HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 49490 of 2025

Pradeep Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s) : Rakesh Kumar Dubey
Counsel for Opposite Party(s) : G.A., Mahesh Narain Singh, Sunil Kumar Misra

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Reserved on 08.09.2026

Delivered on 24.10.2026

Court No. - 76

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard Sri Rakesh Kumar Dubey, learned counsel for applicant and Sri Mahesh Narain Singh, learned counsel appearing on behalf of opposite party no.2 as well as learned AGA.

2. The present application has been preferred for seeking quashing of order of framing charge dated 08.06.2023 alongwith further proceedings of Case No.14861 of 2019 (State Vs. Yashpal Singh and others), arising out of Case Crime No.1412 of 2011, under Section 409 IPC, P.S. Kalyanpur, District Kanpur Nagar, pending in the court of learned Special Chief Judicial Magistrate, Kanpur Nagar.

3. Brief facts of the present case are that huge land was acquired by the State at Ghaziabad and the same was transferred to UPSIDC for its development. The part of said acquired land i.e. 87.10 acres was allotted to M/s Ansal Housing and Construction Ltd. for developing a Housing Colony in Tronica City, Ghaziabad. The letter of allotment i.e. a memorandum was executed between UPSIDC and Ansal on 07.07.1997 which was transcribed on stamp paper worth of Rs.50/- only and not registered. Since the Memorandum executed between UPSIDC and Ansal was transcribed at the tune of Rs.50/- which is liable to be registered and stamp duty is required to be paid thereon treating the same to be lease

deed, the Project Officer of UPSIDC issued notice on dated 25.08.2003 against Ansal to register the said Memorandum and pay the stamp duty. The said notice was challenged by Ansal before this Court by way of preferring Writ C No.40656 of 2004 which was disposed of vide order dated 04.08.2011. Simultaneously, the lessee of development plot preferred bunch of writ petitions before this Court bearing Writ C No.73277 of 2010 wherein this Court passed order dated 28.07.2011 which is being quoted hereinunder:-

> *"Before any further directions are issued, for action being taken against the persons responsible for creating the situation, an opportunity be afforded to the State to inform as to what action is proposed at its end.*
>
> *Consequently, let the Chief Secretary examine the case and inform the Court by means of an affidavit as to what action, if any, is proposed against the officer of the U.P.S.I.D.C., who had executed the agreement with the Ansal as well as the person who had stamped the tripartite deed executed in favour of the petitioner with an stamp affixed thereon to the effect that it is a first transfer.*
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> *Such an affidavit of the Chief Secretary may be filed by 04.08.2011."*

4. The said writ petition was disposed of vide order dated 16.08.2011 with the following directions:-

> *"Sri Mahesh Chaturvedi, Chief Standing Counsel has filed an affidavit on behalf of the Chief Secretary of the State of U.P. today. It has been stated that an enquiry had been conducted in compliance to the order of this Court dated 28.7.2011. In the enquiry report, the Chief Secretary has opined that criminal as well as civil action is required to be initiated in the matter against all involved in the affixation of stamp on the deed as well as otherwise for misleading the allottee to believe that tripartite deed was first transfer of land and that concessional rate of stamp duty would be applicable.*
>
> *In view of the said report of the Chief Secretary of the State,*

this Court is not required to pass any further orders for action being taken against the Officers of the UPSIDC and the construction company namely Ansal. This Court hopes and trust that the Chief Secretary shall act and shall not permit evasion of stamp duty to go unnoticed and persons involved in such acts, scot free.

In the facts and circumstances of the case, this Court finds that since purchasers of the plot have been misled by the officers of the UPSIDC and the Developers namely Ansal the demand of deficiency in the stamp duty payable on tripartite deed of transfer along with interest under the impugned orders must be equally borne by the petitioner UPSIDC and Ansal together. Petitioner must pay his 1/3 of the total demand within two months from today. The Chief Secretary is directed to ensure recovery of 1/3 the amount each from Ansal and UPSIDC within the same period.

