

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

Judgement Reserved on 21.03.2025

Judgement Delivered on 04.04.2025

**Court No. - 53**

**Case :-** APPLICATION U/S 482 No. - 10344 of 2010

**Applicant :-** Smt. Shailja Nagar

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Amit Kumar Mishra,Ranjit Saxena

**Counsel for Opposite Party :-** Abhilasha Singh,Ashutosh Yadav,M.C. Singh,Rajesh Kr Pandey,Shyam Lal,Yadvesh Yadav

**Hon'ble Anish Kumar Gupta,J.**

1. The instant application under Section 482 Cr.P.C. has been filed by the applicant seeking quashing of the order dated 31.10.2009, whereby the application of the opposite party no.2 under Section 156(3) Cr.P.C. was directed to be treated as a complaint case for want of evidence, as no document was produced alongwith the application to support the allegations. The instant application also seeks quashing of the order dated 30.01.2010, passed in Complaint Case no. 5285 of 2009 (Yogeshwar Raj Nagar vs. Smt. Shailja Nagar) whereby, in the aforesaid complaint, the applicant herein has been summoned for the offence under Section 420 I.P.C. While admitting the instant application on 08.04.2010, this Court has directed that no coercive action shall be taken against the applicant in the aforesaid complaint case and the interim order so granted was extended time to time.

2. The brief facts of the instant case are that one Major Deshraj Singh, the father of the opposite party no.2 and the father-in-law of the applicant herein had established a Society, namely '*Spring Dale Academy*', which was registered under the Societies

Registration Act, 1860 in the year, 1988 and the name of the said Society was subsequently got changed as '*Rajbala Spring Dale Academy*', which was approved by the Registrar, Firms Societies and Chits, Meerut. The said Major Deshraj Singh had died on 17.03.2003. After the death of Major Deshraj Singh, a dispute arose between the parties with regard to management of the affairs of the *Rajbala Spring Dale Academy*. The applicant herein is the wife of real brother of the opposite party no.2. The husband of the applicant herein had died. The opposite party no.2 had claimed that his father, Major Deshraj Singh had executed a *Will* on 10.03.2003 in favour of the opposite party no.2. Thus, he is entitled to manage the affairs of the Society. Whereas the applicant herein, after the death of said Major Deshraj Singh, had got conducted a meeting of the Management Committee of the said *Rajbala Spring Dale Academy* and subsequently on 06.04.2003, got herself elected as the Chairman of the Management Committee and thereupon she had submitted the documents with the Registrar of Firms Societies and Chits, Meerut and application alongwith affidavits and the proceedings of Management Committee on 14.05.2003, which was approved by the Registrar on 20.05.2003. Thus, she claimed to have been duly elected Chairman of the said society.

3. The opposite party no. 2, who claimed right to manage the affairs of the Society on the basis of the *Will* executed by his father raised objections and thus, the dispute continued between the parties with regard to management of the affairs of the Society, which has traveled upto the Apex Court. The validity of the elections held time to time were challenged and the dispute between the parties continues. In view of the aforesaid dispute between the parties, which was purely of a civil nature the parties herein lodged criminal cases against each other.

4. The applicant had lodged an F.I.R. in which Final Report was submitted and after sometimes she again filed a complaint for the same cause of action in which the opposite party no.2 was summoned, for which the said summoning order was challenged in revision petition and subsequently by way of a petition under Article 227 of the Constitution of India before this Court. The applicant herein had also filed an Application under Section 482 Cr.P.C., challenging the order whereby a protest application was rejected and Final Report was accepted. Vide judgement and order dated 06.03.2025, the application under Article 227 was *allowed* and proceedings against the opposite party no.2 and his wife were *quashed* and the Application under Section 482 Cr.P.C. filed by the applicant herein was *rejected*.

