2026:AHC:211187

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 43779 of 2026**

Rajendra Prasad Jaiswal And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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| Counsel for Applicant(s) | : | Akhilesh Kumar Mishra |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 72**

**HON'BLE DEEPAK VERMA, J.**

1. Heard learned counsel for the applicants; learned A.G.A. for the State and perused the record.

2. The present application u/s 528 BNSS has been filed with prayer to quash the summoning order dated 09.05.2025 passed by learned Judicial Magistrate-II, Court No.13, Basti as well as entire proceedings of Criminal Misc.Case No.1376 of 2021 (Om Prakash Mishra vs.Rajendra Jaiswal and another), under Sections 420, 406 IPC, P.S. Sonha, District Basti, pending in the court of Judicial Magistrate-II, Court No.13, Basti.

3. Learned counsel for the applicants submits that applicants are innocent and have been falsely implicated in the present case. On perusal of F.I.R., no offence under the alleged Sections is made out. Learned court below has passed the summoning order without application of judicial mind. It is next submitted that proceedings under Sections 420 and 406 I.P.C. cannot run jointly in view of the judgment of Apex Court in **Delhi Race Club (1940) Ltd. vs. The State of Uttar Pradesh & Anr.,** 2024 SCC OnLine SC 2248, wherein the Apex Court in paragraphs 42 and 43 has held thus:

*"42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police ? to thoroughly ascertain whether the allegations levelled by*

*the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.*

*43. 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 viz-a-viz 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 the IPC (now BNS, 2023) are not twins that they cannot survive without each other."*

4. Considering the argument raised by applicants' counsel and in view of judgment passed by Hon'ble The Apex Court in the case of Delhi Race Club (supra), summoning order dated 09.05.2025, passed by learned Magistrate is without application of judicial mind.

5. Accordingly, the impugned summoning order dated 09.05.2025 passed by learned Judicial Magistrate-II, Court No.13, Basti as well as entire proceedings of Criminal Misc.Case No.1376 of 2021 (Om Prakash Mishra vs.Rajendra Jaiswal and another), under Sections 420, 406 IPC, P.S. Sonha, District Basti, pending in the court of Judicial Magistrate-II, Court No.13, Bastiis hereby quashed.

6. The matter is remanded back to learned Magistrate with direction that learned Magistrate shall pass an appropriate order within eight weeks after hearing both the parties from the date of production of certified copy of this order keeping in view the order of Hon'ble The Apex Court passed in the case of Delhi Race Club (supra).

7. With aforesaid direction, the present application under Section 482 Cr.P.C. is accordingly **allowed**.

**October 8, 2026**
SKD

**(Deepak Verma,J.)**

Digitally signed by :-
SURJIT KUMAR DEY
High Court of Judicature at Allahabad