



2024:0001:105210

## HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 24516 of 2025

Premlal Kashyap @ Premlal Madhesiya And 4  
Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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|-------------------------------|---|-------------------------|
| Counsel for Applicant(s)      | : | Rajesh Kumar Singh      |
| Counsel for Opposite Party(s) | : | G.A., Sapan Kumar Singh |

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**Court No. - 83**

**HON'BLE SANJIV KUMAR, J.**

1. Heard Mr. Rajesh Kumar Singh, learned counsel for the applicants, Mr. Rajesh Kumar, learned AGA for the State, Mr. Sapan Kumar, learned counsel for opposite party no.2 and perused the record.

2. This application under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS'), has been filed to quash charge-sheet dated 21.07.2024, cognizance order dated 21.03.2025 as well as entire proceedings of Case No. 7199 of 2025 (State Vs. Rampravesh Madhesiya and others), arising out of Case Crime No. 84 of 2024, under Sections 420, 467, 468, 471, 506 IPC, Police Station Kotwali Hata, District Kushinagar, pending before the court of learned Chief Judicial Magistrate, Kushinagar at Padrauna.

3. Brief facts of the case are that opposite party no.2, Poonam Singh, daughter of Surendra Singh, lodged an FIR against the applicants, stating that her father is an habitual drunkard and as a result he is mentally disturbed. It is alleged that, taking advantage of her father's condition, the accused-applicants Ram Pravesh Kashyap, Pradeep Kashyap, Anil Kashyap and Premlal Kashyap have got a sale deed executed by him on 15.01.2021 of her grand mother's agricultural land bearing *Arazi* No. 215 area 0.085 hectare, and *Arazi* No. 260. It is further alleged that they have got the above sale deed executed on the basis of forged entry of first informant's father, Surendra Singh, name in *khatauni Fasli Year 1426-31* and the above sale deed was got executed by accused-applicant Ram Pravesh in the name of his mother Smt Satti Devi, who is the wife of

Premal Kashyap, for a sale consideration of only Rs.4,00,000/-. Whereas on the basis of circle rate, the value of above land amounts to Rs. 43,00,000/-. The informant has further alleged that now first informant's mother, sister and younger brother are being threatened to vacate the above land otherwise the entire family members would be killed. Earlier also, due to mental and physical condition of first informant's father, two sale deeds were got executed by way of cheating.

4. Upon this information, FIR under Sections 420, 467, 468, 471, 506 IPC was lodged and after investigation, charge-sheet has been filed under the same Sections against all the named accused-applicants.

5. Learned counsel for the applicants submits that the applicants have filed Criminal Misc. Writ Petition No. 4186 of 2024 against the present FIR dated 28.01.2024 and the Hon'ble Court vide order dated 19.03.2024 stayed the arrest of the applicants till the filing of police report under Section 173(2) Cr.P.C. and the same is still pending for disposal. It is further submitted that the first informant's father Surendra filed a Case No. 90 of 2018, in which, by order dated 30.01.2018, the name of Surendra Singh and Narendra Singh, son of Tunni was recorded as heir in place of deceased Anari Devi in *khatauni* on *Arazi* No. 260 and *Arazi* No. 215. It is argued that the father of the first informant has executed a registered sale deed in favour of Satti Devi, after taking full consideration. Smt. Satti Devi filed a mutation proceedings under U.P. Revenue Code, 2006 before Tehsildar, Hata, District Kushinagar and vide order dated 21.11.2023, her name has been recorded in place of Surendra son of Tunni.

6. Learned counsel for the applicants next submits that Surendra filed a civil suit before Civil Judge (Junior Division), Kasia, Kushinagar as Case No. 2215 of 2023, which is pending for disposal. The first informant's mother Bindu Devi, wife of Surendra, also filed a suit for cancellation of sale deed dated 15.01.2021 bearing Case No. 2275 of 2022 before the Civil Judge (Junior Division), Kasia, Kushinagar, which is also pending.

7. It is contended on behalf of the applicants that applicant no.1, Premal, lodged an FIR on 16.01.2024 in regard to an incident dated 12.01.2024 registered as Case Crime No. 53 of 2024, under Sections 420, 467, 465,

471, 506 IPC against the first informant and her brother Arjun Singh for assault and hurling abuses. It is submitted that to harass the applicants and their family members, the present FIR has been lodged on false and concocted facts. It is also submitted that the dispute is essentially civil in nature, which has been given criminal colour. The applicants have never forged any document nor manipulated the extract of *khatauni* as alleged by the first informant. Lastly, it is submitted that the learned Magistrate has not applied his judicial mind while taking cognizance and summoning the accused and the impugned cognizance and summoning order is mechanical in nature.

