HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37877 of 2026

Rakesh Kumar And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Ram Swaroop (Singh), Shivakant Singh
Counsel for Opposite Party(s) :

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Demand Draft dated 20.08.2026 bearing no. 677704 along with Supplementary Affidavit preferred on behalf of applicants is taken on record.

2. Heard learned counsel for applicants and learned AGA for State.

3. Present application has been preferred with prayer to quash charge sheet dated 28.8.2024, cognizance order dated 20.3.2025 passed by learned Chief Judicial Magistrate, Gautam Buddha Nagar and entire proceeding of Case no. 44117 of 2025 (State vs. Rakesh Kumar) arising out of Case Crime no. 446 of 2024 under sections 406, 504, 506 IPC against applicant no. 1 and under sections 504, 506 IPC against applicant no. 2, Police Station- Bisrakh, District Gautam Buddh Nagar.

4. On previous occasion i.e. on dated 23.9.2026, this Court passed the following order:

> *"1. Learned counsel for applicants on instruction submitted that applicants are ready to refund the balance amount whatsoever is due to the opposite party No.2.*
> *2. Issue notice to opposite party no.2 through learned Chief Judicial Magistrate, Gautam Budh Nagar.*
> *3. Learned Chief Judicial Magistrate, Gautam Budh Nagar is directed to ensure service of notice upon opposite party no.2 within seven days from the date of service of this order upon him.*

4. Put up this case on 12.10.2026 as fresh.

5. Meanwhile, learned A.G.A. may seek instructions in this case.

6. Registrar (Compliance) is hereby directed to ensure service of this order upon learned Chief Judicial Magistrate, Gautam Budh Nagar within next three working days for necessary compliance.

"

5. Today when the matter has been taken up, learned counsel for applicants submitted that as alleged in the FIR, out of the amount whatsoever has been extended in favour of applicant no. 1 in view of the agreement to sale of property in question, entered between both the parties Rs. 8,75,000/- has already been refunded by applicant on dated 17.2.2024 through RTGS (receipt of which is appended as Annexure no. 4 to the instant petition) in favour of wife of opposite party no. 2 and for rest of amount to be refunded i.e. Rs. 5,50,000/- (five lakh fifty thousand), a demand draft in favour of Ritu Goyal wife of opposite party no. 2 dated 20.8.2026 bearing number-677704, Bank Name- Indian Bank has been preferred today by learned counsel for applicant along with supplementary affidavit which are taken on record.

6. Learned counsel for applicants prayed that since part of entire amount whatsoever has been mentioned in the narration of the FIR has already been paid and rest is being paid through aforesaid demand draft, so there arises no occasion in favour of opposite party no. 2 to pursue the impugned criminal proceedings initiated against the applicants in shape of Case Crime no. 446 of 2024, hence the same is liable to be quashed.

7. On previous occasion, notices have been issued against opposite party no. 2 and as per office report the same has been served through his Whatsapp no. 8447990644 as reported by learned Chief Judicial Magistrate, Gautam Budh Nagar, but even after service of notice, none appeared at the behest of opposite party no. 2 either in person or through counsel. No option left but to consider the prayer as made through instant application, since it is the moral and legal obligation over opposite party no. 2 to attend the court proceedings wherein the cause of action for registration of Case Crime no. 446 of 2024 has been put under challenge.

8. Learned AGA has not disputed the arguments raised by learned counsel for applicants and submitted that once entire amount has already been repaid

there arises no occasion in favour of opposite party no. 2 to pursue instant criminal proceedings against applicants.

9. After hearing submissions extended by learned counsels for the parties and perusing the records, this Court finds that entire dispute narrated in the FIR is regarding some transaction made in lieu of proposal for purchase of Flat, meaning thereby, dispute between parties is of civil in nature which has been given colour of criminality. Hon'ble the Apex Court in the case of **A.M. Mohan Vs. State Represented by SHO and another, [2024 SCC OnLine SC 339]** has held that there is a growing tendency to convert purely civil dispute into criminal cases. The observations made by Hon'ble the Supreme Court in **G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636**] are also relevant which are as under:-

> *"8. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

10. It would be appropriate to mention following paragraph of a judgment passed by Supreme Court in **Naresh Kumar and another vs. The State of Karnataka and another, [2024 INSC 196**], that in similar circumstances inherent power can be exercised:

> *"6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:*
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> *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and*

only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

11. The aforementioned legal position has also been considered by a Coordinate Bench of this Court in the case of **Kamlesh Singh vs. State of U.P. and others [(2024) 6 ILRA 15]**.

12. The present case is a fit case where in exercise of inherent power under Section 528 BNSS, the impugned charge-sheet along with cognizance/summoning order and entire proceedings of the present case can be quashed since part of the amount whatsoever was paid in favour of applicants by opposite party no. 2 has already been received by wife of opposite party no. 2 through RTGS and rest is being paid through aforesaid Demand Draft.

13. In view thereof, chargesheet dated 28.8.2024 and cognizance/ summoning order dated 20.3.2025 along with entire criminal proceedings of Case no. 44117 of 2025 (State vs. Rakesh Kumar) arising out of Case Crime no. 446 of 2024 under sections 406, 504, 506 IPC against applicant no. 1 and under sections 504, 506 IPC against applicant no. 2, Police Station- Bisrakh, District Gautam Buddh Nagar, are hereby **quashed** only in respect of applicants herein.

14. Accordingly, the present application stands **allowed**.

15. Registrar (Compliance) is hereby directed to ensure service of this order along with Demand Draft in favour of Ritu Goyal wife of opposite party no. 2 dated 20.8.2026 bearing number-677704, Bank Name- Indian Bank (which is appended to the order sheet), over opposite party no. 2

through learned Chief Judicial Magistrate, Gautam Budh Nagar **forthwith.**

16. However, it is also made clear that in case the amount as extended through aforesaid Demand Draft is not received by wife of opposite party no. 2, for any reason whatsoever, then in that event, opposite party no. 2 may file recall application explaining the reasons for filing the said application.

(Saurabh Srivastava,J.)

October 29, 2026
Shaswat

Digitally signed by :-
SHASWAT SINGH
High Court of Judicature at Allahabad