2026:AHC:207543

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 50494 of 2025

Anuj Singh Kushwaha And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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

Court No. - 79

HON'BLE MADAN PAL SINGH, J.

1. Heard Sri Pandey Balkrishna, learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. The present application has been filed for quashing the summoning order dated 04-03-2025 as well as entire proceedings of case no. 5648 of 2025, arising out of case crime no. 326 of 2023, under Sections 420, 406, 120-B IPC, P.S. Kamlanagar, district Agra.

3. Learned counsel for the applicants submits that the applicants have been summoned under Sections 420, 406 and 120-B IPC. It is further submitted that the offences under Sections 406 and 420 IPC cannot ordinarily co-exist on the same set of allegations, in view of the law laid down by the Hon'ble Supreme Court in *Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh and Another*, (2024) 10 SCC 690. It is, thus, contended that the impugned proceedings are liable to be set aside.

4. Per contra, learned A.G.A. has opposed the prayer made in the application; however, he could not dispute the settled proposition of law relied upon by learned counsel for the applicant.

5. Since the controversy involved in the present case relates to the co-existence of offences under Sections 406 and 420 IPC on the same set of allegations, no notice is required to be issued to opposite party

no. 2. The Hon'ble Supreme Court, in *Delhi Race Club (1940) Ltd. vs. State of Uttar Pradesh and Another* (supra), has clarified the legal position. The relevant portion of the judgment is 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 415 IPC, punishable under Section 420 IPC.

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 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.*

42. *The ingredients of the offence of cheating and criminal breach of trust are distinct and separate, and the same set of facts ordinarily cannot constitute both the offences simultaneously.*

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 misappropriates 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."

6. After hearing learned counsel for the parties, perusing the record and considering the law laid down by the Hon'ble Supreme Court, this Court finds that the offences under Sections 406 and 420 IPC cannot ordinarily be invoked together on the same set of facts. Therefore, the impugned summoning order is not sustainable in law.

7. In view of the aforesaid, the summoning order dated 04-03-2025 as well as entire proceedings of case no. 5648 of 2025, arising out of case crime no. 326 of 2023, under Sections 420, 406, 120-B IPC, P.S. Kamlanagar, district Agra, are hereby set aside.

8. The matter is remitted back to the court concerned to pass a fresh order on the question of summoning, if required, within a period of one month, in accordance with law and in light of the law laid down by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. (supra).***

9. Accordingly, the instant application under Section 528 BNSS is partly allowed.

(Madan Pal Singh,J.)

October 5, 2026
pks

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