8. Learned counsel for the applicants has relied upon a decision of Hon'ble Supreme Court in **A.M. Mohan Vs. State, (2024) 12 SCC 181**, with regard to inherent powers of the High Court under Section 482 Cr.P.C. (Section 528 BNSS) and relevant paragraph no. 19 is quoted herein below:

*19. The Court has also noted in Indian Oil Corporation Vs. NEPC India Ltd. (2006) 6 SCC 736, the concern with regard to a growing tendency in business circles to convert purely civil disputes into criminal cases. The Court observed that this is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court also recorded that there is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. The Court, relying on the law laid down by it in the case of G.Sagar Suri and Another v. State of U.P. and others (2000) 2 SCC 636, held that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. The Court also observed that though no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”*

9. He has also relied upon a decision of Hon'ble Supreme Court in **Punit Beriwal Vs. The State of NCT of Delhi and others, 2025 0 Supreme**

(SC) 726, with regard to inherent jurisdiction of High Court under Section 482 Cr.P.C. and relevant paragraph no. 28 reads as below:

**“MERE INSTITUTION OF CIVIL PROCEEDINGS CANNOT ACT AS A BAR TO INVESTIGATION OF COGNIZABLE OFFENCES**

*28. It is trite law that mere institution of civil proceedings is not a ground for quashing the FIR or to hold that the dispute is merely a civil dispute. This Court in various judgments, has held that simply because there is a remedy provided for breach of contract, that does not by itself clothe the Court to conclude that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court. This Court is of the view that because the offence was committed during a commercial transaction, it would not be sufficient to hold that the complaint did not warrant a further investigation and if necessary, a trial. [See: Syed Aksari Hadi Ali Augustine Imam v. State (Delhi Admin.) (2009) 5 SCC 528, Lee Kun Hee v. State of UP (2012) 3 SCC 132 and Trisuns Chemicals v. Rajesh Aggarwal (1999) 8 SCC 686.”*

**10.** Learned counsel for the applicants has next relied upon the decision of **Naresh Kumar and another Vs. The State of Karnataka, (2024) 0 Supreme (SC) 221** with regard to offence under Section 406, 420 IPC and the relevant paragraph no.5 and 6 of the judgment are as below:

*“5. Under these circumstances, we are of the considered view that this is a case where the inherent powers should have been exercised by the High Court under Section 482 of the Criminal Procedure Code as the powers are there to stop the abuse of the process and to secure the ends of justice.*

*6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:*

*“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any*

*court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.” (emphasis supplied).*

*Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr., 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.”*

**11.** In support of his contention that the dispute is essentially civil in nature, learned counsel for the applicants has relied upon the decision of **Inder Mohan Goswami Vs. State of Uttarakhand (2007) 12 SCC 1**. The relevant paragraph nos. 22, 23 and 24 are extracted as below:

*“22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of courts’ powers under section 482 Cr.P.C.*

*23. This court in a number of cases has laid down the scope*

*and ambit of courts' powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:*

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

*24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”*

**12.** Lastly, learned counsel for the applicants has relied upon a decision of Hon'ble Supreme Court in **Sardar Ali Khan Vs. State of U.P., (2020) AIR (SC) 626** in support of his contention that the dispute is essentially civil in nature. The relevant paragraph no.9 is extracted below:

*“9. At the outset it is to be noted that the appellant has purchased the plot in question by sale deed dated 29th December, 1993 which was registered on 5th January, 1994. The father of the 2nd respondent died on 3rd December, 1997. Though the registered sale deed is of 1994, the 2nd respondent filed suit which is pending in O.S. No.160 of 2008, only in the year 2008 seeking cancellation of sale deed alleging that the aforesaid sale deed was got executed by the appellant and his brother, by making use of the acquaintance with his father, in a false and fraudulent manner. There is no allegation of impersonation or forgery of signatures in the suit filed by the 2nd respondent. It is the case of the appellant that even the 2nd respondent is a signatory to the sale deed as a witness. Though the suit was filed in the year 2008, the 2nd respondent has chosen to file the criminal complaint only in the year 2012 alleging forgery and impersonation. With regard to the validity of the sale deed, matter is seized up before the competent civil court and it is for the civil court to decide whether any fraud is played or not by the appellant, on*

