HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 46599 of 2026

Vibha Kumari And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Manoj 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 further proceeding of Complaint Case No. 87635 of 2022 (Arvind Singh Versus Sushil Kumar and another), under Sections 323, 419, 420, 406, 504, 506 I.P.C., Police Station Cant, District Varanasi, pending before learned Additional Chief Judicial Magistrate VI, Varanasi also quash the order dated 15.04.2023 passed by learned Civil Judge (J.D.)/ F.T.C. Ist, Varanasi.

3. Learned counsel for the applicants submits that applicants are innocent and have been falsely implicated in the present case. The evidence produced by the complainant is not disclosing offence against the applicants. The summoning under Sections 420 and 406 I.P.C. are not supported by the cogent evidence and is liable to be set aside. Applicants have been roped in the present case due to malefide intention. Cognizance/summoning order passed by learned Magistrate, is without application of his judicial mind and same is liable to be quashed. 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), cognizance/summoning order dated 14.03.2023, passed by learned Magistrate is without application of judicial mind.

5. Accordingly, further proceeding of Complaint Case No. 87635 of 2022 (Arvind Singh Versus Sushil Kumar and another), under Sections 323, 419, 420, 406, 504, 506 I.P.C., Police Station Cant, District Varanasi, pending before learned Additional Chief Judicial Magistrate VI, Varanasi also quash the order dated 15.04.2023 passed by learned Civil Judge (J.D.)/ F.T.C. Ist,

Varanasi, is hereby **quashed.**

6. The matter is remanded back to learned Magistrate with direction that learned Magistrate shall pass an appropriate order, after hearing both the parties within six weeks 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 528 BNSS is accordingly **allowed.**

October 24, 2026
T.S.

(Deepak Verma,J.)

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