



2026:AHC-LKO:19657

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 482 No. - 1108 of 2026

Akbar Ali

.....Applicant(s)

Versus

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

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Pawan Kumar Singh
Counsel for Opposite Party(s)	:	G.A.

Court No. - 12

HON'BLE PANKAJ BHATIA, J.

1. Supplementary Affidavit filed in court is taken on record.
2. Heard Sri Rahul Singh Rana holding brief of Sri Pawan Kumar Singh the counsel for the applicant and the learned AGA for the State.
3. The application in question has been filed seeking invocation of the powers vested in this court by virtue of section 482 Cr.P.C./528 BNSS of the Cr.P.C.
4. The contention of the counsel for the applicant is that the order dated 04.09.2025, passed by Chief Judicial Magistrate, District Lucknow, in Criminal Case No.49491/2023 (State vs. Firoz Khan and another) arises out of Case Crime No. 0973/2017, U/s- 467, 468, 471, 406, 420, 120-B I.P.C. Police Station-Hazratganj, District- Lucknow and impugned Charge Sheet filed on dated 12.04.2023 in Case Crime No. 0973/2017, U/s- 467, 468, 471, 406, 420, 120-B I.P.C. Police Station-Hazratganj, District- Lucknow contained as Annexure no. 1 and 07 respectively to this petition is liable to be quashed. Further request has been made to stay the further criminal proceedings of Criminal Case No. 49491/2023 arises out of impugned Charge Sheet filed on dated 12.04.2023 in Case Crime No. 0973/2017, U/s- 467, 468, 471, 406, 420, 120-B I.P.C. Police Station- Hazratganj, District- Lucknow, pending in the Court of Chief Judicial Magistrate, District Lucknow.
5. The counsel for the applicant has extensively argued that the applicant

moved an application under section 156(3) Cr.P.C. which led to lodging of the FIR No.0973 of 2017, a copy of the FIR is on record as Annexure no.3. In terms of the FIR, it was alleged that the accused Dr. Firoz met the applicant in the Musafirkhana at Charbagh, Lucknow and informed that he was an officer working in the U.P. Secretariat Lucknow and if the applicant knows certain persons close to him, he could arrange a job as 'Ward Boy' in the KGMU Lucknow. It was also stated that the said accused had called the applicant to come along with the Educational Certificates, photographs and an amount of Rs.1,25,000/- and to bring the same near the Masjid at Gate No.10 of the Secretariat. It was also stated that thereafter all the applicants would receive the letter for undergoing training.

6. In paragraph 2 of the said application, it was stated that the applicant informed with regard to the said offer of job to his friends Mohd. Irfan, Shammo - the wife of the applicant, Mohd. Minhaj, Vimal Kumar, Asraf Ali, Jaya Mishra and on the information of the applicant, all the said persons were desirous of obtaining the job of Ward Boy and all of them with an intent to get a job went to the accused near the Gate No.10 sometimes in October 2016 and on the saying of the accused, all the said persons, on different dates, gave an amount of Rs.1,25,000/-. It was also stated that in the month of January, 2017, the said accused sent the appointment letters through registered post. It was also stated that believing on the version of the accused, the applicant as well as six friends had parted with an amount of Rs.1,25,000/- each, which was obtained by the main accused by plying fraud. It was further stated that after receiving the appointment letter and the letter for undergoing training, when the applicant along with other persons went for taking charge, it was informed that as the election is started, the appointment would take place now after the election is over. Subsequently, it was stated that on 18.04.2017, when the applicant went to the Secretariat on the fifth floor, he came to know that no such appointment letter has ever been issued and then the applicant who was also the complainant came to know that fraud has been played on him and the six friends. It was stated that when he came to know of the same, he sent a letter to the C.O. Hazratganj, under the registered cover and also persuaded all the six persons to lodge an FIR. It was also disclosed that the accused used to call from the mobile numbers disclosed in the complaint which are two. It was also stated that an e-mail was sent to the State and the Police Department, however no FIR was lodged.

7. It was further stated that in the presence of C.O. Hazratganj, the applicant along with the friends had dialled '100' and had called the police who apprehended the accused on 20.04.2017 from the Gate No.10 of the Secretariat and took him to Kotwali Hazratganj. It is also stated that before the police authorities, a confessional letter was signed by the accused and it was agreed that the amounts shall be returned soon and the accused was let off without registering any FIR or investigation. It is stated that after 20.04.2017, the accused was not traceable nor was the money returned nor was the first information report registered. After the investigation carried out by the authorities, a charge-sheet came to be filed against the main accused as well as the applicant. The said charge-sheet, is on record as Annexure no.7.

