2025:AHC:216530

AFR

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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. 22266 OF 2024

Vishwa Bandhu .....Applicant(s)

Versus

State of U.P. and 3 Others ....Opposite Party (s)

Counsel for Applicant (s)	:	Alok Saxena
Counsel for Opposite Party(s)	:	Ayush Mishra, Sunil Kumar Misra, G.A.

Court No. 72

HON'BLE JITENDRA KUMAR SINHA, J.

1. Heard Mr. Alok Saxena, learned counsel for the applicant and Mr. Sunil Kumar Mishra, learned counsel for the opposite party no. 2 and Sri B.P. Singh, learned AGA for the State respondents and perused the affidavit filed in support of this application.

2. Present application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for the sake of brevity 'BNSS') has been filed for quashing the first information report dated 14.6.2024 registered as P.S. Civil Lines, Meerut, giving rise to the registration of Crime No 192 of 2024 against the applicant and two others for the offences under Sections 420, 467, 468 and 471 of the Indian Penal Code.

3. It has been contended by the learned counsel for the applicant that the instant first information report which has been lodged is an abuse of process of the Court as on similar facts, earlier first information report bearing no. 0039 of 2022 was lodged on 3.2.2022 against 04 persons, namely, Narendra Singh Tomar, Satish Tewatiya, Hareram Dua and Jatin Dua for the offences under Sections 420, 467, 468 471, 386 and 120B, P.S. Transport Nagar, District Meerut (annexure 4 to the memo of application). It is further submitted by the learned counsel for the applicant that chargesheet in the said case has already been filed and the learned Magistrate has also taken cognizance of the offences described in the chargesheet. It is also much after registration of the FIR no. 0039 of 2022, the opposite party no. 2 in his capacity as Manager of the Society filed an application under Section 156(3) Criminal Procedure Code (hereinafter referred to as the 'CrPC') against the applicant and two others before the Court of Chief Judicial Magistrate, Meerut and the same was allowed vide order dated 7.6.2024 and the concerned Police Station was directed to register the FIR against the applicant and two others and to investigate the offence in accordance with law. It is further submitted by the learned counsel for the applicant that instant FIR is illegal as two FIRs cannot be lodged for the same offences in view of the law laid down by Hon'ble Apex Court in **T.T. Antony**

vs. State of UP, (2001)6 SCC 181 as the second FIR is barred by the provisions of Section 162 of the CrPC. It is further submitted that on close perusal of FIR No. 39 of 2022, it would emerge that the substratum of the said FIR and the instant FIR is the same. It is further submitted that even if the allegation made in the instant FIR is taken to be true on its face value, then no offence under the aforesaid sections is made out against the applicant. It is also submitted that no falsification of a document within the meaning of Section 464 of the Indian Penal Code (hereinafter referred to as the 'IPC') has been done by the applicant, therefore, offence under Sections 467, 468 and 471 of the IPC is not made out. It is further submitted that falsification of documents within the meaning of Section 464 of the IPC is the prerequisite for constituting the offence under Sections 467, 468 and 471 of the IPC. In this regard, learned counsel for the applicant has placed reliance on a judgement of Hon'ble Apex Court in the case of **Sheila Sebastian vs. R. Jawaharraj**, (2018) 7 SCC 581 in which Hon'ble Apex Court has summarized as follows:

> "**25**. That keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that for constituting an offence under Section 464 it is imperative that a false document is

made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "Fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither respondent no. 1 nor respondent no. 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

4. It is further contended by the learned counsel for the applicant that as per allegation in the FIR in question there is complete lack of describing the essential facts constituting the commission of the offence under Section 420 of the IPC by the applicant. It is, therefore, submitted that no offence under Section 420 IPC is made out against the applicant even if the allegation made in the FIR is taken to be true on its face value. It is also submitted that Navyug Shahkari Avas Samiti filed a suit for cancellation of the sale deed before the Arbitrator invoking the provisions of the UP Cooperative Societies Act and presently the matter is pending before this Court. In view of the above, learned counsel for the applicant submitted that a civil dispute is pending between Navyug

