HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 43532 of 2022

Rama Shanker Singh And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Abhishek Singh, Anurag Rai, Birendra Singh, Hari Kant Shukla
Counsel for Opposite Party(s)	:	Anil Kumar Mishra, G.A., Raj Kumar Tripathi, Ritesh Srivastava, Shweta Singh

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Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard learned counsel for applicant and learned AGA for the State.

2. Present application has been preferred with the prayer to quash the order dated 07.11.2022 passed by the Judicial Magistrate, 2nd Bhadohi Gyanpur (State v. Ramashanker and Others) whereby the learned Magistrate has allowed the application dated 03.09.2022 filed under Section 216 Cr.P.C., and quash the entire proceedings of F.R. 1729 of 2014 (State v. Ramashanker and Others) pending before the learned Judicial Magistrate 2nd Bhadohi, Gyanpur.

3. Learned counsel appearing on behalf of applicant has challenged the order dated 07.11.2022 and entire proceedings of the present case precisely on the ground that Sections 420 and 406 IPC cannot go together in the same breath as per the proposition of law settled by Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another reported in 2024 10 SCC 690***. The relevant portion of the said judgment is being reproduced hereinbelow:-

"38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 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 and explained in Section 415 IPC, punishable under Section 420 IPC.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. 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. Therefore, it is this intention, which is the gist of the offence.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a 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 any property. In such a situation, both the offences cannot co-exist simultaneously.

55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other."

4. It has further been argued that the trial is already proceeding under Sections 419, 420, 467, 468, 471, 504, 506 IPC and the application moved under Section 216 Cr.P.C., has been allowed under wrong proposition of law as discussed above.

5. On the other hand, learned AGA for the State and learned counsel for the opposite party No. 2 have vehemently opposed the prayer sought through the instant application but unable to dispute the settled proposition of law as relied upon by the learned counsel appearing for applicants.

6. Upon hearing learned counsel for the parties and from perusal of the records of the case and the judgment of the Hon'ble Supreme Court rendered in the case of **Delhi Race Club (Supra)**, it is crystal clear that both the sections i.e. Sections 420 and 406 IPC cannot go in the same breath and as such without interfering in any other merit of the present matter, the order dated 07.11.2022 passed by the Judicial Magistrate, 2nd Bhadohi Gyanpur (State v. Ramashanker and Others) is hereby set aside and the Trial Court is directed to proceed in accordance with law.

7. Accordingly, the instant application stands **allowed.**

(Nand Prabha Shukla,J.)

October 29, 2026
Aditya Tripathi

Digitally signed by :-
ADITYA TRIPATHI
High Court of Judicature at Allahabad