petitioner for the offences under sections 341, 188 I.P.C. relating to Case Crime No. 348 of 2014, Police Satation-Kotwali Nagar, district-Gonda as well as summoning order dated 22-01-2018 passed in Case No. 120 of 2018, State Versus Brij Bhushan Singh for offence under section 188 I.P.C. including further proceedings pending before Additional Chief Judicial Magistrate-I, Gonda, so far offence under section 188 I.P.C. are hereby quashed.

10. So far as offence under section 341 I.P.C. is concerned, it is also submitted on behalf of the petitioner that the petitioner does not want to contest the proceedings for offence under section 341 I.P.C. and he will appear before the trial court within ten days from today and plead guilty before the trial court and will deposit the fine as may be awarded by the learned trial court in accordance with law.

11. If the petitioner surrenders before the trial court and plead guilty, the trial court may fine him appropriately for offence under section 341 I.P.C. instead of imprisonment and close the proceedings for offence under section 341 I.P.C."

6. Sri S.K. Singh, learned counsel for the applicant has submitted that in the

earlier petition filed in the year 2022 the present applicant had assailed the Charge-sheet No.77 of 2014 filed against the present applicant under Section 341/188 I.P.C. relating to Case Crime No.348 of 2014. The aforesaid application was partly allowed by this Court quashing the charge-sheet for Section 188 I.P.C. including the further proceedings pending before the learned trial court relating to Section 188 I.P.C. but for Section 341 I.P.C. this Court provided liberty to the applicant to appear before the learned trial court within a period of ten days pleading guilty by depositing the fine as may be awarded by the learned trial court, strictly in accordance with law.

7. Sri S.K. Singh has submitted with vehemence that the trial of Section 341 I.P.C. would be a summary trial□ for the reason that the maximum punishment under that section is one month or fine to the extent of five hundred rupees or with both, which has been indicated under Chapter-XXI Cr.P.C., 1973.□ Section 262 Cr.P.C. provides the procedure for summary trial, which reads as under:-

"(1) In trial under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

8. In the light of the aforesaid prevision of law the trial in the present case would be conducted in a manner the trial of summons cases are conducted by the Magistrate which has been indicated under Chapter-XX.□ Section 251 Cr.P.C.

provides substance of accusation to be stated, which reads as under:-

"When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

9. Sri S.K. Singh has stated that the law is clear on the point that when in a summon case the accused appears before the Magistrate, he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

10. Sri S.K. Singh has further stated that pursuant to the order of this Court the applicant will have to take recourse as has been defined under the Code and as per Section 251 Cr.P.C.. The applicant has got an opportunity either to plead guilty or to place his defence. Pursuant to the order of this Court, it was not incumbent upon the applicant to plead guilty in any circumstances but if he has got defence not to plead guilty he may do so.

11. Therefore, Section 252 Cr.P.C. is very clear on the next steps which says that if the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion convict him thereon.

12. Notably, the Magistrate is empowered under Section 254 Cr.P.C. not to convict the accused under Section 352 or 353□ of the Code and may hear the

prosecution taking such evidence which are necessary to adjudicate the case on merits.

13. In view of the above, Sri S.K. Singh has stated that the liberty being given by this Court vide order dated 22.08.2022 to appear before the learned trial court and plead guilty would mean that he would take legal recourse as has been mandated under Section 251 of the Code.□ He may not plead guilty if he has got material to that effect.

14. The Assistant D.G.C. (Crl.), Gonda has filed an application dated 03.11.2020 under Section 321 of the Code withdrawing the prosecution against the present applicant relating to Sections 188 & 341 I.P.C.. Not only the above, the present applicant has also filed an application under Section 321 of the Code on affidavit on 03/4.04.2023 (Annexure No.11). The learned trial court rejected the aforesaid application of the Public Prosecutor vide impugned order dated 31.07.2024 mainly on the ground that the present applicant appears to have pleaded his guilty before the High Court, therefore, the prosecution may not be withdrawn so far as Section 341 I.P.C. is concerned.

15. Sri S.K. Singh has stated that the learned trial court has erred in observing that the present applicant has pleaded guilty before the High Court so far as Section 341 I.P.C. is concerned inasmuch as the only forum to plead guilty is the learned trial court where the specific provision for doing such exercise has been indicated under Section 251 of the Code which clearly mandates that the applicant may either plead guilty or may not plead guilty if he has got material to that effect.□ Therefore, such observation of the learned trial court in the impugned order dated 31.07.2024 is perverse.

