



A.F.R.



HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 7072 of 2025

Avneesh
Kumar

.....Applicant(s)

Versus

State of U.P.
and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Pawan Singh Pundir, S.M.Ayaz Ali
Counsel for Opposite Party(s) : G.A.

Court No. - 77

HON'BLE PRAVEEN KUMAR GIRI, J.

1. The affidavit filed by the Circle Officer, City, Firozabad is taken on record.
2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application.
3. The relief which has been mentioned in the application is delineated below:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application under section 528 B.N.S.S. and quash the entire proceeding of case No.94500 of 2024 (State Vs. Sooraj Thakur and others), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 alongwith cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad."

4. This Court, vide order dated 07.01.2026, directed the concerned, the then Chief Judicial Magistrate, Firozabad, to submit her explanation

as to why cognizance was taken beyond the limitation period as provided under Sections 468 and 469 Cr.P.C. The order dated 07.01.2026 is being reproduced hereinbelow:

“1. The personal affidavit filed today by the Circle Officer, City, Firozabad is taken on record.

2. Today, Shri Praveen Kumar Tiwari, Circle Officer, Firozabad, is present before the Court. He has acquainted the Court with the facts of the case that the incident occurred on 13.04.2019 and in respect of which an F.I.R. was lodged as Case Crime No. 246 of 2019 under Section 379 I.P.C. in Police Station Firozabad North, District Firozabad, against unknown persons while during investigation, the names of seven persons came to light, namely (i) Aman Sakya, (ii) Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja, (v) Rahul @ Bhagauna, (vi) Suraj Thakur and (vii) Avneesh Kumar.

2. After investigation, the first charge-sheet was prepared on 14.06.2019 under Sections 379 and 411 I.P.C. against the accused (i) Aman Sakya, (ii) Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja, (v) Rahul @ Bhagauna and the charge-sheet along with the case diary was submitted in the court of the concerned Judicial Magistrate. The learned Judicial Magistrate took cognizance against the offences in respect of aforesaid five accused persons on 17.06.2019.

3. The investigation, however, remained pending against two accused persons, namely Suraj Thakur and Avneesh Kumar. In respect of these two accused persons, second charge-sheet under Sections 379 and 411 I.P.C. was prepared on 26.06.2021 after about two years. The second charge-sheet was kept in the office of the Circle Officer, City, District Firozabad, up to 24.11.2024 and thereafter, it was submitted in the court of the Judicial Magistrate on 25.11.2024, after the expiry of the limitation period as provided under Sections 468 as well as 469 Cr.P.C. (corresponding Section 514 and 515 BNSS). The provisions of Section 468 and 469 Cr.P.C. are delineated below:

"Section 468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

Section 469. Commencement of the period of limitation.?-

(1) The period of limitation, in relation to an offender, shall commence-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

4. Learned Judicial Magistrate, ignoring the provisions of Sections 468 and 469 Cr.P.C., took cognizance on 27.11.2024, under Sections 379 and 411 IPC which is punishable upto three years and fine, after lapse of more than three years, which was against the provisions of law and was an abuse of the process of the Court, thus violating the fundamental rights enshrined under Article 21 of the Constitution of India, as due process of law is required to be followed.

5. The Circle Officer present before the Court further acquainted the Court that as soon as this fact came to the knowledge of the senior officers of the district, an inquiry has been initiated against the erring official who delayed to submit the charge-sheet before the court after three years from the date of the incident.

6. The court of Magistrate cannot take cognizance after expiry of the period prescribed under Section 468 Cr.P.C. and if cognizance is taken by the concerned Judicial Magistrate beyond the period of limitation, the same is against the provisions of law, therefore, the proceedings of the trial court have been stayed only in respect of two accused persons, namely Suraj Thakur and Avneesh Kumar.

7. The Circle Officer present before the Court also acquainted the Court with the fact that the inquiry is going on and shall be concluded to its logical end and the report of the inquiry along with its outcome shall be communicated to this Court.

8. Learned AGA submits that as indirectly, the alleged accused persons, who have a long criminal history of about eight cases of similar nature have been acquitted, as no court can take cognizance after expiry of the period of limitation.

