

Ram Jiyavan vs State Of U.P. Thru. Prin. Secy. Deptt. Of ... on 27 March, 2025

Author: Manish Kumar

Bench: Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17593

Court No. - 14

Case :- APPLICATION U/S 482 No. - 11488 of 2024

Applicant :- Ram Jiyavan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Lko And 2 Others

Counsel for Applicant :- Maya Ram Yadav, Shesh Ram Verma

Counsel for Opposite Party :- G.A.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. Present application has been filed under Section 482 Cr.P.C./528 B.N.S.S. with following main relief:-

"Under the facts, reasons and circumstances stated in the present application and affidavit filed in its support, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to set-aside the impugned summoning order dated 03.01.2023 as well as its consequential order passed by learned Additional Chief Judicial Magistrate-II, Gonda in CrI Case No. 1312/2023 (State Vs. Ram Jiyavan) arising out of FIR No. 0024/2022, dated 20.01.2022, U/ S-406, 420, 467, 468, 471, 504, 506 IPC, Police Station- Itiyathok, District- Gonda and to quash the impugned charge-sheet dated 03.07.2022 submitted by Investigating Officer in aforesaid sections against the applicant on which without thoroughly perusing the case diary

and properly applying his judicial mind, the learned Additional Chief Judicial Magistrate-II, Gonda passing the impugned order summoned the innocent applicant for facing trial under section 406, 420, 467, 468, 471, 504, 506 IPC (contained as ANNEXURE NO. 1 & 2) with the affidavit filed in support of this application.

It is further prayed that this Hon'ble Court, may kindly be pleased to stay the proceeding of above noted case which is going on against the applicant before the learned Court below, during pendency of instant application in the interest of justice."

3. This Court has issued notice to the respondent nos. 2 and 3, which was served upon them, as mentioned in the order dated 30.1.2025. The order dated 30.01.2025 is being reproduced hereinbelow:-

"In pursuance to earlier order of this Court dated 17.12.2024, applicant is personally present and has been duly identified by his counsel.

Service of notice upon opposite party Nos.2 and 3 is sufficient as appears from office report dated 29.01.2025. However, no one is present on behalf of opposite party Nos.2 and 3, when the case is called out.

Taking note of the facts of the case and in the interest of justice, the case is adjourned.

List/ put up this case on 27.03.2025 for presence of parties.

Interim order dated 17.12.2024 shall continue till the next date of listing."

4. Today, the position is the same as neither respondent nos. 2 and 3 nor any counsel on their behalf has filed any vakalatnama or present before this Court.

5. Learned counsel for the applicant has submitted that an FIR on 20.01.2022 was lodged under Sections 406, 420, 467, 468, 471, 504 and 506 IPC by the respondent no. 2. In the said case, the charge-sheet was filed against the applicant and in pursuance thereof, the Court concerned has taken cognizance and issued summoning order dated 03.01.2023 without considering the fact that the Section 406 of IPC and 420 IPC cannot go in the same breath hence, the order has been passed without application of mind and in support of his submissions, learned counsel for the applicant relied upon the judgment rendered by Hon'ble Supreme Court in the case of Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another reported in 2024 10 SCC 690. The relevant portion of the said judgment is being 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 405IPC, 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 415IPC, punishable under Section 420IPC.

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.

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.

55. 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 vis--vis 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 IPC (now BNS, 2023) are not twins that they cannot survive without each other."

6. Learned A.G.A. has vehemently opposed the application but unable to dispute the settled proposition of law as relied upon by the learned counsel for the applicant i.e. the Section 406 IPC and Section 420 IPC cannot be proceeded with simultaneously and the Court concerned must apply its mind before taking cognizance and issuing summoning order as to which section is attracted from either of the two.

7. After hearing learned counsel for the parties, going through the record of the case and judgment in the case of Delhi Race Club (supra) as well, it is apparent from the cognizance and summoning order that the Court concerned has taken cognizance and issued summons against the applicant in both the Sections i.e. 406 and 420 IPC alongwith other sections whereas Section 406 IPC and Section 420 IPC cannot go in same breath so before taking the cognizance and issuing summons against the applicants, the Court concerned must have determined as to which section is made out against the applicant.

8. In view of the facts, circumstances and observations made hereinabove, the impugned summoning order dated 03.01.2023 and cognizance order dated 20.01.2022 are hereby quashed.

9. The present case is allowed.

10. The case is remitted to the court concerned to take cognizance in the matter afresh after going through the material available before it and keeping in mind the law laid down by Hon'ble Supreme Court in the case of Delhi Race Club (supra).

Order Date :- 27.3.2025/Ashish