



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8406 of 2026

Reserved On 19.05.2026

Delivered On 03.08.2026

Yogesh Gupta

.....Applicant

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Akash Kishan, Ashok Kumar Gupta
Counsel for Opposite Party(s)	: G.A., Harsh Vardhan Gupta

Court No. - 88

HON'BLE SANJIV KUMAR, J.

1. Heard Shri Akash Kishan, learned Counsel for the applicant, Shri Harsh Vardhan Gupta, learned Counsel for opposite party no.2 and Shri Akhilesh Kumar Mishra, learned A.G.A. on behalf of the State and perused the material on record.

2. This application under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (in short B.N.S.S.) has been filed by the applicant to quash the charge-sheet and summoning order dated 12.12.2025 as well as the entire proceedings of Case No.6752/IX/2025 (State Vs. Yogesh Gupta), arising out of Case Crime No.328 of 2023, under Section 406 IPC, Police Station- Kotwali Nagar, District- Banda, pending in the Court of Chief Judicial Magistrate, Banda.

3. Brief facts giving rise to this application are that opposite party no. 2 lodged an FIR against the applicant, that he owns a company namely,

Balaji Textile No. 9/6463 Nehru Nagar, Delhi 110031, and is indulged in business of readymade garments. He had sold the goods to accused Rakesh Gupta, the owner of Balaji Enterprises in Banda, in the year 2014. The accused is not making payment of goods. On 26.11.2022 the accused was caught by Incharge Police Station- Kotwali Nagar, where he had written an agreement and had stated that he will pay in installments and the first payment would be made on 15.12.2022, but later on he refused to make payment and sought further time up to the April-2023. Now, he is neither making payment nor picking up his telephone.

4. Upon this information, FIR was lodged and after investigation charge-sheet was filed under Section 406 IPC against the applicant. The concerned court took cognizance of the offence and summoned the applicant.

5. It is submitted by learned Counsel for the applicant that the dispute is essentially civil in nature. There is no entrustment of property and as such, offence punishable under Section 406 IPC is not made out. It is also submitted that the dispute is with regard to non-payment of outstanding dues arising from standardized business transactions, which do not constitute any cognizable offence against the applicant. It is also submitted that the FIR has been lodged belatedly after a gap of about nine years, without any explanation and as the offence is not punishable by not more than three years, therefore, the proceeding is barred under Section 468 Cr.P.C. It is also submitted that in view of the decision of Hon'ble Supreme Court in **State of Haryana vs. Ch. Bhajan Lal (1992 Supp. (1) SCC 335)** the proceeding is liable to be quashed because the dispute is essentially civil in nature and criminal colour has been given to it. It is also submitted that the offence of criminal breach of trust is not made out. So this proceeding is nothing but an abuse of process of law.

6. Per contra, learned Counsel for opposite party no.2 and learned A.G.A. have submitted that the FIR was lodged on correct facts. The applicant has committed criminal breach of trust and the offence punishable under Section 406 IPC is made out against him. The

applicant is admitting the outstanding amount and has submitted that the same was demanded by the first informant from him as the applicant is neither making payment nor answering the phone calls, therefore, the offence is clearly made out against him. The dispute is not purely of civil in nature, therefore, the decision of Hon'ble Supreme Court in **State of Haryana Vs. Ch. Bhajan Lal (supra)** does not apply to the present case. In view of the above, this application has no force and is liable to be dismissed. It is also submitted that the dispute involves criminal element in it. The cognizable offence is made out. Therefore, the proceeding is not time barred, as the FIR was lodged when the accused finally refused to make payment and did not bother to pick the call.

7. As per the allegations in the FIR, the readymade garments were sold to accused for which he is not making any payment despite repeated demands and his assurance to pay the amount. The first contention on behalf of the applicant is that an offence punishable under Section 406 IPC is not made out as admittedly, goods were sold and not entrusted to the applicant for offence of criminal breach of trust, entrustment of property is fundamental ingredient to attract punishment under Section 406 IPC. The contention of the applicant has force in it as there was no entrustment of goods but they were sold. Criminal breach of trust is defined under Section 405 IPC, which reads as follows:-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

8. A perusal of the above provision shows that endorsement or dominion over property is one of the essential ingredient to attract criminal breach of trust. As per the first informant the goods were sold by him to the applicant, therefore, there was no entrustment of goods by him to the applicant nor there was any dominion over property handed over to the applicant. Section 405 IPC contemplates the creation of a

relationship whereby the owner of the property makes it over to another to be retained by him until a certain contingency arises or be dispose of by him on the happening of certain event. As held by the Hon'ble Supreme Court in **Jaswantrao Manilal Akhaney v. The State of Bombay (AIR 1956 SC 575)**. Further, in **Common Cause, A Registered Society Vs. Union of India and Others (1999) 6 SCC 667**, the Hon'ble Supreme Court has held that, a trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405 IPC. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner.

