2026:AHC:210696-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 6321 of 2025

Shivam Mishra

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Anand Pati Tiwari, Deepak Upadhyay
Counsel for Respondent(s)	:	G.A.

Court No. - 47

HON'BLE RAJEEV MISRA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

1. Case called out in revised list.

2. Even though the name of Mr. Anant Pati Tiwari is duly shown in the cause list as counsel for petitioner, but neither he nor anyone on his behalf of present to press the writ petition.

3. Learned AGA representing state respondents 1 and 2 is present.

4. Perused the record.

5. Petitioner, Shivam Mishra, has approached this Court by means of present writ petition, challenging FIR dated 28.02.2026.

6. Present writ petition came up for admission on 23.04.2025, and this Court passed the following order:-

"In Re: Criminal Misc. Amendment Application

1. Heard learned counsel for the petitioner and learned A.G.A. for the State respondent nos.1 and 2.

2. It is informed by learned counsel for the petitioner that during the investigation, certain Sections are added and therefore, the same may also be added in the prayer clause of the writ petition.

3. Accordingly, the amendment application is allowed and learned counsel for the petitioner is permitted to amend the prayer clause of the writ petition during the course of the day.

In Re: Writ Petition

1. Heard Sri Anand Patti Tiwari, learned counsel for the petitioner and learned A.G.A. for the State respondents.

2. The relief sought in this petition is for quashing of the F.I.R. dated 28.02.2025 registered as Case Crime No.174 of 2025, under Section 318(4), 316(2), 338, 336(3), 340(2) BNS, Police Station Auraiya, District Auraiya. Further prayer has been made

not to arrest the petitioner in the aforesaid case.

3. Learned counsel for the petitioner vehemently contended that the petitioner is working as Branch Manager in Baroda U.P. Bank. The impugned first information report was lodged against the petitioner without any credible and cogent evidence qua his involvement in the transaction in question. The allegations of criminal breath of trust and cheating levelled against the petitioner are false and no offence under the alleged Sections are made out against him. The offences of criminal breach of trust and cheating have specific ingredients. Every act of breach of trust does not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. Even an act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. Even in case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed.

4. In support of his submission, learned counsel for the petitioner has placed reliance on the judgement of Apex Court in Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh AIR 2024 SC 4531 in which it was held that the offence of cheating and criminal breach of trust cannot be committed by same person at the same time. He has also placed reliance upon a recent judgement of Apex Court in Radheyshyam & ors vs. State of Rajasthan & another Criminal Appeal No.3020 of 2024 decided on July 22, 2024. He has also placed reliance on a recent judgment dated 16.04.2025 passed by Hon'ble Apex Court in Criminal Appeal No._____of 2025 (Rikhab Birani & another vs. State of Uttar Pradesh & another) arising out of SLP (Crl.) No.8592 of 2024, in which Hon'ble Apex Court had strongly deprecated the initiation of the criminal proceeding, wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex-facie outrageous or are pure civil claims. The Apex Court allowed the appeal with a cost of Rs.50,000/- on the State with further observation ?in spite of repeated judgments/orders of this Court, we are being flooded with cases of civil wrongs being made the subject matter of criminal proceedings by filing chargesheets, etc.?. While passing the judgment in Rikhab Birani?s case (supra) Hon?ble Apex Court has considered in threadbare the judgment in V. Y. Jose and another v. State of Gujarat and another (2009) 3 SCC 78; also considered Section 420 IPC and reiterated the earlier judgments passed by the Apex Court in Mohammed Ibrahim and others v. State of Bihar and another (2009) 8 SCC 751 and recent judgement in Lalit Chaturvedi and others v. State of Uttar Pradesh and another 2024 SCC Online SC 171.

5. The matter requires consideration by this Court.

6. Issue notice to the respondent No.3 returnable at an early date. Steps be taken

within a week by ordinary process as well as by registered post.
7. All the respondents may file counter affidavit within four weeks. Petitioners shall have one week, thereafter, to file rejoinder affidavit.
8. List thereafter.
9. Considering the facts and circumstances of the case, as briefly discussed above, as an interim measure, till the next date of listing or till submission of police report u/s 193(3) B.N.S.S., whichever is earlier, the respondents are restrained from arresting the petitioners pursuant to the impugned FIR, subject to cooperation in the on-going investigation.

7. Pursuant to the above order dated 23.04.2025, steps were taken by the learned counsel for petitioner to serve upon respondent 3. Office has submitted a report dated 06.10.2026 that neither acknowledgement nor undelivered cover has returned yet. Therefore, notice upon respondent 3 deem sufficient.

8. On perusal of record, we find that a period of more than one year and seven months has expired from the date of lodging of FIR. In view of above, the Investigating Officer must have submitted the police report in terms of Section 193(3) BNSS. In view of above, in our opinion, the writ petition has been rendered infructuous. It is accordingly dismissed as having rendered infructuous.

9. Interim order, if any, shall stand vacated.

October 7, 2026
S.K.S.

(Jai Krishna Upadhyay,J.) (Rajeev Misra,J.)

Digitally signed by :-
SUNIL KUMAR SINGH
High Court of Judicature at Allahabad