



2026:AHC-LKO:40920

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 528 BNSS No. - 1971 of 2026

Mukesh Kumar Dubey

.....Applicant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.
And Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Mohd. Taufiq Siddiqui
Counsel for Opposite Party(s)	:	G.A.

Court No. - 13

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Mr. Mohd. Taufiq Siddiqui, learned counsel for the applicant and Mr. Vinay Kumar Sahi, learned AGA-I for the State.

2. Learned counsel for the applicant submits that he has filed the instant application under Section 528 BNSS with the relief which has been mentioned in the prayer clause of the application. The prayer clause is delineated below:-

"Quash the impugned Chargesheet and Summoning Order Dated 16/10/2025 Arising Out of Case Crime No. 36/2025, U/S 406, 420 of IPC, Police Station-Kandhai, District Pratapgarh, State v/s Mukesh Kumar Dubey, pending before the Chief Judicial Magistrate, Pratapgarh, as contained in Annexure No. 1 and 2 respectively"

3. Learned counsel for the applicant submits that an F.I.R. has been registered against the applicants as Case Crime No. 36/2025, under Sections 406, 420 of IPC, Police Station-Kandhai, District Pratapgarh, on the basis of the allegations contained in the First Information Report. Upon completion of the investigation, a charge-sheet has been submitted, thereafter the concerned court has taken cognizance of the offences under Sections 406 and 420 I.P.C.

4. Learned counsel for the applicant further submits that proceedings under Section 420 and 406 IPC cannot go on simultaneously in view of

the law laid down by Hon'ble the Supreme Court in **Delhi Race Club (194) Ltd. vs. State of U.P., (2024) 10 SCC 690**. In support of his submission, he has relied upon paragraph Nos.30, 41, 42 and 43 of the decision in **Delhi Race Club (Supra)**, which are being quoted below for ready reference:-

"30. 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.

41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita (?BNS?) in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.

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."

5. Learned counsel for the applicant further submits that the present criminal case is squarely covered by the judgment in **Delhi Race Club** (supra) and that, if the proceedings are allowed to continue simultaneously under Sections 406 and 420 of the I.P.C., the same would amount to an abuse of the process of law. It is, therefore, prayed that the entire criminal proceedings, including the charge-sheet as well as the impugned cognizance-cum-summoning order, be quashed.

6. The learned State Counsel also submits that in cases where cognizance has been taken under Sections 406 or 420 of the I.P.C., the law laid down by Hon'ble the Supreme Court in **Delhi Race Club** (supra) is applicable. It is, therefore, submitted that the learned Judicial Magistrate may be directed to pass an appropriate order in accordance with the law laid down in **Delhi Race Club** (supra).

7. After going through the rival submission advanced on behalf of both the parties and taking into account the law propounded by Hon'ble Supreme Court in the matter of **Delhi Race Club** (supra), this Court is of the view that criminal proceedings for offences under section 406 and 420 IPC cannot be allowed to go on simultaneously.

8. Accordingly, the cognizance-cum-summoning order dated 16.10.2025 arising out of Case Crime No. 36/2025, under Sections 406 and 420 of IPC, Police Station-Kandhai, District Pratapgarh, State v/s Mukesh

Kumar Dubey, passed by the Chief Judicial Magistrate, Pratapgarh, is set aside with a direction upon the concerned court to pass a fresh cognizance order in view of the decision in **Delhi Race Club** (supra), within a period of two months from the date this order.

9. With the aforesaid observation, the present application stands **disposed of**.

(Praveen Kumar Giri,J.)

June 12, 2026

K.Tiwari