*the late father of the 2nd respondent for obtaining the sale deed. When the very same issue is seized up before the civil court, the 2nd respondent cannot pursue criminal proceedings against the appellant for alleged offence under Section 418, 419, 420, 467, 468 and 471 IPC. Although, it is contended by the learned counsel for the 2nd respondent that complaint filed is not barred by limitation but at the same time it appears, there is no reason for lodging private complaint in the year 2012. The sale deed on which basis the title and possession is claimed by the appellant was registered on 5 th January, 1994, suit itself is filed nearly after 14 years. Even after filing of the suit on 24 th August, 2008 there is further about 4 years' delay in filing the criminal complaint against the appellant herein. Allowing the proceedings to go on against the appellant who is stated to be about 87 years, in the above set of facts, is nothing but abuse of the process. It is to be noted that there is no allegation of impersonation and forgery of the signatures in the suit filed by the 2nd respondent. In any event, when the suit filed by the 2nd respondent for cancellation of sale deed, is pending consideration before the competent court of law, the 2nd respondent cannot pursue his complaint in criminal proceedings by improving his case. Having regard to serious factual disputes which are of civil nature, for which civil suits are pending, allowing the 2nd respondent to pursue his complaint in criminal proceedings is nothing but abuse of the process of law. For the aforesaid reasons we are of the considered view that the criminal proceedings are fit to be quashed by allowing this appeal."*

**13.** Per contra, learned counsel for opposite party no.2 has submitted that the sale consideration depicted in the sale deed is much less, whereas the circle rate and the market value of the disputed property is much higher, which shows that the transaction was not fair. It is also submitted that the name of Surendra Singh, the seller, was not recorded in *khatauni* in Fasli year 1426-31 on land Gata No. 215. It is contended that forged as well as correct copy of *khatauni* is part of case diary. Even under the reply to RTI application, it is mentioned that the name of Surendra Singh was not recorded in the *khatauni* of Fasli year 1420-31.

**14.** In view of the above, learned counsel for opposite party no.2 submits that the alleged offence was committed by the applicants, therefore, this application has no force and it is liable to be dismissed.

**15.** In view of the submissions of both the parties and upon a perusal of record, it is clear that in the present case, charge-sheet has been filed against the applicants under Sections 420, 467, 468, 471, 506 IPC. It is submitted on behalf of the applicants that the dispute is essentially civil in nature and opposite party no.2's father has filed a Case No. 90 of 2018, whereby vide order dated 30.01.2018, the name of Surendra and Narendra was entered in place of Anari Devi over Arazi Nos. 260 and 215. It is also submitted that the seller Surendra had filed Suit No. 2215 of 2023 and opposite party no.2's mother, Bindu Devi, has filed a civil suit for cancellation of sale deed as Case No. 2275 of 2022, therefore, it is the civil court, which is to decide the dispute between the parties and criminal colour has been given to it by the first informant.

**16.** I do not agree with this submission of learned counsel for the applicants as the allegations against the applicants is that they manipulated and thus, got forged entry in the *khatauni*, whereby the name of Surendra was depicted in the *khatauni* and due to poor mental and physical condition of the opposite party no.2's father, they have got sale deed executed in their favour.

**17.** A perusal of record shows that the Investigating Officer perused the record from the office of Tehsildar and S.D.M., Hata, Kushinagar and also obtained report from office of S.D.M., Hata, Kushinagar, which reveals that the name of Surendra was not entered on land Arazi No. 215 in *khatauni* for Fasli year 1426-31. The seller had produced the copy of *khatauni* before the Sub-Registrar at the time of registry of the sale deed and the name of 'Narendra' was removed and on its place the name of 'Surendra' was entered and thus, forgery was committed by the applicants in the records to gain undue advantage.

**18.** Therefore, the dispute between the parties is such, which has both civil and criminal elements, and mere pendency of civil suit would not come in a way to initiate and proceed with criminal proceedings against the applicants.

**19.** Here, it is relevant to mention that it is the case of the applicants that the sale consideration shown in the alleged sale deed was also much less than the actual market value and circle rate of the disputed land, which

raises suspicion that the transaction was not fair.

**20.** It is submitted by learned counsel for the applicants that the learned Magistrate has not applied his judicial mind while taking cognizance and summoning the accused. In this regard, I have perused the cognizance and summoning order, which shows that the learned Magistrate after perusing the charge-sheet, case diary and other prosecution papers, found prima facie case and, thereafter, summoned the applicants. Therefore, it cannot be said that the learned Magistrate has not applied his judicial mind while taking cognizance and summoning the accused. Detailed examination of the evidence is not required by the Magistrate, at the time of taking cognizance, therefore, this submission advanced on behalf of the applicants has no force. The allegations levelled in the FIR and the evidence collected by the Investigating Officer, disclose prima facie commission of cognizable offence by the applicants.

**21.** In view of the above discussion, this application lacks merit and it is, accordingly, **dismissed**.

**(Sanjiv Kumar,J.)**

**May 6, 2026**

Subham