5. On 26.10.2009, the opposite party no.2 herein had filed an application under Section 156(3) Cr.P.C. and has prayed for registration of F.I.R. against the applicant herein, alleging that in the application dated 06.04.2003, the applicant has constituted a forged Committee wherein she had shown all the life members to be present in the meeting of the Management Committee, whereas signatures of only five persons were obtained. In the said meeting, one Madanlal Yadav has been shown to be a member of the said Committee, who had died on 20.07.2000. It is further alleged that alongwith the said application various evidences were submitted of the other life members, who were not actually the life members of the said Society. Thus, the entire proceeding was a forged proceeding, thus, F.I.R. has been requested to be registered against the applicant herein.

6. The aforesaid application under Section 156(3) Cr.P.C. filed by the opposite party no.2 was directed to be treated as a complaint

case for want of evidence vide order dated 31.10.2009.

7. Subsequent thereto, statement of witnesses under Sections 200 and 202 Cr.P.C. were recorded and thereupon vide impugned order dated 30.01.2010, the applicant herein was summoned under Section 420 I.P.C. The submission of learned counsel for the applicant is that very foundation of the complaint i.e., the order dated 22.12.2008 has already been set-aside and modified by the subsequent orders passed by the Prescribed Authority. As per the direction of this Court, passed in Second appeal and the Committee constituted by the applicant herein has been found to be a valid Committee. Therefore, there is no basis for any commission of offence as alleged against the applicant herein.

8. Learned counsel for the applicant further submits that the dispute between the parties is purely of a civil nature with regard to the management of the affairs of the Society, therefore, the criminal prosecution is unwarranted and is not sustainable in law. Thus, he prays for quashing of the impugned orders dated 31.10.2009 and 30.01.2010. Learned counsel for the applicant further submits that while issuing summons in a criminal case on a complaint made by the opposite party no.2, the learned Magistrate has failed to apply its mind to the facts of the case and has not even discussed the statement of witnesses recorded under Sections 200 and 202 Cr.P.C. The learned trial court has merely recorded the contents of the complaint and recorded that merely because an order dated 22.12.2008 has been passed against the applicant by the Registrar, Societies, Meerut, holding that the proceedings for her election by the applicant initiated on 06.04.2003 was found to be forged proceedings. Thus, the summoning order has been passed, on the basis of said observations, in the order dated

22.12.2008 without there being any material available before it. Whereas the said application under Section 156(3) Cr.P.C was directed to be treated as a complaint case on the same allegation for want of evidence in the matter. No further evidence has been produced except the statements of witnesses under Sections 200 and 202 Cr.P.C. which has not even been discussed in the impugned order dated 30.01.21010. Thus, the summoning order dated 30.01.2010 is an order without application of mind.

**9.** It is further submitted by learned counsel for the applicant that the basis of the application under Section 156(3) Cr.P.C. and the complaint is an order dated 22.12.2008 passed by Deputy Registrar, Societies, Meerut, who has given a finding that the Committee formed by the applicant was a forged Committee and the Committee constituted by the opposite party no.2 on 21.10.2008 was found to be a valid Committee. The said order dated 22.12.2008 was challenged by the applicant by filing the Writ Petition No. 24623 of 2009, which was *disposed of* on 27.03.2009. The aforesaid order dated 27.03.2009 was modified in Second Appeal vide order dated 30.04.2009, whereby the order dated 22.12.2008 was set-aside and the matter was redirected to the Prescribed Authority without expressing any opinion on merits. Against the order dated 30.04.2009 passed in Second Appeal, Special Leave Petition was filed by the opposite party no.2, which was dismissed vide order dated 04.01.2010. Subsequent thereto, vide order dated 23.05.2013, the election of the Management of the Society got conducted by the applicant herein on 10.08.2008, was upheld and the election conducted on 21.10.2008 by the opposite party no.2 was *set-aside*. Thus, said finding of Deputy Registrar, Societies, Meerut dated 22.12.2008 was already challenged and was set-aside and modified by the Appellate Court

and the same was upheld even by the Apex Court. Therefore, the said order dated 22.12.2008 does not survive in the eyes of law. Thus, the summoning order is not sustainable. Therefore, he has prayed for quashing of the said order.

