2026:AHC:210692

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 9904 of 2026

Vishnu Prasad And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Devendra Mani Tripathi
Counsel for Opposite Party(s)	:	Anil Kumar, G.A.

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard Sri Devendra Mani Tripathi, learned counsel for the applicants, Sri Anil Kumar, learned counsel for the opposite party no. 2 and learned AGA for the State.

2. The present application under Section 528 of B.N.S.S. 2023 has been filed by the applicants seeking to quash the chargesheet No. 145/2025 dated 27.05.2025 as well as the cognizance and summoning order dated 24.12.2025 passed by the learned Chief Judicial Magistrate, Hathras as well as entire proceedings of Case No. 1645/2025 (State Vs. Vishnu Prasad and others), arising out of Case Crime No. 0042/2025, under Sections 406, 504, 506 IPC, Police Station Kotwali Hathras, District Hathras.

3. As per the prosecution story, the complainant, Vikas Gupta, resident of Hathras, was allegedly induced by the accused persons, namely Vishnu Prasad, Navneet Varshney and Vipul Varshney, to pay a total amount of Rs.12,00,000/- in different instalments between December, 2018 and February, 2019 on the assurance that a residential plot would be allotted to him in a colony situated in Ghaziabad. It is alleged that despite receiving the entire amount, the accused persons did not execute the sale deed and kept delaying the matter. When the complainant visited the site at Muradnagar, he found that no such plot existed. Thereafter, when he demanded his money back, the accused persons allegedly did not return the amount and threatened him with death and false implication in criminal cases over telephone on 24.12.2024. It is further alleged that on 02.01.2025, when the complainant demanded refund of Rs. 12,00,000/-, the accused persons abused him. As the

local police did not take any action on his complaint, he approached the Superintendent of Police, Hathras, and thereafter the present F.I.R. was registered under Section 173(4) of B.N.S.S.

4. Learned counsel for the applicants submitted that the applicants have been falsely implicated in the present case due to enmity and ulterior motive. It is submitted that the present F.I.R. is a counterblast to the earlier F.I.R. dated 25.12.2024 lodged by the applicant against opposite party no. 2 alleging extortion, criminal intimidation and cyber defamation. He further submitted that the dispute between the parties is purely civil in nature and arises out of a failed transaction relating to the sale of residential plot. It is contended that there was no entrustment of any property or money for any specific purpose and, therefore, the essential ingredients of criminal breach of trust are not made out. Learned counsel further submitted that in the police inquiry report dated 20.02.2025, the dispute was found to be civil in nature. He also submitted that the allegations regarding the alleged threats are vague and general in nature and do not disclose any specific act against the applicants.

5. Learned counsel for the applicants further submitted that the FIR has been lodged after an inordinate delay of nearly seven years regarding transactions allegedly executed between December 2018 and February 2019. Since Section 406 IPC carries a maximum sentence of three years, Section 468(2)(c) Cr.P.C. imposes a strict three-year bar of limitation, rendering the taking of cognizance in the year 2025 for alleged payments of 2018–2019 manifestly time-barred. Consequently, learned counsel for the applicants urged that the Magistrate, without proper application of judicial mind and in a routine, mechanical manner, took cognizance and issued summons against the applicants without appreciating the statutory bar of limitation or the police report.

6. Per contra, learned AGA appearing for the State as well as learned counsel for opposite party No. 2 strongly opposed the prayer made by learned counsel for the applicants and submitted from the FIR and statements of the informant, witnesses namely Anshul Gupta and Manoj Varshney, and eyewitness of Seema Gupta and Sonam Varshney, a prima fecie case is made out against the applicants. The applicants dishonestly induced the informant on the false promise of allotting a residential plot, but neither provided the plot nor returned the money and retained the funds, which squarely constitutes criminal breach of trust and cheating, while the

accompanying death threats and verbal abuse constitute distinct, substantive criminal offences under Sections 504 and 506 IPC.

7. It is further submitted that after a thorough investigation, the investigating agency found sufficient incriminating material and filed a charge-sheet against the applicants. The plea of limitation raised under Section 468 Cr.P.C. is wholly misconceived and unsustainable in law, as the prosecution is not restricted merely to Section 406 IPC, offences under Sections 504 and 506 IPC have also been invoked and the offence of retaining the money is continuing in nature, with explicit refusal and death threats occurring well within the period of limitation in 2024–2025. Finally, learned counsel emphasized that disputed questions of fact regarding delay, criminal intent, and defence pleas cannot be adjudicated by this Court in exercise of its inherent powers under Section 528 of BNSS.

8. I have considered the submissions advanced by learned counsel for the parites and perused the record. From a perusal of the material available on record and keeping in view the settled law laid down by the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, it is clear that at the stage of considering a prayer for quashing of a charge sheet/summoning order, the Court is only required to see whether a prima facie offense is made out from the allegations. In the present case, the allegations in the FIR and statements of witnesses under Section 161 Cr.P.C. a prima facie case against the applicants is made out.

9. So far as the contention raised by learned counsel for the applicants regarding the bar of limitation under Section 468 Cr.P.C. is concerned, the same is devoid of merit. Although Section 406 IPC, if considered separately, provides a period of limitation of three years, the applicants are also charged under Sections 504 and 506 IPC, and the offence under Section 506 IPC is punishable with imprisonment up to seven years. In view of Section 468(3) Cr.P.C., where offences are tried together, the period of limitation shall be determined with reference to the offence which is punishable with the more severe punishment. Further, the question as to whether the alleged threats and refusal to return the money took place within the period of limitation, or whether there were sufficient grounds for extending the period under Section 473 Cr.P.C., involves mixed questions of fact and law, which cannot be examined in detail at this stage while exercising jurisdiction under Section 528 BNSS.

10. In view of the above, this Court finds no merit in the present application. The prayer for quashing the charge sheet as well as the summoning order is hereby refused.

11. Accordingly, the present application is dismissed.

October 7, 2026
Akbar

(Madan Pal Singh,J.)

Digitally signed by :-
MOHAMMAD AKBAR
High Court of Judicature at Allahabad