Writ petition is disposed of subject to the observations made."

5. The order dated 04.08.2011 passed in Writ C No.40656 of 2004 and order dated 16.08.2011 passed in Writ C No.73277 of 2010 were challenged by Ansal before Hon'ble the Apex Court by way of preferring Civil Appeal No.2582-2584 and 2585 of 2016 wherein Hon'ble the Apex Court vide its judgment dated 09.03.2016, set aside the order dated 16.08.2011 passed by this Court in Writ C No.73277 of 2010 and directed the parties to approach the competent authority under the Indian Stamp Act in the State of U.P. for adjudication of the dispute. In view of the order dated 09.03.2016, both the writ petitions preferred by Ansal and lessess were dismissed as infructuous vide order dated 02.08.2017.

6. The Controversy with respect to the alleged deficiency of stamp duty stood finally settled by the Board of Revenue, Meerut vide its detailed order dated 22.04.2015 passed in Revision No.02 of 2014-15 by way of categorically holding that the MOU executed in the year 1997 was not a lease deed but merely an agreement falling under Article 5(c) of Schedule I-B of the Indian Stamp Act. It was also held that the applicable stamp duty on the said document was only Rs.100/- whereas stamp duty of Rs.50/- had already been paid therefore, it directed payment of deficit

stamp duty of Rs.50/- alongwith nominal penalty of Rs.500/- except that, no other irregularity was found. Against the said order, State preferred Writ C No.54660 of 2015 before this Court which is still pending to be adjudicated wherein no interim order had ever been granted with respect to the order dated 22.04.2015.

7. The present FIR bearing Case Crime No.1412 of 2011 was lodged by opposite party no.2/Incharge of Industrial Area, UPSIDC on dated 10.08.2011, in pursuance of the order dated 28.07.2011 passed by this Court in Writ C No.73277 of 2010, against unknown person alleging that in the year 1997, an allotment of bulk land admeasuring approximately 87 acres was made by UPSIDC in favour of M/s Ansal Housing & Construction Ltd. for development of a project in Tronica City, Ghaziabad and the allotment letter was issued under the signatures of co-accused who was then posted as Deputy General Manager, UPSIDC, Ghaziabad. It has been further alleged that the draft Memorandum of Understanding (MOU) was prepared and forwarded by applicant, namely, Pradeep Kumar and the MOU was thereafter executed by the then Regional Manager i.e. Sri R.B. Maurya. The FIR further alleged that despite the issuance of an office memorandum dated 12.07.2007 directing a search for the relevant file, the original file relating to the project could not be traced.

8. After lodging of the present FIR, the case was entrusted to CBCID for investigation which culminated into submission of chargesheet under Section 409 IPC against three persons including applicant, whereupon learned court took cognizance of offence and charges were also also framed vide impugned order dated 08.06.2023.

9. Learned counsel appearing on behalf of applicant submitted that once the observations of this Court which led to the registration of the present FIR, had already been set aside by Hon'ble the Apex Court and thereafter legality of the MOU had already been upheld by the Board of Revenue, the very foundation of the present criminal proceedings has disappeared, therefore, continuation of the criminal proceedings would amount to nothing but an abuse of the process of law. Apart from the above, learned counsel submitted that there is hardly any documents available which would go to show that the applicant had participated in the processing of

allotment or execution of MOU or custody of the original file or any decision regarding allotment of land to Ansal in any manner whatsoever. He next contended that the material collected during investigation including the statements of various officers and employees of UPSIDC consistently demonstrate that the relevant decisions were taken at the Headquarters level by senior officers and the original records remained under the custody of the Headquarters and the applicant neither exercised administrative control over the concerned records nor had any authority to take decisions in relation to the allotment of maintenance of file, therefore, the essential ingredients of criminal breach of trust under Section 409 IPC, namely, dishonest misappropriation or conversion of property entrusted to the applicant are not made out and as such, the entire proceedings of the present case may be quashed.