16. Sri S.K. Singh has drawn attention of this Court towards Annexure No.SA-1 of the supplementary affidavit, which is the complete order-sheet with effect from 22.01.2018 to 03.10.2024, which makes it crystal clear that till date the charge has not been framed against the present applicant.

17. Sri S.K. Singh has stated at this stage that in a summary trials or trials of summon cases framing of charge is not necessary but if the accused applicant is having material not to plead guilty, he may do so under the law.□ The applicant has filed an application dated 12.12.2024 before the learned trial court (Annexure No.13) i.e. application for retraction of the statement dated 22.08.2022, to plead guilty before the learned trial court.□ In such application, he did not plead guilty.□ Therefore, Sri Singh has stated that if part of the charge-sheet bearing No.77 of 2014 (supra), so far as it relates to Section 188 I.P.C. is concerned, has been set aside vide order dated 22.08.2022 (supra), the remaining part thereof relating to Section 341 I.P.C. may also be set aside as the present applicant does not plead guilty.□ Not only the above, the Public Prosecutor after going through the fact and circumstances and the material available on record had filed an application under Section 321 of the Code to withdraw the prosecution should have been allowed and the prosecution pursuant to the Charge-sheet No.77 of 2014 should have been withdrawn.

18. Per contra, Sri Ran Vijay Singh, learned Additional Government Advocate has opposed the aforesaid contentions of Sri S.K. Singh, learned counsel for the applicant by submitting that once the applicant had not prayed in his

prayer in respect of Section 341 I.P.C. before this Court□ and sought liberty to plead guilty before the learned trial court, he should have pleaded guilty by filing an appropriate application and on the same prayer the second application under Section 482 Cr.P.C. would not be maintainable.

19. On being asked the learned Additional Government Advocate as to whether the applicant is debarred to take legal recourse under Section 251 of the Code in the garb of his undertaking and as to whether his aforesaid undertaking would be sacrosanct debarring him to avail the legal recourse as has been indicated under Section 251 of the Code, learned Additional Government Advocate has submitted that since there is legal prescription to that effect under Section 251 of the Code so the applicant may take that legal recourse in the light of his undertaking being given before this Court.

20. Having heard learned counsel for the parties and having perused the material available on record, notably, the F.I.R. bearing No.348 of 2014 was lodged under Sections 341 & 188 I.P.C. wherein the charge-sheet bearing No.77 of 2014 has been filed. Section 195 Cr.P.C. clearly mandates that no cognizance could have been taken on the charge-sheet submitted by the Investigating Agency in the F.I.R. under Section 188 I.P.C. and if in the same F.I.R. or the charge-sheet any other minor section has been indicated, which is depend upon Section 188 I.P.C., the cognizance of that charge-sheet would be nullity in the eyes of law.

21. Notably, Section 188 I.P.C. defines disobedience to order duly promulgated by the public servant and Section 341 I.P.C. defines punishment for

wrongful restraint.□ Section 339 I.P.C. defines wrongful restraint.□ In the present case, the alleged offence of wrongful restraint is a part and partial of Section 188 I.P.C. as it is not possible to split up and hold the prosecution of the accused for offence under Section 341 I.P.C. inasmuch as the genesis of Section 341 I.P.C. depends upon Section 188 I.P.C.

22. I had occasion to decide one case i.e. **APPLICATION (U/S 482 Cr.P.C.) No.12525 of 2023; Israr Ahmad vs. State of U.P. and another**, wherein the finer aspects of Section 195 Cr.P.C. has been considered in the light of the decisions of Apex Court as well as of other High Court, paras-8, 11 and 12 would be apt to reproduce here-in-below, as under:-

*"8. Learned counsel for the petitioner has also drawn attention of this Court towards judgment of Apex Court rendered in the case of **D.K. Rajendran and Ors. etc. etc. Vs. State of T.N., reported in AIR 2010 SC 3718**, referring Para 25 which reads as under:*

"25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction."

(Emphasis supplied)

11. Having heard learned counsel for the parties, having perused the material available on record and having regard the decisions of Apex Court and various High

Courts, I am also of the considered opinion that no Court can take cognizance of any offence indicated in the chargesheet under Section 188 of IPC in absence of written complaint by the officer authorized for that purpose in view of the specific bar of Section 195 Cr.P.C. The provisions of Section 195 Cr.P.C. are mandatory and non-compliance of it would vitiate the prosecution and other consequential orders.