Shahkari Avas Samiti and the applicant. Learned counsel for the applicant submitted that Hon'ble Apex Court in **G. Sagar Suri and another vs. State of U.P. and others**, (2000) 2 SCC 636 has held as under:

> *"Jurisdiction under Section 482 of the Code has been to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 483 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

5. Learned counsel for the applicant has also placed reliance on a judgement of Hon'ble Apex Court in **Usha Chakraborth and another vs. State of West Bengal and another**, 2023 SCC Online SC90 wherein it has been held that where as dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such dispute can be quashed by exercising the inherent powers under Section 482 of CrPC. He has also placed reliance on a judgement of Hon'ble Apex Court in **Paramjeet Batra vs. State of Uttarakhand**, (2013) 11 SCC 673 wherein the Hon'ble Apex Court held that the High Court can quash the first information report in exercise of its inherent powers under Section 482 CrPC. It is further submitted that this legal

position has not been altered by the introduction of new code of procedure w.e.f. 1.7.2024.

6. In view of the above, learned counsel for the applicant submitted that the instant FIR is an abuse of process of law, therefore, present application deserves to be allowed.

7. On the other hand, learned counsel for the opposite party no. 2 has submitted that present application is not maintainable in view of the decision of Hon'ble Full Bench of this Court in **Ram Lal Yadav vs. State of UP**, 1989 APLJ (Cri) 107 wherein it has been held that in a case at investigation stage by police, the High Court cannot interfere in exercise of its power under Section 482 CrPC but if it appears that investigation is being conducted by police in mala fide exercise of power, the High Court can quash such investigation in exercise of its power under Article 226 of the Constitution of India. The arrest of the applicant by police in cognizable cases cannot be interfered by the High Court under Section 482 CrPC. However, if it appears that police officer is misusing his powers, the High Court can issue a writ of mandamus under Article 226 of the Constitution of India restraining such police officer from such misuse. It is also held that the power of the police to investigate into a report which discloses the commission of a cognizable offence is unfettered and cannot be interfered with by the High Court in exercise of its inherent powers under Section 482 CrPC. The

inherent powers of the High Court are there to prevent the abuse of the process of Court or otherwise to secure the ends of justice come into play only after the chargesheet against an accused is filed in Court and not till then even in cases where the police wrongly investigated into a report which does not disclose the commission of any offence. Learned counsel for the opposite party no. 2, in view of the above pronouncement by Hon'ble Full Bench of this Court, submitted that present application is not maintainable and the same deserves to be dismissed. Learned counsel for the opposite party no. 2 has also submitted that the applicant has played fraud on this Court and he has also misguided and misled this Court as the alleged power of attorney has not been brought on record by the applicant which firmly affirms the fact that it is not at all meant to authorize the said Narendra Sachdeva to execute any sale deed in favour of the applicant and the same power of attorney is not a genuine document and is fraudulently fabricated document. It is also submitted by the learned counsel for the opposite party no. 2 that the award has been challenged before this Court by filing a Writ-C No. 2972 of 2022, which has been declined by this Court vide order dated 23.5.2022 (Neutral Citation No. 2022:AHC-LK):27578).

