**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 51876 of 2025**

Kallu Prasad Jaiswal And Anther

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

| | | |
|---|---|---|
| Counsel for Applicant(s) | : | Anand Kumar Srivastava |
| Counsel for Opposite Party(s) | : | G.A. |

**Court No. - 79**

**HON'BLE MADAN PAL SINGH, J.**

1. Case called out in revised call. None has appeared on behalf of the opposite party no. 2 to press the present application.

2. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

3. This application has been filed filed by the applicant for quashing the charged-sheet dated 03.02.2017 as well as cognizance/summoning order dated 25.07.2017 passed by Additional Chief Judicial Magistrate IV, District Varanasi as well as entire Criminal Case No. 1404 of 2017 (State Vs. Suman), arising out of Case Crime No. 65 of 2016, under Sections, 420, 406, IPC, Police Station- Jaitpura, District- Varanasi.

4. It has been submitted by learned counsel for the applicant that applicant is innocent and no prima-facie case is made out against him. It was further submitted that by impugned order, the applicant summoned for offence under Sections 420 & 406 IPC and as per law laid down in case of **Delhi Race Club (1940) Ltd. and Others Vs. State of Uttar Pradesh and Another 2024 SCC Online SC 2248,** the offence of cheating viz-a-viz criminal breach of trust are independent and distinct and both cannot exist simultaneously and on this account alone the impugned summoning order is liable to be set aside.

5. Perusal of record shows that by impugned order, the applicant has been summoned under Sections 420 & 406 I.P.C. as stated above, in case of **Delhi Race Club (supra),** it has been held by the Hon'ble Apex Court that the offence of cheating viz-a-viz criminal breach of trust are independent and distinct and thus, the same cannot exist simultaneously in same set of facts

and that they are antithetical to each other. Thus, it is clear that impugned order is not in accordance with law.

6. In view of the aforesaid, impugned order dated 25.07.2017 passed by Additional Chief Judicial Magistrate IV, District Varanasi is hereby set aside and the matter is remitted back to the court concerned to pass an order on the point of summoning afresh, expeditiously in accordance with law within a period of two months from today.

7. The instant application is disposed of in above terms.

8. The Registrar (Compliance) is directed to communicate the order to the trial court concerned with three days for necessary compliance.

**October 27, 2026**
Akbar

**(Madan Pal Singh,J.)**

Digitally signed by :-
MOHAMMAD AKBAR
High Court of Judicature at Allahabad