2026:AHC:208603

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 44283 of 2025

Sarvesh Kushwaha And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Sayujya Singh, Yashovardhan Singh
Counsel for Opposite Party(s)	:	G.A., Gaurav Singh

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard learned counsel for the parties and perused the record.

2. The present application has been filed for quashing the cognizance/summoning order dated 27-05-2024 as well as entire proceedings of case no.43464 of 2024 arising out of case crime no. 181 of 2023, under Sections 406, 420, 120-B IPC, P.S. Nawabganj, district Kanpur Nagar.

3. Learned counsel for the applicant submits that, despite their best efforts, the parties could not appear before the court concerned for verification of the compromise in compliance with the order dated 05-08-2026, and it appears that the parties are no longer willing to enter into a compromise. Learned counsel for the applicant further submits that the applicant has been summoned for offences under Sections 406, 420, and 120-B IPC. It is further submitted that the offences under Sections 406 and 420 IPC cannot ordinarily co-exist on the same set of allegations, in view of the law laid down by the Hon'ble Supreme Court in Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh and Another, (2024) 10 SCC 690. It is, thus, contended that the impugned proceedings are liable to be set aside.

4. Per contra, learned A.G.A. has opposed the prayer made in the application; however, he could not dispute the settled proposition of law relied upon by learned counsel for the applicant.

5. The controversy involved in the present case relates to the co-existence of offences under Sections 406 and 420 IPC on the same set of allegations. The Hon'ble Supreme Court in *Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh and Another* (supra) has clarified the legal position. The relevant portion of the judgment is 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 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.*

42. *The ingredients of the offence of cheating and criminal breach of trust are distinct and separate, and the same set of facts ordinarily cannot constitute both the offences simultaneously.*

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 misappropriates 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."*

6. After hearing learned counsel for the parties, perusing the record and considering the law laid down by the Hon'ble Supreme Court, this Court finds that the offences under Sections 406 and 420 IPC cannot ordinarily be invoked together on the same set of facts. Therefore, the impugned summoning order is not sustainable in law.

7. In view of the aforesaid, the cognizance/summoning order dated 27-05-2024 as well as entire proceedings of case no.43464 of 2024 arising out of case crime no. 181 of 2023, under Sections 406, 420, 120-B IPC, P.S. Nawabganj, district Kanpur Nagar are hereby set aside.

8. The matter is remitted back to the court concerned to pass a fresh order on the question of summoning, if required, within a period of one month, in accordance with law and in light of the law laid down by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. (supra).***

9. Accordingly, the instant application under Section 482 Cr.P.C. is allowed.

(Madan Pal Singh,J.)

October 6, 2026
pks

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