8. I have considered the rival submissions and perused the affidavit filed in support of this application.

9. The opposite party no. 2 has filed the instant FIR through an application under Section 156(3) CrPC alleging therein that he is the registered member of Navyug Shahkari Avas Samiti (a registered society) being Registration No. 2459 dated 25.11.1971. It is also stated that he is the coordinator of the said society and he is authorized to act on behalf of the society. It is further alleged in the instant FIR that the above society had executed a sale deed in favour of one member Hareram Dua being plot no. 5, area 631-2/9 sq yard on consideration of money of Rs. 36,600.10 paise dated 11.9.1978. It is further alleged that as per paragraph 3 of the sale deed it is mentioned that a member of the society can transfer it to his family members and if he transfers in favour of some other person, then he will have to follow the rules and by-laws of the society. It is further alleged that accused Narendra Sachdeva by entering into criminal conspiracy with the co-accused Vishwa Bandhu (applicant herein) prepared a forged power of attorney and executed a forged sale deed of plot no. 5 in favour of the applicant Vishwa Bandhu on 12.9.1988 whereas no power of attorney was ever executed by the earlier allottee of the said plot Hareram Dua in favour of accused Narendra Sachdeva and the applicant was neither a member of the society nor his relative or family member of said Hareram Dua. It is further alleged that accused has violated the provisions of by-laws as provided in Section 55.

10. It is further alleged in the FIR that when the society came to know about the execution of the said sale deed dated 12.9.1988, a notice was issued to Hareram Dua and Vishwa Bandhu (applicant herein) through registered post on 4.8.2021 and 20.8.2021 but Vishwa Bandhu (applicant herein) refused to receive the notice and registered notice was returned back whereas Hareram Dua in reply to the notice submitted that he never executed any power of attorney in favour of the accused Narendra Sachdeva and if any power of attorney has been shown by Narendra Sachdeva, the same is a forged one and the alleged sale deed is a forged and fabricated document and he is still having possession over the aforesaid plot no. 5. It is further alleged in the FIR that thereafter the society instituted mediation case no. 57W of 2021 before the UP Joint Housing Commissioner, UP in which Hareram Dua delegated his power to his son Jatin Dua for looking after the case and taking steps. The said Hariram Dua filed an affidavit that he had never sold the plot no. 5 to anyone and even he did not require the said plot and he asked for refund of the money for the said plot. The society on the request of Hareram Dua refunded the consideration money with interest of the said plot to him and the sale deed dated 11.9.1978 which was executed by the society in favour of Hareram Dau was declared null and void.

11. It is further alleged in the FIR that accused Vishwa Bandhu (applicant herein), Narendra Sachdeva and Anil Sachdeva prepared a forged power of attorney ostensibly being executed by Hariram Dua and the applicant on the basis of forged power of attorney lodged an FIR No. 39 of 2022 for the offences under Sections 420, 467, 468 471, 386 and 120B IPC, P.S. Transport Nagar, District Meerut. It is further alleged that in view of the above, the accused Vishwa Bandhu (applicant herein), Narendra Sachdeva and Anil Sachdeva by committing fraud and preparing forged document with an intention to cause loss to the society got executed a forged sale deed.

12. Learned counsel for the opposite party no. 2 has raised a preliminary objection regarding maintainability of present application filed under Section 528 BNSS (old section 482 CrPC) and he has heavily relied on a decision of Hon'ble Full Bench of this Court in *Ram Lal Yadav* (supra) whereas the learned counsel for the applicant has submitted that the application is maintainable in view of the judgements of Hon'ble Apex Court in *Paramjeet Batra* (supra) and *Usha Chakraborth* (supra) and *G. Sagar Suri* (supra). However, the question whether an application under Section 528 BNSS (old section 482 CrPC) is maintainable for quashing the FIR has been considered by a Two-Judge Bench of Hon'ble Apex Court in **Pradnya Pranjal Kulkarni vs. State of Maharashtra**

and anohter, passed in Special Leave to Appeal (Crl.) No. 13424 of 2025 dated 3.9.2025 wherein in paragraph 8 the Hon'ble Apex Court has held as under:

