



2026:AHC:126976

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 36218 of 2025

Manoj

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Pankaj Sharma, Prashant Sharma,
Shubham Singh

Counsel for Opposite Party(s) : G.A.

Court No. - 5

HON'BLE SANJIV KUMAR, J.

1. Heard Mr. Prashant Sharma, learned counsel for the applicant, Mr. Akhilesh Kumar Mishra, learned AGA for the State and perused the record.

2. This application under Section 528 BNSS has been filed to quash charge-sheet dated 08.09.2021, cognizance/summoning order dated 05.10.2021 as well as entire proceedings of Case No. 1006 of 2021 (State Vs. Manoj), arising out of Case Crime No. 148 of 2019, under Sections 120B, 406, 420, 467, 468, 471 IPC, Police Station Dhaulana, District Hapur, pending in the court of learned Additional Civil Judge (Jr. Div.), IInd, Hapur.

3. Brief facts of the case are that opposite party no. 2, Pradeep, lodged an FIR against the applicant, which was registered under Case Crime No. 148 of 2019, Sections 120B, 406, 420, 467, 468, 471 IPC, at Police Station Dhaulana, District Hapur, pursuant to an order passed by the concerned court on an Application under Section 156(3) Cr.P.C. As per the allegations made in the FIR, in the year about 2015-2016, the applicant called him at his village Mahmoodpur and requested him to stand as a guarantor and Harendra Pradhan, Nakul and Sanju told the informant that, you are acquainted with applicant, Manoj, so believing that they had given a total amount of Rs.21,50,000/- to Manoj for securing employment in various department such as Army, FCI, Railways etc. It is stated that since the first informant was also unemployed, he

allegedly gave Manoj a sum of Rs.11,10,000/- to secure employment for himself. Thus, a total sum of Rs. 32,60,000/- were taken by Manoj for arranging jobs for him and others. It is further alleged that Manoj failed to secure employment for them. When the first informant, along with other three persons went to the Manoj's village, they came to know that he was lodged in jail for committing offences of cheating and criminal misappropriation of money to secure job for others. His relatives assured that Manoj would return their money after his release from jail, but no money has been returned and upon demand, Manoj has threatened the first informant to kill him.

4. It is further alleged that on the other hand Harendra Pradhan, Nakul and Sanju are repeatedly harassing the informant for repayment of their money and saying that they had given the money to Manoj on the first informant's guarantee. It is stated that to save himself, the first informant has sold his property and made part payment to them and even thereafter, he is being harassed by Nakul, Sanju and others. The informant was a guarantor of their money and he would return the money in monthly installments, but he is being harassed nonetheless. Consequently, it is alleged that Manoj has cheated the first informant under the false pretext to secure employment for him.

4. Upon this information, FIR was lodged and after conclusion of investigation, charge-sheet has been filed against the applicant, Manoj, under sections 120B, 406, 420, 467, 468, 471 IPC. The concerned Court has taken cognizance of the offence and summoned the applicant to face trial.

5. Learned counsel for the applicant submits that the investigation was not conducted in a fair, impartial and proper manner, and the impugned cognizance and summoning order is passed mechanically and without application of judicial mind, which is absolutely illegal and arbitrary. It is further submitted that in view of decision of the Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another reported in 2024 (10) SCC 690**, the offences punishable under Sections 406 and 420 IPC cannot run simultaneously on same set of facts, as both the offences are distinct from each other. Therefore, the impugned cognizance and summoning order is not sustainable.

6. Learned counsel for the applicant next submits that the FIR has been lodged after a delay of about four years without any proper explanation and there is no documentary evidence to show that the first informant made any online payment in the account of the applicant. The FIR has been lodged on false and concocted facts. It is contended that the applicant requested the first informant to secure an employment for him as his financial condition was not good and it was the first informant who demanded Rs.5,00,000/- from the applicant, whereupon the applicant gave him Rs.2,00,000/- with an assurance that rest amount would be paid after he gets the job. It is submitted that it was the first informant, who has taken money from several persons, upon assurance of providing service, and when the applicant demanded repayment of his money, the informant threatened him to implead them in a criminal case.

7. Learned counsel for the applicant next submits that it was, in fact, the first informant, who had taken money from Harendra, Nakul and Sanju on the pretext of securing Government employment for them. The applicant has neither received any such amount from the said persons nor forged any document, as alleged. The dispute is essentially civil in nature and criminal colour has been given to it with ulterior motive in order to exert undue pressure upon the applicant. Therefore, continuation of criminal proceedings against the applicant is nothing but an abuse of process of law.

8. Per contra, learned A.G.A. submits that the FIR has been lodged on correct facts and it is the applicant, who has committed the offence of cheating with the first informant and others to secure a Government job for them. It is further submitted that charges have already been framed against the applicant on 10.07.2023 and the case is at the stage of prosecution evidence. Therefore, in view of Section 221 Cr.P.C. (corresponding to Section 244 BNSS), the decision of the Hon'ble Supreme Court in **Delhi Race Club** (supra), does not apply in the present case. It is also submitted that there is enough evidence that the applicant has committed the offence, therefore, this application has no force and it is liable to be dismissed.

9. In view of submissions of both the parties and upon a perusal of record, it is clear that after investigation, charge-sheet has been filed against the

applicant. The first argument on behalf of the applicant is that the dispute is essentially civil in nature and criminal colour has been given to it with ulterior motive in order to exert undue pressure upon the applicant.

