



2026:AHC-LKO:374

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**APPLICATION U/S 482 No. - 10838 of 2025**

Jitendra Nath Singh Yadav And Another

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.  
And Another

.....Opposite  
Party(s)

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Counsel for Applicant(s) : Ajai Krishna Yadav, Mansha Shukla  
Counsel for Opposite Party(s) : G.A.

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**Court No. - 16**

**HON'BLE BRIJ RAJ SINGH, J.**

1. Notice to opposite party No. 2 is dispensed with since this court is proceeding to decide the case finally.
2. Heard Sri Ajai Krishna Yadav, learned counsel for the applicants as also the learned A.G.A. and perused the record.
3. The applicants herein have filed this application with the prayer to quash the entire proceedings of complaint case no. 112879/2024, including the order dated 13.11.2024 by means of which the protest application has been treated as complaint and the summoning order dated 22.09.2025 under section 354, 504, 506, 341 I.P.C., pending in the court of Additional Chief Judicial Magistrate-V, Court no. 29, Lucknow.
4. It is case of the applicants that complaint case no. 112879/2024 is the genesis of the F.I.R. lodged by opposite party no. 2 under Sections 354, 504, 506, 341, I.P.C., which after due investigation resulted in final report No. 1 of 2023 and protest application moved by opposite party No. 2 has been wrongly treated as 'complaint' by the learned court below in violation of law propounded by Hon'ble the Supreme Court in the case of **Vishnu Kumar Tiwari v. State of U.P., (2019) 8 SCC 27**, wherein the procedure has been explained, which is to be adopted by the Magistrate while dealing with the protest application.
5. The F.I.R. was registered at Case Crime No. 298 dated 30.09.2023

under Sections 354, 504, 506, 341, I.P.C. by opposite party No. 2. On 25.08.2023, a case was fixed before the Chief Judicial Magistrate (Customs), Lucknow, the applicants and wife of applicant No. 2 appeared before the court in morning around 10.30 a.m. and since the Members of the Bar were abstaining from work, the next date was fixed with order to prepare the copies of the compliance of Section 207 Cr.P.C., as such the applicants after making their attendance left the court premises at around 11 a.m. It appears that the opposite party No. 2 visited the court at around 2.00 p.m. and coming to know that applicants and wife of applicant No. 2 have marked their attendance and had already left, she got an opportunity to fabricate a fictitious story against the applicants. The investigating officer after investigation, i.e. after recording the statements of witnesses as well as after collecting the other documents found that applicants could not have been charged, therefore, he filed a final report on 28.12.2023. The opposite party no. 2 filed a protest application against the final report on 24.10.2024. The Magistrate rejected the final report on 13.11.2024 and directed the protest application to be registered as 'complaint' and also directed for issuance of notice to the applicants.

6. It has been further stated by counsel for the applicants that the protest application filed by opposite party No. 2 was made with a prayer for further investigation with the allegation that the Police did not investigate the matter properly. The opposite party No. 2 mainly pointed out an error in the case diary where at some places in later part of case diary, the mobile number of applicant has been written as mobile number of applicant No. 1 and annexed the parts of case diary. Contents of the protest application were only that the investigating officer did not investigate the case properly, therefore, final report filed by the Police should be rejected and further investigation be directed.

7. It is further submitted by learned counsel for the applicants that the court below failed to consider the fact that in the instant case the protest application cannot be treated as complaint for the reason that the protest application neither had any material apart from alleged case diary nor the names of witnesses were disclosed in the said application, as such the order dated 13.11.2024 rejecting the final report and treating the protest application as complaint suffers from manifest error of law.

8. In pursuance to the order dated 13.11.2024 no notice was ever served on the applicants and on 16.05.2025 statement of the complainant was recorded under Section 200 Cr.P.C. wherein the complainant reiterated her earlier version as stated in the statement under Section 161 Cr.P.C. and F.I.R. Thereafter, statement of one Kalpana Kumari of District Barabanki under Section 202 Cr.P.C. was also recorded on 09.06.2025, as witness.

