2026:AHC:211761

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 40312 of 2026

Sarvesh Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Rama Pati Tripathi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. This matter is being taken up out of turn from the category of cases which have been mentioned in the morning on account of urgency. Heard learned counsel for parties.

2. The present application has been preferred for seeking quashing of entire proceeding of Case no. 90119 of 2022 (State vs. Sarvesh Kumar and others) arising out of Case Crime no. 375 of 2021 under sections 419, 420, 406, 504, 506 IPC, PS- Bidhnoo, District Kanpur Nagar and set aside the cognizance order dated 18.6.2022 along with charge sheet dated 24.3.2022.

3. Learned counsel appearing on behalf of applicant has challenged the impugned charge sheet along with cognizance/summoning order and entire proceedings of the present case precisely on the ground that Sections 420 and 406 IPC cannot go together in the same breath as per the proposition of law settled by Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another reported in 2024 10 SCC 690**. The relevant portion of the said judgment is being reproduced hereinbelow:-

> *"38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same*

breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other."

4. On the other hand, learned A.G.A. has vehemently opposed the prayer sought through the instant application but unable to dispute the settled proposition of law as relied upon by the learned counsel appearing for applicants.

5. Since, only legal argument has been raised at the behest of applicant,

process to issue notice to opposite party no. 2 is hereby dispensed with.

6. After hearing the learned counsel for the parties, going through the record of the case and the judgment of the Hon'ble Supreme Court rendered in the case of **Delhi Race Club (Supra)**, it is crystal clear that both the sections i.e. Sections 420 and 406 IPC cannot go in the same breath and as such, cognizance/summoning order dated 18.6.2022 is liable to be set aside. Although judgment of Hon'ble Supreme Court rendered in the case of **Delhi Race Club (Supra)** has been passed on 23.08.2024 and cognizance of offence in the present case, has been taken on dated 18.6.2022 and as per the judgment rendered by Hon'ble the Apex Court in the case of **Kanishk Sinha and another Vs. The State of West Bengal and another [2025 SCC Online SC 443]**, the judgment of Hon'ble the Apex Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.

7. In view thereof, cognizance/summoning order dated 18.6.2022 passed in Case no. 90119 of 2022 (State vs. Sarvesh Kumar and others) arising out of Case Crime no. 375 of 2021 under sections 419, 420, 406, 504, 506 IPC, PS-Bidhnoo, District Kanpur Nagar is **quashed** only in respect of applicant(s) herein. Matter is hereby remitted back to learned court concerned for passing fresh order of taking cognizance of offence, if required, in light of the proposition of law settled by Hon'ble Supreme Court in the case of **Delhi Race Club (supra).**

8. Accordingly, the instant application stands **allowed in part.**

(Saurabh Srivastava,J.)

October 7, 2026
Shaswat

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