9. *The present Chief Judicial Magistrate, Firozabad and the then Chief Judicial Magistrate, Firozabad who has taken cognizance in the matter, are directed to submit their explanation to this Court, disclosing their names, on or before 19.01.2026.*

10. *The trial court is directed that this Court has only stayed the proceedings in respect of accused Suraj Thakur and Avneesh Kumar.*

11. *The Circle Officer, City, Firozabad shall remain present before this Court on the next date fixed.*

12. *The Superintendent of Police, Firozabad, the District Magistrate, Firozabad and the Chief Judicial Magistrate, Firozabad, are directed to take notice of this order in the monthly meeting and inform all the police officers to complete investigation within the time frame prescribed under the Code of Criminal Procedure and submit police report within the limitation period as prescribed under law and the Judicial Magistrates are directed to take notice of the provisions of Sections 468 and 469 Cr.P.C. as well as of Sections 514 and 515 BNSS, while taking cognizance.*

13. *List this case on 19.01.2026 for further hearing.*

14. *Registrar (Compliance) is directed to obtain the said explanation from the present Chief Judicial Magistrate, Firozabad and the then Chief Judicial Magistrate, Firozabad who has taken cognizance in the matter. ”*

5. Today, Shri Praveen Kumar Tiwari, Circle Officer, Firozabad, is present before this Court and submits that though the incident occurred on 13.04.2019 and the first information report was lodged on 16.04.2019 and the charge-sheet was prepared against two accused persons, namely Avneesh Kumar and Suraj Thakur on 26.06.2021, but the same was kept by the then Circle Officer as well as the Head Constable in the office of the Circle Officer and as the offence was punishable up to three years, therefore, if the charge-sheet is not submitted in the Court within three years from the date of the alleged incident, the concerned Magistrate cannot take cognizance as it is barred under Sections 468 and 469 Cr.P.C. and indirectly the accused will be acquitted as no further proceedings shall be initiated against the accused in the time barred case. In the present case, the charge-sheet was submitted in the court on 24.11.2024, after lapse of three years, and the learned Judicial Magistrate took cognizance on 25.11.2024, ignoring the above-mentioned provisions and took cognizance beyond the period of limitation.

6. Shri Praveen Kumar Tiwari, Circle Officer, further informs this Court that the then Circle Officer is not in service at present and the Head Constable is in service, therefore, departmental proceedings have been initiated against the Head Constable and the same shall travel up to its logical end.

7. This Court has perused the order dated 01.12.2025. The relevant portion of the same is quoted hereinbelow:

“1. Heard Shri Pawan Singh Pundir,, learned counsel for the applicant, learned AGA for the State.

2. Learned counsel for the applicant submits that he has filed the present application under Section 528 BNSS for the following prayer, which has been mentioned in the prayer clause of this application. The prayer clause is delineated below:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application under section 528 B.N.S.S. and quash the entire proceeding of case No.94500 of 2024 (State Vs. Sooraj Thakur and others), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 along with cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad.”

3. Shri Pawan Singh Pundir, learned counsel for the applicant, submits that regarding the alleged incident dated 13.04.2019, a First Information Report was lodged by Shri Krishnakat in respect of theft of his motorcycle, and the police of Police Station- Firozabad North, District-Firozabad registered an FIR against one unknown person as Case Crime No. 246 of 2019 under Section 379 IPC Indian Penal Code, 1860 (corresponding Section 303(2) B.N.S.).

*4. Shri Prateek Tyagi, learned AGA for the State submits that initially, **first police report/ charge-sheet** has been prepared on 14.06.2019 against Aman Shah, Tanuj Gautam, Adarsh Yadav, Vishal Raja and Rahul alias Bhagona under Sections 379 and 411 IPC (corresponding Sections 303(2) & 317(2) of B.N.S.).*

5. Learned counsel for the applicant further submits that in the confessional statement of co-accused Vishal Raja dated 04.10.2020 recorded in Supplementary Case Diary (S.C.D.) No. 2, for the first time, name of applicant-accused as well as one Suraj Thakur came in the picture and the Investigating Officer submitted charge-sheet against the applicant and one Suraj Thakur in the concerned court on 26.06.2021, after seen/ verification of the same by the concerned Circle Officer. He further submits that the cognizance has been taken against the applicant for the offence under Sections 379 and 411 IPC on 27.11.2024 by the then learned

Chief Judicial Magistrate, Firozabad and thereafter, registered the case as Case No. 94500 of 2024 (State v. Sooraj Thakur and others).

