2025:AHC:177877

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**APPLICATION U/S 528 BNSS No. - 23347 of 2025**

Keshav Kumar Alias Kalu And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

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| Counsel for Applicant(s) | : | Durga Prasad Tiwari, Shrawan Kumar Pandey |
| Counsel for Opposite Party(s) | : | G.A. |

**AFR**

**Court No. - 77**

**HON'BLE SAURABH SRIVASTAVA, J.**

1. Heard Sri Durga Prasad Tiwari along with Sri Shrawan Kumar Pandey, learned counsel for applicants and learned Additional Government Advocate appearing on behalf of State.

2. The present application under Section 528 BNSS has been preferred for seeking quashing of cognizance/summoning order dated 03.03.2025 and entire proceedings of Case No.2045 of 2025 (State Vs. Keshav @ Kalu and another), arising out of Case Crime No.918 of 2024, under Section 420, 506 IPC, Police Station Sahar, District Bulandshahar, pending in the court of learned Chief Judicial Magistrate, Bulandshahar.

3. Learned counsel for applicant raised legal issue in respect of applicability of two simultaneous proceedings in pursuance of Section 138 of Negotiable Instrument Act as well as implication of the same person under Section 506, 420 IPC on the basis of same set of allegations, therefore, process to issue notice to opposite party no.2 is hereby dispensed with.

4. Learned counsel for applicants submitted that implication of applicants in two simultaneous proceedings i.e. in Case No.16559 of 2024, under Section 138 of N.I. Act which was instituted on dated 19.07.2024 wherein applicant was summoned vide order dated 14.02.2025 after recording statements under Section 200 and 202 Cr.P.C. and in subsequent proceedings which was initiated by way of lodging FIR on dated 11.10.2024 on similar set of facts

which was registered as Case Crime No.918 of 2024, under Section 506, 420 IPC wherein after submission of chargesheet on dated 24.12.2024, cognizance of offence was taken and applicant was summoned vide impugned order dated 03.03.2025 by learned court of Chief Judicial Magistrate, Bulandshahar.

5. Learned counsel for applicant submitted that while adjudicating the same controversy involved in the case of **J. Vedhasingh Vs. R.M. Govindan and others [2022 0 Supreme(SC) 665]**, Hon'ble the Apex Court formulated two issues and referred the matter to the larger Bench of Hon'ble the Supreme Court to be answered, the said two issues are as follow:-

*"(1) Whether the ratio of the judgment, in the case of G. Sagar Suri (supra) and Kolla Veera Raghav Rao (supra) lay down the correct law? Or*

*The view taken in the case of Sangeetaben Mahendrabhai Patel (supra) as followed in M/s V.S. Reddy and Sons (supra) which is subsequent and conflicting, lay down the correct proposition of law?*

*(2) Whether on similar set of allegations of fact the accused can be tried for an offence under NI Act which is special enactment and also for offences under IPC unaffected by the prior conviction or acquittal and, the bar of Section 300(1) Cr.P.C. would attract for such trial?"*

6. The legal issues which have been formulated to be answered by larger Bench of Hon'ble the Supreme Court, are still pending to come up as law of land specifically in respect of Issue No.2 which has been underlined above.

7. Learned counsel for applicants submitted that the questions of law which have been formulated to be answered by larger Bench vide order dated 11.08.2022 passed in J. **Vedhasingh (supra)**, are attracting the same controversy since the applicants have already been summoned vide order dated 14.02.2024 over the allegation that they issued an instrument which was dishonored and they are under the obligation to pay a sum of Rs.38,00,000/- and on the other hand, applicants were summoned vide order dated 03.03.2025 in pursuance of Case Crime No.918 of 2024, under Section 506, 420 IPC on the same set of allegations and as such, the entire proceedings arising out of Case Crime No.918 of 2024, may be kept in abeyance till the answer to be given by larger Bench of Hon'ble the Apex Court in pursuance of questions formulated vide order dated 11.08.2022

passed in **J. Vedhasingh (supra)**.