10. I do not agree with the aforesaid submission of learned counsel for the applicant. The allegation against the applicant is that money was obtained from the first informant and other persons on the false promise of securing Government employment for them and when they demanded their money back then they were threatened. Such allegations *prima facie*, show that the dispute is not purely civil in nature, but it also has criminal element in it.

11. It is also argued by learned counsel for the applicant that the first informant himself is involved in the alleged commission of offence, as he too took the money and stood as a guarantor for Harendra, Nakul and Sanju and the Investigating Officer has falsely filed charge-sheet against the applicant alone. The applicant has filed statements of Nakul, Harendra and Sanju, which were recorded by the Investigating Officer during investigation. In this proceeding these statements can not be examined and evaluated, as it would amount to holding a mini trial. But *prima facie* the allegation against the applicant is that he was provided money and he got conducted fake medical examination and thereafter provided forged joining letters to one of the victim and to another he asked to wait till Police verification is over and thereafter, his brother would be called upon to join service.

12. This Court, in this proceeding under Section 528 BNSS, is not expected to evaluate and examine the evidence, as it would amount to holding a mini trial, which is not permissible in law, therefore, the role of the first informant, if any, in the commission of the offence, could be examined by the Trial Court, during trial, and only on this ground the proceedings cannot be quashed against the applicant.

13. Learned counsel for the applicant has submitted that the impugned cognizance and summoning order is bad in the eye of law inasmuch as the applicant has been summoned under Sections 406 and 420 IPC along with other Sections of the IPC, whereas in view of the decision of the Hon'ble Supreme Court in **Delhi Race Club** (supra), offences under Sections 406,

420 IPC cannot run simultaneously on same set of facts.

14. A perusal of the decision of Hon'ble Supreme Court in **Delhi Race Club** (supra) reveals that the above case arose out of a compliant case, in which, the accused was summoned for offences punishable under Sections 406, 420 IPC. The accused had challenged the summoning and cognizance order before the High Court, which dismissed the petition. Thereafter, the accused approached the Hon'ble Supreme Court, where the Supreme Court held that the offences of criminal breach of trust and cheating have distinct elements and they cannot run together on same set of facts.

15. The relevant paragraph nos. 41,42 and 43 of the decision of the Hon'ble Supreme Court in **Delhi Race Club (supra)** are as under:

“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 a 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. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

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 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.”

16. Here, in the present case, the charge has already been framed on 10.07.2023 and the case is at the stage of prosecution evidence. Section 221 Cr.P.C. (corresponding Section 244 BNSS) is relevant in this regard which is applicable at the stage of framing of charge. Section 221 Cr.P.C. (corresponding Section 244 Cr.P.C.) is as follows:-

221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating.

17. Section 221 Cr.P.C. (corresponding Section 244 BNSS), starts with the heading ‘**where it is doubtful what offence has been committed**’ and sub-clause (i) provides that if a single act or series of acts is of such a nature that is doubtful, which of several offences the facts which can be

proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. Illustration (a) of Section 221 Cr.P.C. is relevant in this regard, as it relates to offences of 'cheating' and 'criminal breach of trust' also. Therefore, in view of Section 221 Cr.P.C. (corresponding Section 244 BNSS), at the stage of framing of charge, the Court can frame charge under Sections 406, 420 IPC together or in alternate, if, from the fact, it is doubtful what offence has been committed. Now that the stage of charge is already over and the case is presently at the stage of recording of prosecution evidence and in **Delhi Race Club** (supra), the proceedings had not reached at the stage of framing of charge, therefore, the Hon'ble Supreme Court was not required to consider the applicability and effect of provisions provided in Section 221 Cr.P.C. (corresponding Section 244 BNSS).

18. In a recent decision of a Co-ordinate Bench of this Court in Vikash Kumar Vs. State of U.P., Criminal Misc. Bail Application No. 1381 of 2026 dated 28.03.2026, the Court came across with the legal issue, whether Sections 406 and 420 IPC simultaneously make the proceedings erroneous in view of the decision of Delhi Race Club (supra) and the Court observed that in view of Section 221 Cr.P.C. (corresponding Section 244 BNSS), the proceedings on this ground will not be erroneous, if Sections 420 and 406 IPC are invoked together. Recently, in another case of Bhim Sain Arora Vs. State, 2025 DHC 7379, the Delhi High Court held that there is no doubt that the legal position is that a person cannot be convicted for offences punishable under Section 409, 420 IPC simultaneously. However, at the time of consideration on point of charge, in view of Section 221 Cr.P.C., the Trial Court can proceed to frame charge under both the Sections.

19. In view of the above discussion and looking at the stage on which this case stands, the decision of Hon'ble Supreme Court in **Delhi Race Club** (supra) does not apply to the present set of facts.

20. It is also submitted by learned counsel for the applicant that the FIR has been lodged belatedly after a lapse of four years without any explanation of delay, therefore, the proceedings are not sustainable. As this issue requires consideration of evidence, which is not permissible in

this proceedings, so this issue is not material in this proceeding.

21. In view of the above discussion, I come to the conclusion that this application is devoid of merits and is, accordingly, **dismissed**.

(Sanjiv Kumar,J.)

June 12, 2026

Subham