2026:AHC:210333-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 9135 of 2025

Ashok Kumar Rai

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Diwan Saifullah Khan
Counsel for Respondent(s)	:	G.A., Sakshi Patel

Court No. - 47

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

1. Heard Mr. Diwan Saifullah Khan, the learned counsel for petitioner and the learned A.G.A. for State/respondents 1, 2 and 3.

2. Perused the record.

3. Petitioner-Ashok Kumar Rai has approached this Court by means of present Criminal Misc. Writ Petition challenging the F.I.R. dated 08.07.2023 lodged by first informant/respondent-4, Rajeev Kumar Singh and registered as Case Crime No. 314 of 2023 under Sections 419, 420, 467, 468, 406 I.P.C., Police Station-Shivpur, District-Varanasi.

4. Present writ petition came up for admission on 14.05.2025, and this Court passed the following order:

"1. Heard Sri D.S. Khan, learned counsel for the petitioner and learned AGA for State respondents.

2. The instant writ petition has been preferred for quashing the impugned FIR dated 08.07.2023 being Case Crime No.314 of 2023 under Sections 419, 420, 467, 468, 406 IPC, Police Station Shivpur, District Varanasi and for a direction to respondents not to arrest the petitioner pursuant to impugned FIR.

3. Learned counsel for the petitioner vehemently contended that the father of the petitioner namely late Avadha Vihari Rai was the true owner of house No.S-1/77-E including open area of plot Nos.30/2 and 30/3 situated in Village Chuppepur, Sikraul, District Varanasi. The respondent no.4 is the partner and authorized signatory of M/s Manjari Developers. The petitioner alongwith his father and elder brother entered into a registered agreement dated 10.08.2024 with M/s Manjari Developers for development of the aforesaid plots. Since the firm of the respondent

no.4 constructed flats in one block only and the flats of other two blocks could not be constructed within the time stipulated under the agreement, therefore, the firm moved an application under Section 9 of Arbitration and Conciliation Act for grant of an interim injunction restraining the petitioner and other stakeholders from interference, which was allowed on 30.04.2008. The said order was challenged in First Appeal From Order No.1680 of 2009 and the same was partly allowed by this Court vide an order dated 31.08.2009. Meanwhile, the respondent no.4 executed various sale deeds, which were ultimately cancelled by the trial court. Against the judgement and decree passed by the trial court, the respondent no.4 preferred First Appeal Nos.335/2012, 336/2012, 337/2012, 338/2012 & 339/2012, which are pending consideration.

4. Learned counsel for the petitioner further submits that the impugned FIR has been lodged against the petitioner on account of the civil dispute. A bare perusal of the FIR, no criminal offence is made out against him. It is submitted that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. The allegations of cheating or fraud levelled against the petitioner are false and no offence under Sections 419, 420, 467, 468, 406 IPC are made out against the petitioner. Even though the proceedings are pending and neither the charge-sheet nor the final report has been submitted in the present case. The petitioner does not have any other criminal antecedent and in case, no indulgence is accorded, the petitioner would suffer irreparable loss and injury.

5. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgements of Hon'ble Apex Court in Criminal Appeal No.932 of 2021 (Randheer Singh vs. the State of UP and ors) decided on 02.9.2021 and M/s Indian Oil Corporation vs. NEPC India Ltd & ors. AIR 2006 SC 2780, wherein it has been held that the tendency to convert a purely civil dispute into criminal cases is to be deprecated. Further also, to buttress his submission, learned counsel for the petitioner has placed reliance upon the judgment and order rendered by Hon'ble the Apex Court in Naresh Kumar & Anr. Vs. The State of Karnataka & Anr. arising out of SLP (CRL.) No.1570 of 2021. The relevant paragraph No.7 of the aforesaid judgment is reproduced hereinunder:-

"Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise."

6. Reliance has also been placed on the judgments of Hon'ble Apex Court in K. Bharthi Devi & Anr. v. State of Telangana & Anr., Criminal Appeal No.... of 2024 arising out of Special leave Petition (Criminal) No.4353 of 2018 decided on 3.10.2024 and Radhey Shyam & Ors. v. State of Rajasthan & Anr., Criminal Appeal No.3020 of 2024 @ Special Leave to Petition (Crl.) No.13675 of 2023 decided on 22.7.2024. Hon'ble Apex Court in recent judgment dated 16.04.2025 passed in Criminal Appeal No. Nil of 2025 (Rikhab Birani & another vs. State of Uttar Pradesh & another) arising out of SLP (Crl.) No.8592 of 2024 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.

7. Per contra, learned AGA appearing for the State has vehemently opposed the writ petition and submitted that from bare perusal of the FIR, cognizable offence is made out against the petitioner. He further submits that truthfulness of allegations and establishment of guilt take place, when the investigation is done or trial proceeds. Probability, reliability or genuineness cannot be looked under Art.226 of the Constitution. The FIR can only be quashed in a writ jurisdiction, if the FIR does not discloses commission of offence and that too prior to framing of charges. As such it is submitted that no interfere is required in the matter.

8. The matter requires consideration.

9. Issue notice to respondent no.4 returnable at an early date. Step may be taken within a week.

10. The respondents are accorded four weeks time to file counter affidavit. One week, thereafter, is accorded to file rejoinder affidavit. List thereafter.

11. Till the next date of listing or till the submission of Police Report under Section 173 (2) CrPC/ 193 (3) BNSS, whichever is earlier, respondents are restrained to arrest the petitioner pursuant to the impugned F.I.R. subject to cooperation in the on-going investigation. "

7. On the matter being taken up, learned A.G.A representing State/respondents-1, 2, 3 submits that during pendency of present writ petition, Investigating Officer, upon completion of statutory investigation of aforesaid case crime number in terms of Chapter XII Cr.P.C has submitted the charge sheet / police report dated 26.08.2026 as contemplated under Section 173 (2) Cr.PC. As such, the present writ petition has been rendered infructuous.

Learned A.G.A. representing State/ respondents 1, 2 and 3 has no objection to the prayer made by the learned counsel for petitioner.

9. In view of above, this writ petition is hereby **dismissed** as having rendered infructuous.

10. Interim order, if any, granted earlier shall stand vacated.

October 6, 2026
Imtiyaz

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

Digitally signed by :-
IMTIYAZ AHMAD
High Court of Judicature at Allahabad