**10.** In support of his case, learned counsel for the applicant has relied upon the judgements of the Apex Court in ***Delhi Race Club Ltd. vs. State of U.P. : (2024) 10 SCC 690, A.M. Mohan vs. The State Represented by SHO and Another : (2024) 3 S.C.R. 722 and Mohammed Ibrahim and Others vs. State of Bihar and Another : (2009) 8 SCC 751.***

**11.** *Per contra*, learned counsel for the opposite party no.2 submits that there is due application of mind by the Magistrate by summoning the applicant herein for the offence under Section 420 I.P.C. as for the rest of the offences under Sections 457, 468, 471 I.P.C., he has given his findings that no *prima facie* case is made out against the said offences. Thus, there is no illegality in the said summoning order passed by the trial court, therefore, he prayed for dismissal of the instant complaint filed by the applicant herein.

**12.** On the query made by this Court, learned counsel for the opposite party no.2 could not dispute that the validity of the said order dated 22.12.2008 was under challenge, which has traveled upto the Apex Court and the same has not sustained and subsequently fresh order has been passed by the Prescribed Authority holding the election of the applicant as valid election and the election of the opposite party no.2 was set-aside and the disputes are still pending in courts with regard to Management of the Society.

**13.** Learned A.G.A. submits that at the time of passing of the

impugned summoning order dated 30.01.2010, it was not brought to the notice of the Magistrate that the order dated 22.12.2008 was set-aside and on the basis of the findings recorded in order dated 22.12.2008, the summons have been issued in the instant case. Thus, while passing the summoning order there is no illegality on the part of the Magistrate. He further submits that the order dated 30.10.2009, the trial court having recorded its findings that there is no sufficient material for registration of the F.I.R., has thus directed to be treated the same as a complaint case, so that the evidence can be led by the parties. However, since the basis of the summoning i.e., the order dated 22.12.2008 passed by the Deputy Registrar, Societies, Meerut has gone, thus further prosecution in the instant case is unwarranted.

**14.** Having heard the submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. In the instant case, the pure and simple dispute between the parties is with regard to the management of the Society, which is a purely civil dispute for which criminal prosecution is not sustainable in law. From the material available on record, it is fully established that the very basis of the complaint case lodged by the opposite party no.2 is the order dated 22.12.2008 passed by the Deputy Registrar, Societies, Meerut, which was challenged in the writ petition and in the Second Appeal the same has already been set-aside and a fresh order has been passed by the Prescribed Authority in accordance with law, whereby the election of the applicant has been upheld and the election of the opposite party no.2 is set-aside. In the Second Appeal, the order dated 22.12.2008, was already set-aside by the Division Bench of this Court vide order dated 30.04.2009, against which an SLP was filed, which was also dismissed.

**15.** Thus, the order dated 22.12.2008 does not survive in the eyes of law, which was the foundation of the instant complaint case, on the basis of which the summoning order was passed. From the perusal of the order dated 30.01.2010, it is apparent that the learned Magistrate has merely noted the allegations as noted in the complaint and without analyzing any evidence led by the parties, has found a *prima facie* case and summoned the applicant herein, merely, on the basis of the order dated 22.12.2008 passed by the Registrar, which has already been set-aside vide order dated 30.04.2009 before passing the said summoning order and the opposite party no.2 being fully aware of the order dated 30.04.2009 passed by this Court and the order dated 04.01.2010 whereby the Special Leave Petition filed by the opposite party no.2 was dismissed, has deliberately concealed the aforesaid fact before the learned Magistrate and has obtained the said summoning order against the applicant herein. Therefore, since the order dated 22.12.2008 was already set-aside by this Court against which SLP was also dismissed, which was the very basis of filing of the complaint.

**16.** In view thereof, the very foundation of the instant complaint case has gone and does not survive even before passing of the summoning order. Therefore, the summoning order dated 30.01.2010 as well as the entire proceedings of the instant complaint case are liable to be quashed and are hereby ***quashed***.

**17.** The instant application is ***allowed*** accordingly.

**Order Date :-** 4<sup>th</sup> April, 2025  
*Shubham Arya*

**(Anish Kumar Gupta, J.)**