> "**8**. However, from the preamble of the writ petition filed by the petitioner before the Bombay High Court, it is evident that the same sought to invoke the twin jurisdiction under Article 226 of the Constitution and Section 528 of the BNSS for having the FIR quashed. It is true that the police report (charge-sheet) had been filed on 14th May, 2025 upon completion of investigation of the FIR, but whether or not cognizance had been taken by the jurisdictional magistrate is not too clear from the impugned order extracted above. So long cognisance of the offence is not taken, a writ or order to quash the FIR/charge-sheet could be issued under Article 226; however, once a judicial order of taking cognisance intervenes, the power under Article 226 though not available to be exercised, power under Section 528, BNSS was available to be exercised to quash not only the FIR/charge-sheet but also the order taking cognisance, provided same is placed on record with the requisite pleadings to assail the same and a strong case for such quashing is set up. Significantly, it was reasoned by us in Neeta Singh (supra) that a judicial order not being amenable to challenge before a high court under Article 226 of the Constitution and there being no prayer either under Article 227 thereof or Section 482, Cr.PC, the Allahabad High Court was right in holding the writ petition under Article 226 to have been rendered infructuous.

13. Thus Hon'ble Apex Court in *Pradnya Pranjal Kulkarni* (supra) has clearly held that for quashing of the FIR, the High Court can exercise jurisdiction under Article 226 of the Constitution of India and if chargesheet has been submitted and cognizance has been taken and the same has been placed along with the FIR on the record, then the same can

be quashed by invoking Section 528 BNSS (old section 482 CrPC).

14. Learned counsel for the petitioner has placed reliance on the judgement of Hon'ble Supreme Court in *G. Sagar Suri* (supra) in which Hon'ble Supreme Court has held that the power under Section 482 CrPC should be used with caution only to prevent the abuse of process of the Court. It has also been held in the said judgement that a case under Section 138 Negotiable Instruments Act was pending against the appellant and the case related to the FIR lodged by the G.M. of a Finance Company roping the appellants and their family members in order to coerce them to refund the amount borrowed by them from the Company, Hon'ble Supreme Court allowed the appeal and quashed the FIR. The question whether the High Court can exercise the power under Section 482 CrPC to quash the FIR when charge-sheet has already been filed and cognizance has been taken was not an issue before the Hon'ble Supreme Court in the above judgement and therefore, the Hon'ble Supreme Court has not dealt with the said issue in the above judgement.

15. Learned counsel for the applicant has also placed reliance on a judgement of Hon'ble Supreme Court in *Paramjeet Batra* (supra) in which the Hon'ble Supreme Court quashed the entire proceedings on the ground that a purely

civil dispute was given the colour of criminal texture and Hon'ble Supreme Court has held as under:

> "12. While exercising its jurisdiction under Section 482 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.
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> 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."

16. The issue whether the FIR can be quashed by the High Court under Section 482 CrPC after submission of the charge-sheet and taking of cognizance was not an issue in the said judgements and Hon'ble Supreme Court has not dealt with the same in the said judgements.

17. The applicant has made following prayers in the present application:

> "1. To allow this application and quash the first information report dated 14.06.2024 registered at P.S. Civil Lines, Meerut, giving rise to the registration of Crime No. 192 of 2024, against the applicant and two others for the offences under Section 420, 467, 468 and 471 of the Indian Penal Code;
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> 2. Any/or to pass such other further order as this Hon'ble Court may deem fit and proper under the circumstances of the case."

18. From perusal of the prayers so made in the present application, it is clear that the applicant has simply sought for quashing the FIR and he has not placed the chargesheet as well as the cognizance taken on the chargesheet by the competent Court. Thus, in view of the judgement of Hon'ble Apex Court in *Pradnya Pranjal Kulkarni* (supra), since the chargesheet and the cognizance has not been placed on record, FIR cannot be quashed by invoking the provisions of Section 528 BNSS (old section 482 CrPC). Thus, in view of the above, present application is not maintainable.

19. Since the application is not maintainable, therefore, the merit of the case cannot be gone into by this Court.

20. Accordingly, present application is dismissed as not maintainable.

December 03, 2025
Abhishek

(Jitendra Kumar Singh, J.)

Digitally signed by :-
ABHISHEK AGRAHARI
High Court of Judicature at Allahabad