9. In view of the above, it is clear that in the present case there is no entrustment of property or creation of any dominion over the property, because by sale of goods the ownership was also transferred, therefore, the facts of the case do not constitute an offence of criminal breach of trust, which is punishable under Section 406 IPC.

10. Beside that, the dispute arose due to business transaction and for non-payment of goods, therefore, the dispute between the parties is essentially civil in nature. The applicant says that due to dis-agreement over the quality of the products supplied, the dispute has genuinely arisen justifying the withholding or re-negotiation of payment, which shows that the dispute is clearly of civil and contractual nature having no criminal element in it.

11. In support of this contention learned Counsel for the applicant has relied upon a decision of Hon'ble Supreme Court in the landmark case ***State of Haryana vs. Ch. Bhajan Lal (1992 Supp. (1) SCC 335***, where a two-judge Bench of the Supreme Court considered in detail, the provisions of section 482 and the powers of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by High

Courts in exercise of their inherent powers to quash a criminal complaint:

"1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with

an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. Learned Counsel for the applicant has also relied upon a decision of Hon'ble Supreme Court in **(2013) 11 SCC 673, Paramjeet Batra Vs. State of Uttarakhand** and Others and relevant part of the judgment is quoted hereinbelow:-

"12. While exercising its jurisdiction under Section 482 Cr.P.C. of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court

13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

13. In the backdrop of the above legal position this Court, while exercising inherent power under Section 528 BNSS, can also see the unrefuted material of the applicant to judge whether criminal proceeding instituted by opposite party no.2 is manifestly attended with *mala fide* and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. Therefore, it is apparent that the above criminal proceeding was instituted by opposite party no.2 *mala fide* and maliciously with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. It *ex-facie* demonstrates that continuation of this criminal proceeding would be unjust and oppressive.

15. It is also well settled that summoning of any person as an accused on the basis of a frivolous or fictitious complaint is something very serious, as this would tarnish the image of the person against whom false, frivolous, or fictitious allegations are levelled. It is the duty of the Court, in such cases where the accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous or fictitious or instituted with an ulterior motive for wreaking vengeance to delineate such abuse of the process of law, and exercise its power under Section 482 Cr.P.C. (Section 528 BNSS).

16. Lastly, it is argued on behalf of the applicant that the dispute is with regard to non-payment of goods and the FIR has been lodged in the year 2014 i.e., after a gap of nine years and as offence under Section 406 IPC is punishable by not more than three years imprisonment, therefore, the cognizance is time barred in view of Section 468 Cr.P.C. In this regard, a perusal of FIR shows that goods were supplied in year 2014 and payment thereafter, was not made by the applicant. The FIR further shows that the later on upon being asked the applicant promised to make payment in December, 2022 and then April, 2023 and thereafter, did not make any payment and resultantly the FIR was lodged in April, 2023. As

per opposite party no.2 the dispute with regard to payment of goods kept pending during the aforesaid period and the applicant had promised to make payment, therefore, when he did not make payment in the year 2023, then the cause of action arose and the FIR was lodged and therefore, it is not time barred. Without going into the controversy, as to whether the cognizance taken was time barred or not as it held above, the dispute is essentially civil in nature and criminal colour has been given to it and further the offence of criminal breach of trust is not made out, therefore, the pendency of the present criminal proceeding is nothing but an abuse of process of law.

17. In view of the above, the present application, under Section 528 BNSS, is **allowed** and the impugned summoning order dated 12.12.2025 passed by Chief Judicial Magistrate, Banda in Case No.6752/IX/2025 (State Vs. Yogesh Gupta), arising out of Case Crime No.328 of 2023, under Section 406 IPC, Police Station- Kotwali Nagar, District- Banda, pending in the Court of Chief Judicial Magistrate, Banda are, hereby, **quashed**.

(Sanjiv Kumar,J.)

August 03, 2026
AdityaG