2025:AHC:172468

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 20941 of 2025

Jitendra And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Ram Pravesh Yadav
Counsel for Opposite Party(s)	:	Brajesh Kumar Singh, G.A.

Court No. - 72

HON'BLE DEEPAK VERMA, J.

1. Supplementary affidavit filed today is taken on record.

2. Heard learned counsel for the applicants, Sri Brajesh Kumar Singh, learned counsel for the informant, learned AGA for the State and perused the material available on record.

3. The present 528 BNSS application has been filed to quash the charge-sheet dated 07.11.2020, cognizance order dated 26.11.2020 as well as the entire proceeding of Case No.11637 of 2020 (State Vs. Jitendra and others), arising out of Case Crime No. 0040 of 2020, under Sections 406, 420 I.P.C., P.S. Jasrana, District Firozabad pending in the court of A.C.J.M-II, Shikohabad, Firozabad.

4. Counsel for the applicant submitted that applicant is innocent and has been falsely implicated in the present case. The evidence collected by Investigating Officer not disclosing offence against the applicant. The charge sheet submitted under Sections 420 and 406 IPC is not supported by cogent evidence and is liable to set aside. Applicant has been roped in the present case due to mala fide intention. Cognizance/Summoning order passed by learned Magistrate, is without application of his judicial mind and the same is liable to be quashed. He further submitted that proceedings under Sections 420 and 406 I.P.C. cannot run jointly in view of the judgment of Apex Court in ***Delhi Race Club (1940) Ltd. vs. The State of Uttar Pradesh & Anr.*, 2024 SCC OnLine SC 2248,** wherein the Apex Court in paragraphs 42 and 43 has held thus:

"42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police ? to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other."

5. Per contra, learned AGA opposed the submissions raised by learned counsel for the applicant.

6. Considering the facts and circumstances of the case, charge sheet has been submitted by Investigating Officer under Sections 406 and 420 IPC. In view of the judgments of Hon'ble Apex Court in ***Delhi Race Club (1940) Ltd. vs. The State of Uttar Pradesh & Anr.*** (supra) both the offences cannot simultaneously run. The Hon'ble Apex Court in **State of Gujarat vs Girish Radhakishan Varde (2014) 3 SCC 659,** the Hon'ble Apex Court held that court has no power to include or exclude the sections of IPC in charge sheet submitted by Investigating Officer. Paragraph nos.15 and 18 is quoted below:-

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a

remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or substract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under section 228 of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.

18. Since the instant case is based on FIR lodged before the police, the correct stage for addition or subtraction of the sections will have to be determined at the time of framing of charge."

7. The offence under Section 406 and 420 cannot run simultaneously in view of the Apex Court judgement passed in ***Delhi Race Club (1940) Ltd. vs. The State of Uttar Pradesh & Anr.*** (supra). Since the Investigating Officer has submitted charge sheet under Section 406 and 420 IPC, therefore, in view of the Apex Court judgements, court cannot include or exclude crime sections in the charge sheet submitted by Investigating Officer. At this stage, this

Court is not inclined to allow the prayer made in the present application.

8. The defence version of the applicant has to be considered by the court concerned at the appropriate stage. The accused/applicant has statutory remedy of moving discharge application before the court concerned at the appropriate stage.

9. Considering the material on record, it is directed that, if objection/discharge application is filed on behalf of the applicant before the court concerned within thirty days, it is expected that the court concerned will consider and decide the same expeditiously within a period of two months in accordance with law. Till the disposal of discharge application, no coercive action will be taken against the applicant.

10. With the aforesaid observations/directions, this application under Section 528 BNSS stands ***disposed of*.**

(Deepak Verma,J.)

September 24, 2025
Kpy

Digitally signed by :-
KAVLESHWAR PRASAD YADAV
High Court of Judicature at Allahabad