10. Per contra, Sri Mahesh Narain Singh, learned counsel appearing on behalf of opposite party no.2 vehemently opposed the prayer sought through the instant application and rebutted the stands taken up by learned counsel appearing on behalf of applicant on the ground that the missing file is related to bulk of allotment of 87.10 acres which contains critical notesheets, bidding details, costing records and board proceedings and the same was intentionally suppressed/stolen from the Headquarters of UPSIDC, whereas the duplicate file was opened by applicant containing and consisting of only selective photocopies of the documents and this replacement was designed only to hide irregularities of bypassing officials guidelines and extending an unauthorized benefit to the developer at the cost of public exchequer. It has also been submitted by learned counsel for opposite party no.2 that the arguments raised at the behest of applicant are related to disputed questions of fact and would involve appreciation of evidence. It is submitted that at the time of taking cognizance, only a prima facie case is to be seen and the court concerned is not expected to hold a mini trial.

11. Learned AGA also seconded the arguments raised by learned counsel for opposite party no.2.

12. After having the rival contentions raised by learned counsel for parties and upon perusal of the material available on record, it appears that the very basis of the present criminal proceedings has been seriously

weakened, particularly in view of the fact that the observations of this Court, which led to the registration of the FIR, have already been set aside by the Hon'ble Supreme Court and the legality of the MOU has also been upheld by the Board of Revenue.

13. It is also relevant to note that no specific material has been brought on record to demonstrate the applicant's involvement in the processing of the allotment, execution of the MOU, custody of the original records or any decision relating to the allotment of land in favour of anyone. Rather, the material collected during investigation, including the statements of the officers and employees of UPSIDC, indicates that the relevant decisions were taken at the Headquarters level and that the original records remained in the custody of the Headquarters. In order to constitute an offence under Section 409 IPC, there must be material to show that the property was entrusted to the accused or was under his control and that he dishonestly misappropriated or converted the same for his own use, or dishonestly used or disposed of it in violation of the law. In the present case, no specific material has been brought to the notice of this Court to show that the original file was entrusted to the applicant, remained in his custody when it went missing, or was dishonestly dealt with by him. The mere fact that the applicant was holding an official post at the time of allotment does not, by itself, establish the essential ingredients of criminal breach of trust and this very fact is also missing in shape of specific evidence collected against applicant at the time of filing chargesheet.

14. This Court is conscious of the submission advanced by learned counsel for opposite party no.2 and learned AGA that the allegations involve disputed questions of fact which should be examined during trial. It is settled that, while considering an application for quashing criminal proceedings, the Court should not conduct a mini trial or undertake a detailed examination of the evidence. However, this does not mean that criminal proceedings must continue merely because a chargesheet has been submitted. Where the allegations and the material collected during the investigation do not disclose the essential ingredients of the alleged offence against the applicant, this Court can exercise its inherent jurisdiction under Section 528 BNSS to prevent abuse of the process of law.

15. In view of the aforesaid facts and circumstances, this Court finds that the material available on record does not disclose the essential ingredients of the offence under Section 409 IPC against the applicant. In the absence of material connecting him with the alleged disappearance of the original file or showing dishonest misappropriation of any property entrusted to him, continuation of the criminal proceedings against him would not be justified and would amount to an abuse of the process of the Court. Accordingly, this Court finds the present case to be a fit one for exercising its inherent jurisdiction under Section 528 BNSS to secure the ends of justice.

16. In view thereof, order of framing charge dated 08.06.2023 alongwith further proceedings of Case No.14861 of 2019 (State Vs. Yashpal Singh and others), arising out of Case Crime No.1412 of 2011, under Section 409 IPC, P.S. Kalyanpur, District Kanpur Nagar, pending in the court of learned Special Chief Judicial Magistrate, Kanpur Nagar, are hereby set aside.

17. Accordingly, the instant application is **allowed**.

(Saurabh Srivastava,J.)

October 24, 2026
Vivek Kr.

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