



2026:AHC:45178

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35783 of 2025

Lallan Chaubey

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Arun Kumar Singh, Jaishankar Prasad Tyagi
Counsel for Opposite Party(s) : Vipin Chandra Pal, G.A.

Court No. - 84

HON'BLE SANJIV KUMAR, J.

1. Heard Shri Lallan Chaubey, applicant in person, learned A.G.A on behalf of the State, Mr. Vipin Chandra Pal, learned Counsel for opposite party no. 2 and perused the record.

2. This application under Section 528 BNSS has been filed by the applicant to quash the proceedings of Criminal Case No. 1083 of 2014 under Sections 419, 420, 424, 506, 504, 506 IPC, Police Station- Colonel Ganj, District- Prayagraj, now pending before the court of Chief Judicial Magistrate- Bhadohi at new case number 587 of 2020, and also stay the effect and operation of NBW issued by the court vide order dated 29.7.2025.

3. Brief facts giving rise to the present application are that opposite party no. 2, Surya Nath Pal, filed an application under Section 156(3) CrPC before the CJM, Allahabad, whereupon under the order of the learned court, an FIR was lodged against Sitaram Yadav that the accused Sitaram Yadav wanted to sell his House No. 29A, New Mumfordganj, Allahabad and in this regard the first informant held talk with him through Lallan Chaubey, Advocate and it was settled that the house would be sold for a sale consideration of Rs. 20 lakhs. The first informant gave the desired amount by way of demand draft and cash through Mediator Lallan Chaubey, Advocate, and date i.e. 15.03.2013 was fixed for execution of sale deed before the Registrar office. Thereafter, Sitaram Yadav on one count or the other did not execute the sale deed and also abused and threatened the first informant.

4. Upon this information, FIR was lodged against Sitaram Yadav and during investigation the I.O. filed charge-sheet against Sitaram Yadav and applicant Lallan Chaubey in which the I.O. found that Rs.5,50,000/- were transferred in the account of applicant Lallan Chaubey and the house regarding which the above sale deed was to be executed had already been sold about 7-8

years ago. The I.O. filed charge-sheet against accused Sitaram Yadav, under Sections- 419, 420, 504 and 506 IPC and against Lallan Chaubey under Section- 406 IPC. The concerned court took cognizance of the offence and summoned the accused.

5. It is submitted by the applicant that he challenged the charge-sheet before this Court by filing Criminal Misc. Application U/S 482 No. 41510 of 2017 (Lallan Chaubey Vs. State of U.P. and Others), in which this Court gave the applicant time of 45 days to surrender before the trial court and may exercise right to move discharge application before the court concerned. The applicant filed discharge application before the court concerned at Allahabad. Meanwhile, the first informant/ opposite party no. 2 filed transfer application No. 14 of 2018 before this Court, and without giving an opportunity of hearing to the applicant, the above transfer application was allowed by this Court *vide* order dated 24.10.2019, and the case was transferred from the court of Special Chief Judicial Magistrate, Allahabad to Chief Judicial Magistrate, Bhadohi. It is submitted on behalf of the applicant that he has filed recall application against the said order of transfer of the case, which is pending disposal.

6. It is also submitted that the first informant filed an objection against discharge application of the applicant and *vide* order dated 5.11.2022, Chief Judicial Magistrate, Bhadohi has dismissed the discharge application of the applicant, against which the applicant has filed a Criminal Revision No. 587-D of 2023 before this court which is pending for disposal.

7. It is further submitted that the learned trial court at Bhadohi has issued NBW against the applicant without giving him an opportunity of hearing. It is further submitted that the charge sheet filed against the applicant is only under Section 406 IPC for which maximum punishment is three years' imprisonment. It is also submitted that the applicant had only introduced the first informant to accused Sitaram Yadav and the first informant and his family were tenant of the applicant from July, 2012 to March, 2016 and rent became due upon them. The first informant was also a client of the applicant, so to grab the due rent and advocate fees, false allegations have been levelled against the applicant.

