



2026:AHC:98804

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 10086 of 2025

Gaurav Kumar Gupta @ Gaurav Gupta

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	: Ajay Kumar, Akhilesh Chandra Shukla
Counsel for Opposite Party(s)	: Ashish Pandey, G.A., Nikil Pathak

Court No. - 81

HON'BLE ACHAL SACHDEV, J.

1. Heard, learned counsel for the applicant, learned counsel for opposite party no.2 and learned AGA for the State are present.

2. Present application u/s 528 BNSS has been preferred by the applicant challenging the summoning order dated 27-01-2025, passed by Civil Judge(JD)/FTC-1st/ Judicial Magistrate, Hapur, in Complaint Case No.261 of 2024, under sections 406, 504, 506, IPC, by which the applicant has been summoned as an accused.

3. Learned counsel for the applicant has assailed the summoning order broadly on two grounds, which are as follows:-

(a). Absence of an element of entrustment of property as alleged in the complaint.

(b). Absence of any fiduciary relationship between the complainant and the applicant.

4. Learned counsel for the applicant has submitted that the complainant and the applicant have business relation and in the course of several transactions that happened between the complainant and the applicant dating back to the year, a time barred complaint happened to be filed by the complainant despite the fact that there was no outstanding amount due from applicant to the complainant but the trial court, while ignoring the fact that an offence under sections 406, 504, 506, IPC, had become time barred and a frivolous

complaint had been made after the statutory period of three years from the date of last demand made by the complainant through notice. The impugned summoning order is materially defective as the same has been passed without due application of judicial mind to facts and circumstances of the case. Learned counsel for the applicants further submits that the dispute between the applicant and complainant is purely civil in nature and the same could have been resolved by resorting to MSME Act 2006, but the complainant after the lapse of the prescribed period sought the intervention of authorities under MSME Act had elapsed by efflux of time, preferred the present time barred complaint against the applicant in which impugned order happened to be passed by the trial court.

5. Perusal of the the record shows that the complainant filed an application under s.156(3) Cr.P.C., which was subsequently treated as a complaint case, and after recording the statement of the complainant and two witnesses, under section 200 and 202 Cr.P.C., the applicants were summoned as accused under sections 406, 504, 506 IPC.

6. The facts of the complaint in brief are as follows :-

(a) That the applicant is the proprietor of M/s Shilpam Packing and Printing Industries, situated at Kithore Road, Meerut Road, Hapur. The opposite party, Gaurav Kumar Gupta, is the proprietor of M/s Omega Drug Inc., Ghaziabad. The opposite party had been purchasing goods from the complainant's firm for several years, which led to mutual acquaintance and trust between them. At times, goods were supplied on credit, for which the opposite party duly made payment.

(b) That in continuation of this business relationship, an outstanding amount of Rs. 4,17,030/- became due as on 02.06.2020. Thereafter, the opposite party ceased all business transactions with the complainant and failed to discharge the said liability. Despite repeated demands, the opposite party did not pay the outstanding amount.

(c) That being compelled by circumstances, the complainant personally met the opposite party on 07.04.2024 and also served a legal notice on the 23-04-2024

demanding payment of the outstanding dues. However, the opposite party did not relent.

(d) That subsequently, on 24.04.2024, when the complainant met the opposite party in person at his residence in Hapur, the opposite party abused and threatened the complainant, thereby aggravating the matter.

7. The complainant in his statement before the trial court under s.200Cr.P.C, supported the complaint and two witnesses had also been examined under s.202 Cr.P.C. The trial court, after hearing the arguments and examining the record, summoned the applicant as accused under s.406, 504, 506, IPC. The last transaction account between the applicant and the complainant as per the complaint, is of 02-06-2021, after which the applicant ceased all business transactions.

8. In the context of Section 406 IPC, proceedings may be quashed if the complaint or FIR, even if taken at face value, does not disclose the essential ingredients of the offence. A clear absence of allegations regarding entrustment or dishonest misappropriation can be a ground for quashing. The Supreme Court in **Anand Kumar Mohatta v. State (Govt. Of NC T Of Delhi), Department of Home and Another (2019) 11 SCC 706**, emphasized the need to ascertain if the facts make out an offence under Section 406 IPC.