12. *In the present case, notably, the complaint has not been filed by the officer who has issued proclamation under Section 144 of Cr.P.C., therefore, the trial court could have not taken cognizance of the chargesheet indicating the offence under Section 188 IPC. Besides other offences i.e. Section 143 IPC: Punishment of unlawful assembly and Section 342: Punishment for wrongful confinement since form part of the same transaction of the offence contemplated under Section 195(1) of Cr.P.C., so it is not possible to split up and hold that prosecution of the accused for the other offences, inasmuch as the genesis of other offences depends under Section 188 IPC. To me, had it not been any proclamation under Section 144 Cr.P.C. there would have been no offence of the petitioner under Section 188 IPC. Further, the offence of unlawful assembly is also part and parcel of Section 188 IPC. On account of the promulgation order, the offence of wrongful confinement in the present case is said to have been committed by the petitioner alongwith so many persons who have gathered when promulgation order was in operation and due to that some persons of public and vehicles thereof stucked in jam."*

23. In the present case, the cognizance of Section 188 I.P.C., pursuant to the Charge-Sheet No.77 of 2014, was

barred under Section 195 of the Code so that part of the charge-sheet has already been set aside by this Court vide order dated 22.08.2022, hence, the remaining part of the same charge-sheet is also liable to be set aside as the allegations relating to Section 341 I.P.C. is dependent upon the allegation relating to Section 188 I.P.C.

24. When the present applicant did not plead guilty, which can be done by him under Section 251 of the Code so the learned trial court may not observe that since the applicant has not pressed his that prayer before the High Court seeking liberty to appear before the learned trial court to plead guilty and it may not be treated as if he has pleaded guilty. Unless and until the accused applicant pleads guilty before the learned trial court it may not be treated as if he has pleaded guilty. Therefore, the findings of the learned trial court are perverse to that effect.

25. The Apex Court in the case in re: ***State of Maharashtra vs. Sukhdev Singh and another reported in (1992) 3 SCC 700*** has held the same in that case, though sections are relating to the sessions trial but law on the point of plead guilty may be applicable in the present case. The relevant extract of the observations of the Apex Court has been made in para-52, which reads as under:-

"52....The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt.□ Once these requirements are satisfied the law permits

the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case...."

26. In view of the facts and circumstances, which have been considered above, the case laws considered above, the impugned order dated 31.07.2024 (Annexure No.2) passed by the learned Additional Chief Judicial Magistrate, Court No.1/ Special Magistrate Court MP/MLA, Gonda is hereby set aside/ quashed.

27. Since the part of the charge-sheet relating to section 188 IPC has already been set aside/ quashed by this Court and the Public Prosecutor had already filed an application withdrawing the prosecution which would now be relating to the subsequent part of the same charge-sheet of section 341 IPC, therefore, instead of relegating the matter to the learned trial court to consider afresh, as I do not find any fruitful purpose to remand back the issue before the learned trial court, but invoking power of this Court under Section 528 B.N.S.S. (erstwhile under Section 482 Cr.P.C.), I hereby hold that the prosecution of Section 341 I.P.C., pursuant to the Charge-Sheet No.77 of 2014, shall be treated being withdrawn and the application of the Public Prosecutor dated 03.11.2020 □ filed under Section 321 Cr.P.C., would be treated to have been allowed.

28. Accordingly, the instant application is **allowed**.

29. No order as to costs.

Before parting with, I appreciate the efforts and research made by Sri Piyush

Tripathi, Research Associate attached with me as well as Ms. Ayushi Pandita, Law Intern in finding out the relevant case laws applicable in the present case.

(2025) 2 ILRA 160
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.02.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Application U/S 482 No. 25418 of 2024

Piyush Gupta & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
Kabeer Tiwari, Sr. Advocate

Counsel for the Opposite Parties:
G.A.

Criminal Law – Criminal Procedure Code, 1973- Section 482 - Food Safety & Standards Act, 2006 - Sections 3(1)(n), 3(1)(o), 3(1)(y), 26, 26(2)(i), 26(4), 27, 42(4), 59(i) & 80 - Application U/s 482 – challenging the summoning order as well as the entire proceeding – Applicant is the employee of applicant no. 2 who is running a restaurant – dealing with selling different kind of prepared food – inspection carried out by food safety officer - sample of four sealed packets of turmeric collected of Goldiee Masala Brand - which were found having lead-chromate which is harmful for human consumption – complaint lodged – summon order issued U/s 59(1) of the Act, 2006 – court finds that – it is not in dispute that the applicant has purchased sealed packet of turmeric powder from a licenced/registered manufacturer and relied upon the information given by the manufacturer of the turmeric powder about the quality – if the turmeric powder is found to be unsafe despite guarantee of its quality – in that case, food business operator dealing with business of selling the