2026:AHC:211513

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 36240 of 2026

Indivar Kohli

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Mohd Abdullah Tehami, Syed Mohammad Nawaz
Counsel for Opposite Party(s)	:	G.A.

Court No. - 77

HON'BLE NAND PRABHA SHUKLA, J.

1. Heard Mr. Syed Mohammad Nawaz, 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 allow the present application and to quash the entire proceeding of Criminal Case No. 30776/2024 (State Vs Indivar Kohli and others), Summoning order dated 29.04.2024, Cognizance order dated 29.04.2024, pursuant to Chargesheet dated 29.01.2024, arising out of Case Crime No. 1164 of 2023, under Sections 420, 406, 506, 120-B I.P.C., Police Station-Indirapuram, District-Ghaziabad, pending before court of learned Chief Judicial Magistrate, Ghaziabad and to stay the further proceeding of the aforesaid Criminal 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 summoning/cognizance order dated 29.04.2024 applicant has been summoned for offence under Sections 420, 406, 506, 120-B 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 summoning/cognizance order dated 29.04.2024 applicant has been summoned for offence under Sections 420, 406, 506, 120-B 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 cognizance/summoning order dated 29.04.2024, passed by the learned learned Chief Judicial Magistrate, Ghaziabad, 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 8, 2026
Shivani Sri.

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