8. A perusal of the charge-sheet, reveal that on the basis of the investigation carried out by the investigating officer, the name of the applicant had also surfaced as an accused and to avoid any prosecution, the applicant along with the main accused Firoz had extracted money from various persons on the pretext of getting a job and a forged appointment letter was sent and when, the demands for money were being made, the applicant moved an application under section 156(3) Cr.P.C. and an FIR came to be lodged thereafter against the accused Firoz. Subsequently, the name of the applicant also surfaced to the effect that the applicant along with the main accused used to do the offences jointly. It is also recorded that the statement of the victims was on record and based upon the said statements, a charge-sheet against Firoz had already been filed on 09.12.2024 and based upon the statement of the complainant, the statement of the victims, the perusal of the documents and on the basis of the other evidences, the name of the applicant has also surfaced as an accused. Thus, the charge-sheet came to be filed under section 120-B, 406, 420, 467, 468, 471 IPC.

9. The applicants aggrieved of the said charge-sheet, moved an application under section 239 Cr.P.C. seeking discharge. The said application is on record as Annexure no.2. In the said application, in paragraph 1, all the averments which were contained in the application under section 156(3) Cr.P.C. were disclosed. In para 2 of the said application, it was alleged that initially, the charge-sheet was filed against the co-accused Firoz Khan and after that the IO in collusion with the main accused prepared forged evidence and a forged supplementary charge-sheet was filed, which is nothing but a packet of lies. In paragraph 3 of the said application, it was stated that based

upon the forged documents, a false charge-sheet No.2 dated 12.4.2023 has been filed on the basis of the collusion with the main accused. It was also stated that the applicant was wrongly implicated as an accused without there being any checks and balances and thus, the applicant should be discharged. It was also stated in paragraph 4 that the statements under section 164 Cr.P.C. were recorded contrary to the provisions of the law and were recorded on the basis of the threats issued by the police authorities which cannot be believed. The said application came to be partly allowed by means of the impugned order dated 04.09.2025. The trial court was of the view that on the basis of the averments, the offence under section 406 IPC was not made out and the offence against applicant under other sections being 420, 406, 468, 471 and 120-B IPC were found to be prima-facie made out in terms of the charge-sheet. Reliance was placed upon the judgment in the case of the **Delhi Race Club (1940) Ltd. vs. State of U.P.; 2024 (10) SCC 690**. The said order dated 04.09.2025 is under challenge before this court.

10. The counsel for the applicant argues that the applicant was falsely implicated. It is argued that the applicant is the complainant himself and all the six persons, stated that the wife of the applicant was also one of the persons who was duped by the main accused and the police authorities have wrongly charge-sheeted the applicant also as an accused. In the light of the said, it is argued that the order dated 04.09.2025 as well as the entire proceedings are liable to be quashed.

11. Sri Ran Vijay Singh learned AGA argues that on the basis of the material collected during the investigation as well as the statements, the name of the applicant was found to be involved as an accused and thus, the charge-sheet was rightly filed against the applicant and no interference is called for.

12. Considering the submissions made at the bar, it is essential to see the mandate of Section 239 Cr.P.C. under which, the application for discharge was filed. Section 239 Cr.P.C. is quoted herein below :

239-. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

13. On a plain reading of the provisions of Section 239, the discharge can be availed by the accused by the Magistrate upon considering the police report and the documents sent under section 173 and making examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, if the Magistrate considered that the charge against the accused to be groundless, he is duty bound to discharge the accused and record his reasons for doing so.

14. In the present case, in terms of the application filed by the applicant, which is contained in Annexure no.2, the discharge was sought essentially on the ground while filing the charge-sheet, a forged evidence was created by the I.O. in collusion with the main accused and a forged charge-sheet was filed. It was stated that the statements under section 161 were recorded under the threats issued by the police authorities. The said two grounds, based upon which, the discharge was sought, are beyond the scope of powers of discharge conferred upon the Magistrate by virtue of Section 239 Cr.P.C. While deciding the application under section 239 Cr.P.C., it is incumbent upon the Magistrate to peruse the report and the documents sent under section 173 Cr.P.C. making such examination if any as Magistrate thinks necessary and after giving prosecution and the accused an opportunity of being heard, the orders are being passed for the reasons to be recorded.

15. In the present case, there is no assertion that no opportunity of hearing was accorded. The assertion was only to the effect that the evidence was obtained by the I.O. in collusion with the main accused. This aspect could not have been considered by the Magistrate while exercising the power under section 239 Cr.P.C. The charge-sheet on record was filed based upon the statements collected. In fact in the FIR itself, the applicant had admitted that he met the main accused, who persuaded him that he can arrange jobs and on his persuasion, it is the applicant who contacted the six persons, who are said to have been duped by the main accused. On the basis of the statement of the applicant itself, the complicity of the applicant, cannot be said to be not made out. The statement on record filed along with the charge-sheet, clearly make out the case. The submission of the counsel for the applicant that the forged evidence was created by the I.O. in collusion with the main accused could not have been sent by the Magistrate at the stage of section 239 Cr.P.C. and was rightly not considered.

16. In view thereof, no error can be found in the order dated 04.09.2025,

warranting interference in exercise of the powers under section 482 Cr.P.C./528 BNSS.

17. The application lacks merit and is **dismissed**.

(Pankaj Bhatia,J.)

March 18, 2026
VNP/-