6. He further submits that the alleged incident occurred on 13.04.2019; the First Information was lodged on 16.04.2019 u/s 379 & 411 IPC which is punishable up to three years; the first charge-sheet has been prepared and submitted u/s 379 & 411 IPC against five persons on 14.06.2019. The counsel for the applicant further submits that, for the first time, name of the applicant came in the picture in the confessional statement of co-accused, Vishal Raja dated 04.10.2022; recorded in S.C.D. Parcha No. 2 and thereafter, supplementary charge-sheet has been prepared and submitted in the concerned court u/s 379 & 411 IPC against the applicant and Suraj Thakur on 26.06.2021 but the learned Magistrate took cognizance on 27.11.2024 on the supplementary charge-sheet dated 26.06.2021 after three years and registered the case as Case No. 94500 of 2019 (State v. Sooraj Thakur and others), u/s 379 & 411 IPC, Police Station- Firozabad North, District- Firozabad, thus, as per Sections 467 r/w 468 r/w 469 CrPC (corresponding Sections 513, 514 and 515 BNSS), the concerned Judicial Magistrate cannot take cognizance as it is time-barred, beyond the period of three years as per the conditions made under Section 469 CrPC and no reason has been mentioned also in the cognizance order dated 27.11.2024 passed by the then Chief Judicial Magistrate, Firozabad as to taking cognizance beyond expiry of period of limitation. It is further submitted that as per the mandatory provision enshrined under Sections 467, 468, 469 CrPC, the concerned court cannot take cognizance beyond the period of limitation as provided in the Sections, therefore, the proceedings pending the concerned trial court is against the procedure established by law/ Code of Criminal Procedure and it is violating the fundamental right of the applicant as provided under **Article 21 of the Constitution of India**, i.e. "No person shall be deprived of his life or personal liberty, except according to procedure established by law". The provisions of Sections 467, 468, 469 CrPC are delineated below :-

"467. Definitions. For the purposes of this Chapter, unless the context otherwise requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.

468. Bar to taking cognizance after lapse of the period of limitation.-(1) Except as otherwise provided elsewhere in this Code, **no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.**

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

¹[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

469. Commencement of the period of limitation. (1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier, or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

7. The **classification** of offences has been mentioned in the **first schedule** of the Code of Criminal Procedure. The relevant part of the First Schedule in respect of Sections 379 & 411 are being quoted below :-

Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or Non-bailable	By what court triable
379	Theft	Imprisonment for 3 years, or fine or both	Cognizable	Non-bailable	Any Magistrate
411	Dishonestly receiving stolen property knowing it to be stolen	Imprisonment for 3 years, or fine or both	Cognizable	Non-bailable	Any Magistrate

”

8. Learned A.G.A., Shri Pankaj Kumar Tripathi, submits that in this case, after expiry of the period as prescribed under law, cognizance cannot be taken but the learned Judicial Magistrate has taken cognizance

beyond the limitation period as provided under Sections 468 and 469 Cr.P.C.

9. The then Chief Judicial Magistrate, Firozabad, Minakshi Sinha, in her explanation dated 12.12.2025, mentioned in paragraph Nos. 4 and 6 with an assurance that she will be more careful in future. Paragraph Nos. 4 and 6 of the aforesaid explanation are quoted hereinbelow:

“

4. That as regards the allegations of the two accused persons named above before the Hon'ble Court that the issue of limitation being involved in the matter was not taken note of and not mentioned in the cognizance taking order dated 27.11.2024, it is most humbly submitted to the Hon'ble Court that at the time of taking of the cognizance on 27.11.2024 on the supplementary charge-sheet, none including the Assistant Public Prosecutor of the State had invited my attention to the issue of limitation and due to bona fide oversight the point of limitation did not come to my mind and in all good faith the said cognizance taking order was passed by me on 27.11.2024 on the supplementary charge-sheet in discharge of my judicial functions of my court. It is humbly submitted to the Hon'ble Court that as per the usual practice prevalent in all magisterial courts in the State of Uttar Pradesh, and perhaps in other states too, no in depth enquiry or examination of the record is made on receiving the police report i.e. the charge-sheet (or the final report) for purposes of taking cognizance of the offences and only a prima facie view is formed by the Magistracy on the basis of material contained in the case diary.

