2026:AHC:209811

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35891 of 2026

Ram Kumar Patel

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Prabha Upadhyay, Raghvendra Pratap Rajan

Counsel for Opposite Party(s) : G.A.

Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Mr. Raghvendra Pratap Rajan, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present application under Section 528 B.N.S.S. has been filed with a prayer to quash the impugned charge sheet dated 02.02.2017 as well as entire proceeding of the Case No. 882 of 2017 giving rise to Case Crime No. 231 of 2016, under Sections 419, 420, 406 IPC, P.S.-Jansa, District-Varanasi including impugned summoning order dated 22.03.2017, pending before the Court of learned Additional Chief Judicial Magistrate, Court No. 4, Varanasi and to stay further proceedings of the aforesaid case.

3. It has been submitted by learned counsel for the applicant that the first information report of this case has been lodged making false allegations. It is further submitted that by impugned order dated 22.03.2017 applicant has been summoned for offence under Sections 419, 420 & 406 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.

4. Perusal of record shows that by impugned order dated 22.03.2017 applicant has been summoned for offence under Sections 419, 420 & 406 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.

5. In view thereof, the summoning order dated 22.03.2017, passed by the learned Additional Chief Judicial Magistrate, Court No. 4, Varanasi, 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.

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

(Nand Prabha Shukla,J.)

October 7, 2026
Shivani Sri.

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