2026:AHC:210519

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 42908 of 2026

Sarfaraz @ Sarfaraz Ahmad

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Akhilesh Kumar Mishra, Anurag Dubey
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. Present application has been preferred with the prayer to quash the charge sheet dated 22.12.2025, cognizance/summoning order dated 26.5.2026 as well as entire proceedings of Case no. 15641/9 of 2026 (State of U.P. vs. Mairaj and others) arising out of Case Crime no. 61 of 2025, under Sections 318(4), 316(2), 351(3) BNS, P.S.- Bhopa, District Muzaffar Nagar.

3. Learned counsel appearing on behalf of applicants has challenged the impugned chargesheet along with cognizance/summoning order and entire proceedings of the present case precisely on the ground that Sections 420 and 406 IPC (i.e. section 318(4) and 316(2) BNS) 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 AGA for the State 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 318(4) and 316(2) (i.e. 420 and 406 IPC) cannot go in the same breath and as such without interfering in any other merit of the present matter, cognizance/summoning order dated 26.5.2026 passed by learned Additional Civil Judge (Junior Division)/Court no. 1, Judicial Magistrate, Muzaffarnagar in Case no. 15641/9 of 2026 (State of U.P. vs. Mairaj and others) arising out of Case Crime no. 61 of 2025, under Sections 318(4), 316(2), 351(3) BNS, P.S.- Bhopa, District Muzaffar Nagar, is **quashed** only in respect of applicant(s) herein. Matter is hereby remitted back to learned Additional Civil Judge (Junior Division)/Court no. 1, Judicial Magistrate, Muzaffarnagar 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).**

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

(Saurabh Srivastava,J.)

October 6, 2026
Shaswat

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