8. Per contra, learned Additional Government Advocate submitted that the controversy is persisting in both the simultaneous proceedings and the same has to be dealt with according to law.

9. After having rival submissions extended by learned counsel for parties, specially the arguments so raised by learned counsel for applicants which is in shape of suggestion that proceedings arising out of Case Crime No.918 of 2024 may be kept in abeyance till referral questions may be answered, this Court finds that the said matter has already been placed before Hon'ble the Chief Justice of India for consideration by a larger Bench, the decision of the larger Bench will undoubtedly have a binding effect on all courts across the country, but in sofar as the present matter is concerned, the proceedings initiated at the behest of Case Crime No.918 of 2024 wherein the applicants have already been summoned vide order dated 03.03.2025 by learned court concerned by way of observing that prima facie offence has been made out against applicants for putting them to trial in respect of Section 506, 420 IPC, whereas the subject matter of liability which has been taken up into consideration by other learned court concerned in respect of proceedings under Section 138 N.I. Act wherein applicants have also been summoned vide order dated 14.02.2025, is still to be finalized and determined whether the applicants are under the obligation to pay the amount in question to be realized in pursuance of the instrument received by opposite party no.2, the observations made by learned Chief Judicial Magistrate, Bulandshahar that prima facie case is made out for putting the applicants to trial under Section 506, 420 IPC, is still under the clouds and the same shall be dependent upon the outcome of proceedings of Case No.16559 of 2024, under Section 138 of N.I. Act wherein applicant no.1 has already been summoned vide order dated 14.02.2025.

10. The mandate of Section 300(1) Cr.P.C. is crystal clear and as such, there is hardly any ambiguity in respect of implication of applicants in two simultaneous proceedings, but if the applicants are ultimately found guilty of dishonour of the instrument executed by them, such act would fall within the ambit of Section 420 IPC for which they are already facing prosecution in pursuance of Case Crime No.918 of 2024, but before final outcome of Case No.16559 of 2024, under Section 138 N.I. Act, the determination of such culpability would be premature and proceeding with the trial under Sections

506 and 420 IPC at this stage would serve no meaningful purpose, in case the determination of both the learned trial courts contrary to each other, the same will be miscarriage of justice.

11. The arguments raised by learned counsel for applicants in respect of applicability of Section 300(1) Cr.P.C., is not at all touched by this Court, since the controversy and ambiguity of law which has already been referred by Hon'ble the Apex Court to the larger Bench of Apex Court vide order dated 11.08.2022 and answer of the same will be the law of land which shall give light to the controversy if so raised in future.

12. In sofar as the present controversy is concerned, without adjudication of Case No.16559 of 2024, under Section 138 of N.I. Act, the proceedings initiated in pursuance of Case Crime No.918 of 2024 wherein the applicants have already been summoned vide order dated 03.03.2025, is redundant at present since the same shall be dependent upon the outcome of Case Crime No.918 of 2024 and as such, cognizance/summoning order dated 03.03.2025 along with entire proceedings of Case No.2045 of 2025 (State Vs. Keshav @ Kalu and another), arising out of Case Crime No.918 of 2024, under Section 420, 506 IPC, Police Station Sahar, District Bulandshahar, pending in the court of learned Chief Judicial Magistrate, Bulandshahar, is hereby set aside.

13. Accordingly, the instant application is **allowed**.

14. However, it is made clear that opposite party no.2 will be at liberty to initiate proceedings in pursuance of sections so warranted under the law after outcome of Case No.16559 of 2024, under Section 138 N.I. Act which is still pending to be adjudicated by learned court concerned.

**October 7, 2025**
Vivek Kr.

**(Saurabh Srivastava,J.)**

Digitally signed by :-
VIVEK KUMAR
High Court of Judicature at Allahabad