8. It is also submitted that it is likely that the dispute between the first informant and accused No. 1 Sitaram Yadav may have settled because, since 2013 the first informant has not claimed any money from Sitaram Yadav and has not opposed the exemption application being filed on behalf of accused Sitaram Yadav on every date

9. It is also submitted that in fact the actual dispute between the applicant and the first informant arose after the first informant had left the house of the applicant in April, 2016 without paying the rent due. After final settlement,

the applicant received the due amount of rent from the first informant of Rs.2 lakhs, on 01.2.2016 and 02.02.2016. The applicant was counsel of the first informant in two cases, and after adjusting the rent due and counsel fees, the first informant paid Rs.2 lakhs to the applicant. It is submitted that the dispute between the first informant and the applicant is purely civil in nature. The first informant is maligning the reputation and profession of the applicant.

10. It is submitted on behalf of the applicant that the second application under Section 528 BNSS (old Section 482 CrPC) is maintainable. In this regard the applicant is relying upon a decision of this court in **Application U/S 482 Cr.P.C. No. 9701 of 2022 (Uday Pratap Singh Vs. State of UP) decided on 27.01.2023**, where the court held that in view of settled law in case of **Superintendent And Remembrancer Of Legal Affairs Vs. Mohan Singh and Others** reported in **(1975) 3 SCC 706**, the second application under Section 482 Cr.P.C. is maintainable, but it varies from case to case in the changed circumstances.

11. The applicant has also relied upon a decision of the Hon'ble Supreme Court in **Criminal Appeal No. 5000 of 2025 (Inder Chand Bagri Vs. Jagdish Prasad Bagri) decided on 24.11.2025**, where the Hon'ble Supreme Court, while discussing the nature of the offences of criminal breach of trust and cheating, held that in **Delhi Race Club (1940) Limited and Others Vs. State of U.P. and Another (2024) 10 SCC 690**, observed that:-

"Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.1 that the offence of criminal breach of trust as defined under Section 405 of the IPC, punishable under Section 406 of the IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 of the IPC. This Court in Delhi Race Club (1940) Limited and Others Vs. State of U.P. and Another (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust or cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly, induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."

12. Applicant has also relied upon a case law of **Criminal Appeal Number of 2026, (Special Leave Petition (Criminal) 14741 of 2025), (Beri Manoj Vs. State of Andhra Pradesh and Another) decided on 20th January 2026**, in support of his submission that he was an advocate of the first informant and was discharging his professional duties, therefore, no offence against him is made out. In the above case, the Hon'ble Supreme Court in

paragraph No. 7 has held that:-

"In the absence thereof continuation of the prosecution against the appellant by virtue of a vague reference to the expression "an uncle" cannot by itself would not disclose any offence. Vague allegations unsupported by prima facie cogent evidence cannot constitute offence indicated under Section 506 of the IPC. Last but not the least, the mere presence of a lawyer (appellant in the instant case) in his capacity of discharging professional duty of either giving advice or suggestion cannot amount to intimidation and this is foundational fact being conspicuously absent in the instant case, we are perforced to disagree with the contention of learned counsel for the complainant (victim) and the learned counsel appearing for respondent No.1 the State."

13. On the other hand learned counsel for opposite party No.2 has opposed the application, raising preliminary objections that the application is not maintainable, due to the reason that this is a successive invocation of inherent powers on substantially the same plea as the applicant has earlier filed an Application U/S 482 Cr.P.C. No. 41510 of 2017, in which this court by detailed order dated 13.12.2017 refused to quash the entire proceeding and the charge-sheet of the above case, holding that, *prima facie*, offences are disclosed, and remedy lies to the applicant is to file discharge application under Section 239 or 227 Cr.P.C. before the learned trial court.

14. It is also submitted that the present application is not maintainable on the ground of non-joinder of necessary party as the applicant has not impleaded the complainant/informant as opposite party to this case. It is also submitted that the applicant has concealed facts that he had earlier filed an Application U/S 482 Cr.P.C. (now Section 528 BNSS) No. 26615 of 2022, which was not pressed/ passed over and his discharge application was dismissed by the learned trial court against which his Criminal Revision No. 587-D of 2023, is pending before this Court. It is also submitted that the applicant has raised the issues/grounds which were available to him earlier, therefore, he cannot file subsequent Application U/S 482 Cr.P.C./528 BNSS, as it would amount to a disguised review which is barred under Section 362 Cr.P.C., and it would amount to an abuse of process of law. The applicant has remedy against the NBW issued against him, under Section 70(2) Cr.P.C., before the learned trial court and without availing such remedy, he has approached directly to this Court, which amounts to forum shopping and is an abuse of process of law.