9. The punishment for an offence under Section 406 IPC is imprisonment which may extend to three years, or with fine, or with both. Consequently, as per Section 468(2)(c) of the Code of Criminal Procedure, 1973 (CrPC), the period of limitation for taking cognizance of such an offence is three years. The commencement of the limitation period can be contentious, particularly in cases involving commercial transactions where it might be argued to commence from the date of demand and refusal. Section 406 IPC is generally not considered a continuing offence. However, Section 473 CrPC empowers a court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and the circumstances of the

case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

10. In the case in hand, the last transaction, as per complaint, is of 02-06-2021 and notice of demand as per complaint, is of 23-04-2024, and complaint was filed on 30-04-2024 and cognizance on complaint was taken on 23-05-2024. The complaint cannot be held to be barred by limitation.

11. Section 406 of the Indian Penal Code, 1860 (IPC) prescribes the punishment for the offence of criminal breach of trust. This provision plays a crucial role in upholding fiduciary relationships and ensuring accountability for the misappropriation of property entrusted to another. Criminal breach of trust, as defined in Section 405 of the IPC, is a nuanced offence, requiring a careful examination of the elements of entrustment, dishonest misappropriation, and the violation of legal or contractual duties.

12. Section 406 IPC is intrinsically linked to Section 405 IPC, as the former provides punishment for the offence defined by the latter.

13. Section 405 IPC defines , Criminal breach of trust. "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."

14. This definition is further elucidated by two explanations, which create deeming fictions in specific employer-employee contexts.

15. Explanation 1 pertains to deductions made by an employer from an employee's wages for contribution to a Provident Fund or Family Pension Fund. If the employer defaults in remitting such contributions, they are

deemed to have been entrusted with the amount and to have dishonestly used it.

16. Similarly, Explanation 2 addresses deductions for the Employees' State Insurance Fund, with a similar deeming provision for default in payment.

17. For a conviction under Section 406 IPC, the prosecution must prove the commission of criminal breach of trust as defined in Section 405 IPC.

18. In **Binod Kumar And Others v. State Of Bihar And Another (2019) 16 SCC 739**, the Supreme Court reiterated that the prosecution must prove:

(i.) entrustment with property or dominion over it; and

(ii) dishonest misappropriation, conversion, use, or disposal of that property in violation of law or legal contract.

19. The cornerstone of criminal breach of trust is 'entrustment'. The expression "entrusted" as used in Section 405 IPC is not a term of art with a narrow technical meaning. Entrustment implies that the accused was voluntarily handed over property for a specific purpose, creating a relationship of trust and confidence.

20. At this stage, it is crucial to distinguish entrustment from other transactions. For instance, a mere transaction of sale does not amount to entrustment. Similarly, the Supreme Court in **Indian Oil Corpn. v. Npc India Ltd. And Others (2006) 6 SCC 736**, held that hypothecation of goods as security for a debt does not constitute "entrustment" as required under Section 405 IPC, because ownership and possession (subject to the hypothecatee's rights) remain with the debtor. The absence of a clear allegation or proof of entrustment is fatal to the prosecution under Section 406 IPC, as highlighted in cases like **Pradeep Kumar Alias Pradeep Kumar Verma v. State Of Bihar and Another (2007) 7 SCC 413**, **Arti And 3 Others v. State of U.P. and Another**. In **K. Sampath Kumar v. State**, where a contractor purchased cement, it was argued that there was no

entrustment, leading to an alteration of the charge from Section 406 to Section 403 IPC (dishonest misappropriation of property).

21. The second critical element is the "dishonest misappropriation or conversion" of the entrusted property. "Dishonestly" is defined in Section 24 IPC as doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. This implies a deliberate act of using the property for a purpose other than that for which it was entrusted, or converting it to the accused's own use.

22. The dishonest misappropriation or use must be "in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, **Anand Kumar Mohatta supra**.

23. This means the accused's actions must contravene either a statutory duty or a contractual term (whether express or implied) governing how the entrusted property was to be handled. This element underscores the fiduciary nature of the relationship and the breach of the specific terms of that trust.

24. Mens rea, specifically a "dishonest intention," is the linchpin of the offence of criminal breach of trust. A mere failure to return property or a simple breach of contract does not automatically translate into a criminal breach of trust. The prosecution must establish that the accused acted with a dishonest mind. The Supreme Court in **Indian Oil Corpn. v. Npec India Ltd. And Others supra** emphasized the distinction between a civil wrong (breach of contract) and a criminal offence, noting that criminal liability arises when elements like fraudulent or dishonest intention are present. The lack of dishonest intention can lead to the quashing of proceedings under Section 406 IPC.

