2026:AHC:208347

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35600 of 2026

Sudhir Kumar Arora

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rahul Agarwal, Riya Shukla
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Ms. Riya Shukla, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present application under Section 528 BNSS has been filed with a prayer to allow the application and set aside/quash the chargesheet dated 15.03.2020 submitted in Case Crime No. 1040 of 2014 under Section 406, 420 and 120-B I.P.C., Police Station Kavi Nagar, District Ghaziabad as well the entire proceedings of Case No. 8042 of 2021 arising out of Case Crime No. 1040 of 2014 under Section 406, 420 and 120-B I.P.C., Police Station Kavi Nagar, District Ghaziabad pending in the court of Additional Chief Judicial Magistrate, Ghaziabad along with the summoning order dated 19.03.2021 passed by Additional Chief Judicial Magistrate, Ghaziabad.

3. 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 after the investigation, charge sheet dated 15.03.2020 was submitted and by impugned order dated 19.03.2021 applicant has been summoned for offence under Sections 406, 420 I.P.C. and 120-B IPC as well. 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.

4. Perusal of record shows that by impugned order dated 19.03.2021, the applicant has been summoned for offence under Sections 420, 406 I.P.C. and 120-B IPC. 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 summoning order is not in sustainable in law.

5. In view of the aforesaid, the impugned summoning order dated 19.03.2021 passed by learned Additional Chief Judicial Magistrate, Ghaziabad is hereby quashed and the matter is remitted back to the court concerned to meticulously examine the contents of the allegations and pass the order of taking cognizance in the light of the proposition of the law settled by Hon'ble Supreme Court in the case of **Delhi Race Club (supra)** expeditiously, preferably within a period of six weeks, if there is no other legal impediment.

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

(Nand Prabha Shukla,J.)

October 6, 2026
Aditya Tripathi

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