



2025:JHC-1 K03:25792

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 10609 of 2025

Sheikh Mirajul @ Sk. Mirajul Islam

.....Applicant(s)

Versus

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

.....Opposite
Party(s)

Counsel for Applicant(s)	: Saubhagya Mishra, Abhishek Mishra
Counsel for Opposite Party(s)	: G.A., Puneet Saxena

Court No. - 29

HON'BLE DIVESH CHANDRA SAMANT, J.

1. Heard learned counsel for the applicant, Sri Puneet Saxena, learned counsel for the opposite party No. 2 and learned A.G.A. for the State.

2. Present 482 Cr.P.C. application has been filed with the prayer to quash the entire criminal proceeding arising out of Case Crime No. 52 of 2024 under Sections 406 and 420 I.P.C., Police Station-Saadatganj, District-Lucknow, in which charge sheet No. 01 dated 31.05.2025 has been filed and summoning order dated 02.07.2025, Bailable Warrant dated 06.08.2025 and Non Bailable Warrant dated 10.11.2025 have been issued by the Judicial Magistrate, ATS, Lucknow, Pratapgarh.

3. It has been argued by the learned counsel for the applicant that the opposite party No. 2 has adopted criminal procedure for recovery of amount which was given to the applicant as loan and in lieu thereof, the applicant has given four blank cheques as security. It is further argued that the opposite party No. 2 has not adopted the civil procedure to recover the said loan amount and just to harass the applicant, present F.I.R. has been lodged. It is further argued that there had been a business relationship between the applicant and opposite party No. 2 of making the ornaments. The applicant has taken money from the opposite party No. 2 and opposite party No. 2 issued legal notice to applicant under Section 138 N.I. Act mentioning the amount given to be Rs. 13,20,000/-.

4. It is further argued that the opposite party No. 2 has adopted two course of proceedings for a single cause of action by giving legal notice under Section 138 N.I. Act and filing F.I.R. under Section 406 and 420 I.P.C., but the grounds so mentioned in the legal notice for the cheque bounce case are

different from the allegation made in the F.I.R. It is further argued that the cognizance order has been taken without considering the essential ingredients of the offence punishable under Section 406, 420 of I.P.C. In support of his submission, learned counsel for the applicant relied upon a judgment of Apex Court in ***Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr. 2024 SCC OnLine SC 2248.***

5. Learned counsel for the opposite party No. 2 has opposed the submission of learned counsel for the applicant and submitted that the present application is not supported by affidavit of the applicant, which is not in accordance with the provision laid down in Chapter 4, Rule 10 of the High Court Rules. It is further argued that the case of the applicant is against the summoning order and contradiction between the legal notice issued for the cheque bounce and the F.I.R. are not to be seen at this stage. It is further argued that the applicant is an absconder and after issuance of process under Section 82/83 Cr.P.C., he has filed present application, which is not tenable.

6. I have considered the submissions advanced by learned counsel for the parties and perused the record as well as judgment relied upon.

7. A copy of the F.I.R. shows that it has been alleged by the informant that the informant-opposite party No. 2 has a business of manufacturing of the ornaments and the applicant was known to him. The applicant cheating the opposite party No. 2, demanded money from him with the request to purchase his house. The informant-opposite party No. 2 has given Rs. 13,20,000/- to the applicant, but later on he came across that the applicant was not the owner of the house for which he had taken money and that the applicant has usurped his money by deceiting him.

8. In the legal notice the fact that Rs. 13,20,000/- was given in lieu of manufacturing of the jewellery has been mentioned, which was not returned and after great persuasion and efforts, three cheques were issued, which were dishonored by the bank.

9. Therefore, it appears that the opposite party No. 2 is taking two versions of the fact regarding the money given to applicant, which creates doubt on the allegations made in the F.I.R. Since, these facts are not available with the case diary and chargesheet has been submitted against the applicant and has taken cognizance against him by summoning him under Sections 406 and 420 I.P.C.

10. Considering the fact that there are cogent grounds regarding doubt over the fact of the F.I.R., it would be appropriate that the applicants appear and move an appropriate application for discharge before the Trial Court.

11. Accordingly, present 482 Cr.P.C. application is **disposed of** with direction that if the applicant appears before the Trial Court and moves appropriate application for discharge within one month from today along with certified copy of this order, the learned Trial Court shall consider the application of discharge and decide the same expeditiously after hearing on the application preferably within a period of two weeks thereafter.

12. If the applicant moves an application as stated above within one month from today, no coercive action shall be taken against the applicant till disposal of the said application.

December 18, 2025

ADY

(Divesh Chandra Samant,J.)