HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 48345 of 2026

Gaurav Tyagi

.....Applicant(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Applicant(s)	:	Bihaan Pandey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

HON'BLE DR. GAUTAM CHOWDHARY, J.

1. Heard learned counsel for applicant and learned AGA for the State.

2. Present application has been preferred with the prayer to quash the chargesheet dated 26.02.2019 and cognizance/summoning order dated 27.02.2019 along with entire proceedings of Case No.3286 of 2019 (State Vs. Pushpendra and others), arising out of Case Crime no. 1892 of 2018, under Section 406, 419, 420, 467, 468, 471 IPC and Section 66 of I.T. Act, P.S. NOIDA Sector-20, District Gautam Buddh Nagar, pending before learned Chief Judicial Magistrate, Gautam Budh Nagar.

3. Learned counsel appearing on behalf of applicant has challenged the impugned chargesheet and cognizance and summoning order on several other grounds inter-alia precisely on the ground that Sections 420 and 406 IPC 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 415IPC, punishable under Section 420IPC. 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. In sofar as implication of applicant under Section 66 of 1.T. Act and other sections of Indian Penal Code ie Sections 406, 419, 420, 467, 468, 471 IPC are concerned, learned counsel for applicant has submitted that during investigation, not a single evidence was collected by concerned Investigating Officer which would go to show that applicant has committed the offence which comes under the said sections. He further state that, this Hon'ble Court was pleased to pass Order dated 23.09.2025 in Application u/Sec. 528 BNSS No. 37495 of 2025 Yogender Chauhan v. State of U.P. and Anr. essentially quashing the entire proceedings, whilst noting that no offences have been made out. The applicant craves that since the same factual matrix is involved in the present case crime, benefit of the order may be extended in this one as well. Learned counsel for applicant has further submitted that once the specific report in shape of scientific report in pursuance of those devices which were alleged to be

being used by applicant for committing the alleged offence, has not been obtained, then under which circumstances, he could be fastened with criminal liability and morese applicant was not named in the FIR.

5. On the other hand, the learned A.G.A. 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 applicant.

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 420 and 406 IPC cannot go in the same breath. In sofar as implication of applicant under Section 66 of I.T. Act is concerned, the same have been fastened against the applicant without obtaining the scientific report of the devices which were alleged to be used by applicant. In sofar as implication of applicant under Sections 419, 467, 468, 471 IPC are concerned, the same have been fastened upon applicant in connection with Section 406 and 420 IPC as well as 66 of I.T. Act and as such, charge-sheet dated 26.02.2019 and cognizance and summoning order dated 27.02.2019 along with entire proceedings of Case No. 3286 of 2019 (State Vs. Pushpendra and others), arising out of Case Crime no. 1892 of 2018, under Section 406, 419, 420, 467, 468, 471 IPC and Section 66 of I.T. Act, P.S. NOIDA Sector-20, District Gautam Buddh Nagar, pending before learned Chief Judicial Magistrate, Gautam Budh Nagar, are hereby quashed.

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

(Dr. Gautam Chowdhary,J.)

November 2, 2026
CP.sahani

Digitally signed by :-
CHANDRA PRAKASH SAHANI
High Court of Judicature at Allahabad