25. Dishonest intention is the sine qua non of the offence of Criminal Breach of Trust. Mere failure to account for money does not constitute CBT. The prosecution must establish that the accused dishonestly misappropriated or

converted the property. A mere civil liability to pay does not attract Section 406 IPC **Velji Raghavji Patel v. State of Maharashtra (AIR 1965 SC 1433)**.

26. As per the complainant, the disputed amount left outstanding between the complainant and opposite party arose out of subsisting business transactions and nowhere in the complaint the complainant alleges entrustment of any property with any specific direction in regard to its disposal or the specific purpose of entrustment of property. The dispute is purely an accounting issue and a dispute of civil nature that is devoid of any shade or shadow of criminality. The trial court, while passing the summoning order, has totally ignored the nature of transaction that subsisted between the complainant and the opposite party.

27. **The Delhi Race Club (1940) Ltd. and Ors. v. State of Uttar Pradesh (2024) 10 SCC 690** is a recent Supreme Court precedent emphasizing that commercial disputes should not be criminalized unless clear evidence of dishonest intention exists. It is now a strong authority for quashing criminal complaints in business debt recovery matters.

28. In the case of **Ashok Chaturvedi And Others v. Shitul H. Chanchani And Another 1998 AIR SC 2796**, in para 5, Hon'ble Supreme Court has observed :

"But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest (sic earlier) point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the

ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint is a vague one and excepting the bald allegation that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner, and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Penal Code, 1860 cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5-2-1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5-2-1996 taking cognizance of the offence as against the appellants stand quashed."

29. In light of the observations made by The Supreme Court in a catena of judgments, an offence of criminal breach of trust cannot be made out where the transaction arise out of purely business relations ,as in the present case.The summoning order, in so far as s.406 IPC, is devoid of merits and is unsustainable.

30. In so far as offence under s.504 is concerned, the two witnesses examined by complainant in support of complainant viz., Ravindra Kumar Singhal and Amit Kumar Yadav have supported the complainant that the opposite party on 24-04-2024 at 9 pm entered the house of complainant and abused him and threatened to kill him but neither the complainant or the witnesses examined by the complainant have stated before the court the

exact words that were used by the opposite party while abusing him.

31. Section 504 IPC punishes intentional insult made with the intent or knowledge that it is likely to provoke the person insulted into breaching public peace or committing another offence. Mere abuse is not enough; the insult must be of such a nature that it reasonably incites provocation.

32. To establish an offence under Section 504 IPC, prosecution must prove: (i) intentional insult, (ii) provocation, (iii) intent/knowledge of likely breach of peace, and (iv) reasonable likelihood of breach of peace. As per the complaint, the opposite party had entered the house of complainant and had abused him but neither the complainant nor the witnesses have stated that the insult was of such a magnitude that it would have resulted in breach of peace being committed.

33. For an offence under s.506 IPC, The essence of Section 506 IPC is the intention to cause alarm; without this, the offence is not made out. **Romesh Chandra Arora v. State AIR 1960 SC 154**. The ruling emphasized that the offence requires proof of intention to cause alarm. Mere abusive language or indecent conduct is insufficient unless it is calculated to provoke fear or alarm. The complainant himself in his complaint has stated that he issued a legal notice to the opposite party on 23-04-2024 and on 24.04-2024, the applicant came to his house and abused him and threatened to kill him. Even if the statement of the complainant is taken on its face value, the applicant may have approached the complainant to enquire as to the reason for issuance of notice and it is difficult to gather from the fact contained in the complaint that the applicant would go to the house of complainant and threatened him on account of legal notice that was issued by the complainant in regard to demand of outstanding amount.

34. In conspectus, the complainant's case is of doubtful veracity and therefore, the summoning order 27-01-2025, passed by Civil Judge(JD)/FTC-1st/Judicial Magistrate, Hapur, in Complaint Case No.261 of

2024, under sections 406, 504, 506, IPC, is liable to be set aside and the entire proceeding is liable to be quashed.

35. Accordingly, present application u/s 528 BNSS is hereby **allowed**. The summoning order 27-01-2025, passed by Civil Judge(JD)/FTC-1st/ Judicial Magistrate, Hapur, in Complaint Case No.261 of 2024, under sections 406, 504, 506, IPC, is set aside.

April 28, 2026
VKG

(Achal Sachdev,J.)