6. That in case, the Hon'ble Court still finds any lapse on my part in passing the aforesaid cognizance taking order dated 27.11.2024 on the said supplementary charge-sheet, it is most humbly submitted that the same had not occurred on account of any mala fides on my part but as a matter of purely bona fide oversight for which I most sincerely regret to the Hon'ble Court and assure to be more careful in future.

”

10. The then Chief Judicial Magistrate, Firozabad, Minakshi Sinha, who is currently posted as the Chief Judicial Magistrate, Saharanpur has not submitted explanation as person having knowledge of law but as a layman, as per her explanation “as per the usual practice prevalent in all magisterial courts in the State of Uttar Pradesh, and perhaps in other states too, no in depth enquiry or examination of the record is made on receiving the police report i.e. the charge-sheet (or the final report) for purposes of taking cognizance of the offences and only a prima facie view is formed by the Magistracy on the basis of material contained in the case diary”. Such practice cannot substitute a law which is not mentioned in the Code of Criminal Procedure. For such

explanation and passing of impugned order, it may be assumed that she is taking her judicial service very lightly and is not treating it as a serious obligation to impart justice. The behaviour as well as the conduct of the Presiding Officer as reflected from her explanation as well as cognizance order deserves initiation of departmental proceedings, as the same *prima facie* demonstrates conduct unbecoming of the office held by her, but taking a very lenient view, this Court is silent on this aspect.

11. The Chief Judicial Magistrate, Minakshi Sinha, is directed to be more cautious in future and to pass orders strictly in accordance with law and existing law may not be substituted by practice (if any) is illegally prevalent in all the Magisterial Courts in the State of U.P.

12. The other Judicial Magistrates as well as courts are also directed not to follow such practice, as mentioned in the explanation of the Chief Judicial Magistrate, Minakshi Sinha.

13. The **Registrar General of the Allahabad High Court** is directed to communicate this order to the Judicial Training and Research Institute (J.T.R.I.), Lucknow to impart such training to the Judicial Officers, as cognizance is the base of a criminal case so cognizance order must be passed in accordance with law.

14. Learned counsel for the applicant submits that as per the judgment of the Hon'ble Supreme Court in **P.K. Chaudhary vs. Commander, 48 BRTF (GRET); (2008) 13 SCC 229** and **Surinder Mohan Bikal vs. Ascharaj Lal Chopra; (1978) 2 SCC 403** as well as **State of Punjab v. Sarwan Singh; (1981) 3 SCC 34**, the learned court cannot take cognizance after expiry of the limitation period.

15. This Court has gone through the entire facts of the case as well as the provisions of law laid down by the Hon'ble Supreme Court in the judgments of **P.K. Chaudhary** (supra), **Surinder Mohan Bikal** (supra) as well as **Sarwan Singh** (supra) and has formed the opinion that where a provision is mandatory, the court should not take cognizance contrary to the mandate of law.

16. Accordingly, the entire proceeding of case No. 94500 of 2024 (State Vs. Sooraj Thakur and another), arising out of case crime No.246 of 2019, under Sections 379, 411 IPC, Police Station- Firozabad North, District Firozabad, pending in the court of Chief Judicial Magistrate Firozabad as well as charge sheet dated 26.06.2021 alongwith cognizance order dated 27.11.2024 passed by Chief Judicial Magistrate Firozabad in respect of the applicant Avneesh Kumar and co-accused Suraj Thakur are hereby **quashed**.

17. The proceedings against the other five accused namely, (i) Aman Sakya, (ii) Tanuj Gautam, (iii) Adarsh Yadav, (iv) Vishal @ Raja and (v) Rahul @ Bhagauna shall continue, against whom separate charge-sheet was submitted and cognizance was taken within the period of limitation.

18. Accordingly, the application is **disposed of**.

(HON'BLE PRAVEEN KUMAR GIRI, J.)

January 19, 2026

K.Tiwari