9. It has been submitted that witness under Section 202 Cr.P.C., namely, Kalpana Kumari, is just a hearsay witness and as per her deposition she asked the complainant and the complainant told her that two persons, who are her neighbours, are forcing her to take back the case against them and they were uttering abusive words, touching her inappropriately and pulling her by hand. The witness belongs to District Barabanki, however, she neither revealed as to how she knew the complainant and her profession nor did she reveal as to why she was in Lucknow at court premises on the alleged date.

10. Learned counsel for the applicants has vehemently submitted that there is no complaint in the format and also there is no list of witnesses, but the learned Magistrate has treated the protest petition as complaint wherein there is also no prayer to treat this application as complaint. Counsel for the applicants has also relied judgment of Hon'ble the Supreme Court in the cases of **Vishnu Kumar Tiwari (supra)**, **Mukhtar Zaidi v. State of U.P. & anr., arising out of S.L.P. (Crl.) No. 9122 of 2021**, decided on 18.04.2024. The relevant para in **Vishnu Kumar Tiwari (supra)** are 42 to 46, which are quoted hereinbelow:

*"42. In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint. The fact that he may have jurisdiction in a case to treat the protest petition as a complaint, is a different matter.*

*Undoubtedly, if he treats the protest petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the protest petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the protest petition as a complaint, the remedy of the complainant would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.*

*43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In Mahabir Prasad Agarwala v. State [Mahabir Prasad Agarwala v. State, 1957 SCC OnLine Ori 5 : AIR 1958 Ori 11] , a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with the provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in Qasim v. State [Qasim v. State, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows: (Qasim case [Qasim v. State, 1984 SCC OnLine All*

260 : 1984 Cri LJ 1677] , SCC OnLine All para 6)

"6. ... In *Abhinandan Jha* [*Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] also what was observed was "it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint". This observation would not mean that every protest petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under Section 200 CrPC. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case."

(emphasis supplied)

44. We may also notice that in *Veerappa v. Bhimareddappa* [*Veerappa v. Bhimareddappa*, 2001 SCC OnLine Kar 447 : 2002 Cri LJ 2150] , the High Court of Karnataka observed as follows: (SCC OnLine Kar para 9)

"9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 CrPC, but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) CrPC on a complaint. If it were to be so, the

*protest petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) CrPC, and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) CrPC. Instead, if it is to be simply styled as a protest petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 CrPC."*

*45. "Complaint" is defined in Section 2(d) of the Code as follows:*

*"2. (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

*Explanation.--A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"*

*46. If a protest petition fulfils the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections of the second respondent against the final report."*

11. After going through the record I find that there is prayer for further investigation in the protest application and the same is also not supported by any witness. If the protest petition fulfills the requirement of a

complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200, read with Section 202 Cr.P.C., however, in the instant case there is no list of witnesses, the prayer in the protest petition is to set aside the final report and to allow the application against the final report. The question before this court is whether such application filed by the opposite party No. 2 could have been treated as complaint, has been answered by Hon'ble the Supreme Court in the case of **Vishnu Kumar Tiwari (supra) and Mukhtar Zaidi (supra)**, therefore, the application is **allowed**. Complaint case no. 112879/2024, including the order dated 13.11.2024 by means of which the protest application has been treated as complaint and the summoning order dated 22.09.2025 under section 354, 504, 506, 341 I.P.C., pending in the court of Additional Chief Judicial Magistrate-V, Court no. 29, Lucknow, are hereby **quashed**.

12. However, it is made clear that the Magistrate had already recorded its satisfaction that it was a case worth taking cognizance and fit for summoning the accused, I am of the opinion that the Magistrate ought to have followed the provision and procedure prescribed under Chapter XV of the Cr.P.C., therefore, in view of the law laid down by Hon'ble the Supreme Court, the case is remanded before the Magistrate and it will be open for the Magistrate to treat the protest petition as complaint and proceed in accordance to the law laid down under Chapter XV of the Cr.P.C.

**(Brij Raj Singh,J.)**

**January 6, 2026**

A.Nigam