HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 28004 of 2026

Mahaveer Singh And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Sarve Nazir, Zafar Abbas
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Learned counsel for the applicants is permitted to correct the prayer clause within the course of the day.

2. Heard Mr. Sarve Nazir, learned counsel for the applicants, learned A.G.A. for the State and perused the record.

3. The present application under Section 528 B.N.S.S. has been filed with a prayer to allow the application and quash the Charge-sheet dated 07.10.2018, cognizance and summoning order dated 06.03.2019 passed by court of learned Chief Judicial Magistrate Rampur and entire criminal proceeding of Criminal Case No. 1119 of 2019 (State vs. Chatrapal Singh and others) arising out of Case Crime No. 127 of 2018, under Sections 420, 406, 504, 506, 323 IPC, Police Station-Civil Lines, District-Rampur, pending in the court of learned Chief Judicial Magistrate, Rampur and to stay the further proceeding of the aforesaid Case.

4. It has been submitted by learned counsel for the applicants that the first information report of this case has been lodged making false allegations. It is further submitted that by impugned order dated 06.03.2019 applicants have been summoned for offence under Sections 420, 406, 504, 506, 323 I.P.C. and as per law laid down in case of **Delhi Race Club (1940) Ltd. and Others Vs. State of Uttar Pradesh and Another, 2024 SCC Online SC 2248**, offence of cheating viz-a-viz criminal breach of trust are independent and distinct and both cannot exist simultaneously on the same set of facts and are antithetical to each other and on this account

alone the impugned summoning order has been passed without any proper application of mind and is liable to be set aside.

5. Perusal of record shows that by impugned order dated 06.03.2019 applicants have been summoned for offence under Sections 420, 406, 504, 506, 323 I.P.C. As stated above, in case of **Delhi Race Club (supra)**, it has been held by the Hon'ble Apex Court that offence of cheating viz-a-viz criminal breach of trust are independent and distinct and both cannot exist simultaneously in same set of facts and that they are antithetical to each other. Thus, it is clear that impugned cognizance/summoning order is not sustainable in law.

6. In view thereof, the cognizance/summoning order dated 06.03.2019, passed by the learned Chief Judicial Magistrate, Rampur, is hereby quashed and the matter is remitted back to the learned court concerned to meticulously examine the contents of the allegations and pass a fresh order of taking cognizance in light of the proposition of law settled by the Hon'ble Supreme Court in the case of **Delhi Race Club (supra)**, expeditiously within a period of six weeks, if there is no other legal impediment.

7. Hence, the application u/s 528 BNSS is partly **allowed.**

(Nand Prabha Shukla,J.)

October 23, 2026
Shivani Sri.

Digitally signed by :-
SHIVANI SRIVASTAVA
High Court of Judicature at Allahabad