15. It is further submitted that being an advocate the applicant possess no immunity from the prosecution, if the offence is made out. It is further submitted that the applicant did not appear before the learned trial court, therefore, the learned trial court has rightly issued NBW against him due to his non-appearance before the concerned trial court. The NBW was issued to secure his presence. In view of the above, this application has no force and lacks merit, and is liable to be dismissed.

16. Section 528 BNSS, 2023 envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (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. It is trite law that the inherent power of the High Court under Section 528 BNSS (corresponding Section 482 Code of Criminal Procedure, 1973) ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the Court or to otherwise secure the ends of justice and the Court possesses wide discretionary powers.

17. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. An inherent jurisdiction can be invoked only to prevent abuse of process of court.¹⁷ The Supreme Court in the case of ***Madhu Limaye Vs State of Maharashtra*, AIR 1978 SC 47**, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

"1. Power is not to be resorted to, if there is specific provision in code for redress of grievances of aggrieved party.

2. It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.

3. It should not be exercised against the express bar of the law engrafted in any other provision of the code."

18. In the landmark case ***State of Haryana v. Ch. Bhajan Lal (1992 Supp. (1) SCC 335)***, a two-judge bench of the Supreme Court of India considered in detail, the provisions of section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

"1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19. In view of the above submissions of both the parties, above legal position as well the material on record, it is clear that applicant is co-accused in Case Crime No. 1083 of 2014 and charge-sheet has been filed against him under Section 406 IPC. Opposite party no.2 has raised a preliminary objection with regard to maintainability of this application by stating that earlier also an application had been moved by the applicant under Section 482 Cr.P.C. (now 528 BNSS) No.26615 of 2022 before this Court, wherein the applicant had prayed for quashing the entire proceeding and charge-sheet of the above said Case Crime No.1083 of 2014, as prayed in this application as well. It is submitted that on such application, order dated 13.12.2017 was passed by this Court on merits, therefore, this application is not maintainable seeking the same relief.

20. The applicant has not disputed that he had earlier filed an application under Section 482 Cr.P.C. No. 41510 of 2017 which was disposed off on 13.12.2017 by this Court. But the applicant has submitted that this second application is maintainable because the circumstances have changed and NBW has been issued against the applicant. I do not agree with the submission of the applicant. It is admitted fact that the applicant has moved discharge application before the learned trial court which was rejected, against which criminal revision has been filed by the applicant which is pending before this Court.

21. A perusal of copy of order-sheet shows that after disposal of discharge application the applicant did not appear before the learned trial court and consequently NBW was issued by the learned trial court against the applicant. Issuing NBW is a process adopted by the court for securing attendance of an accused before the court, therefore, issuing NBW against

the applicant does not amount to change of circumstances. Therefore, the judgment relied upon by the applicant **Superintendent And Remembrancer Of Legal Affairs (Supra)** does not apply to the facts and circumstances of the present case. It is also submitted by the applicant that the learned trial court while issuing NBW has not given him an opportunity of hearing and thus, order of issuing NBW is illegal. I do not agree with the submission, because there is no such provision that before issuing NBW against an accused, an opportunity of hearing has to be given to him.

22. In view of the above, I am of the considered opinion that this application under Section 528 BNSS is not maintainable, being filed for the same relief of quashing the entire criminal proceeding as well as the charge-sheet which was prayed by the applicant earlier before this Court in another application filed under Section 482 No.41510 of 2017, and disposed off on merit.

23. The applicant has raised certain other disputed questions of fact with regard to alleged offence, the role of the applicant and the evidence collected by the I.O. and the law applicable thereon, these matters will be considered by the learned Trial Court and, therefore, these issues cannot be discussed and analysed in this proceeding as it would amount to holding a mini trial, which is not permissible under Section 528 BNSS.

24. In view of the above, this application under Section 528 BNSS is **dismissed**, as not-maintainable.

February 12, 2026
AdityaG

(Sanjiv Kumar,J.)