Court finds that the opposite party no.2 failed to discharge the statutory obligation.

7. Accordingly, the order dated 05.03.2025 is set aside/quashed to the extent aforesaid. The petition is thus **allowed**. No order as to costs.

8. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me in drafting this judgment.

(2025) 3 ILRA 73
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.03.2025

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Matters Under Article 227 No. 4173 of 2018
(Criminal)
Connected with
Application U/S 482 No. 2701 of 2019

Yogeshwar Raj Nagar & Anr. ...Petitioners
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioners:
Ms. Abhilasha Singh, Sri Ashutosh yadav, Sri Manoj Kumar Rajvanshi, Sri Shyam Lal, Sri Yadvesh Yadav

Counsel for the Respondents:
G.A., Sri Lallan Prasad Yadav, Sri Nagesh Kumar, Sri Vimlendu Tripathi

Criminal Law – Constitution of India, 1950 – Article 20 & 227 – Indian Penal Code, 1860 - Sections 406, 420, 465, 471 & 506 – Criminal Procedure Code, 1973 – Section 468 & 482 - The dispute over the management of a society and an educational institution led to multiple legal proceedings – a complaint case - an FIR was field in 2005 - but after investigation, the police submitted a final report in 2006 due to insufficient evidence – final report was accepted by the trial court in 2012 - In 2017, the opposite party filed another complaint against petitioner based on the same facts - leading to summoning orders – criminal revision – dismissed – instant writ u/Article 227 - additionally, after a six-year delay, opposite party no. 2 contested the acceptance of the final report through an Application U/s 482, with no justification for the delay - both cases arise from the same cause of action and are decided through a common judgment - court finds that, - (i) the dispute primarily pertains to the management of a society and educational institution, which is of a civil nature but, attempts to give it a criminal colour were deemed inappropriate, - (ii) to prove an offense under Section 406 IPC, entrustment is necessary, which wasn't shown in this case, - (iii) The summoning order was vague and lacked proper reasoning, - (iv) Filing a second complaint on the same set of facts after a significant delay was deemed unwarranted and hit by Section 468 CrPC – (v) before summoning someone, the court must carefully check if there are valid grounds to proceed, which wasn't done here – held, - trial court has erred in entertaining the second complaint and further the order impugned is very cryptic order, whereby the applicant have been summoned, therefore, the same is not sustainable – accordingly, the writ petition under Article 227 is allowed - and - the application under Section 482 CrPC is dismissed due to delay and lack of merit. (Para – 27, 28, 30, 36, 37, 38)

Writ petition Allowed & Application Dismissed. (E-11)

List of Cases cited:

1. Lalan Kumar Singh & ors. Vs St. of Mah.: 2022 SCC OnLine SC 1383,

2. Delhi Race Club Ltd. Vs St. of U.P.: (2024) 10 SCC 690,

3. Mahboob & ors. Vs St. of U.P. & anr.: 2016 SCC OnLine All 4468,

4. Bhagirath Kanoria & ors. Vs St. of M.P.: (1984) 4 SCC 222,

5. krishna Bhattacharjee Vs Sarthi Choudhary: (2016) 2 SCC 705,

6. Balram Singh Vs Sukhwant Kaur & anr.: 1991 SCC OnLine P&H 37,

7. Shailesh Tripathi & ors. Vs St. of U.P. & anr. (Application U/s 482 Cr.P.C. No. 12792 of 2015),

8. Pramatha Nath Talukdar Vs Saroj Ranjan Sarkar, 1961 SCC OnLine SC 155,

9. Shivshankar Singh Vs St. of Bihar, (2012) 1 SCC 130,

10. Jatinder Singh Vs Ranjit Kaur, (2001) 2 SCC 570,

11. Subrata Choudhury Vs St. of Assam, 2024 SCC OnLine SC 3126,

12. Dwarka Nath Mandal Vs Beni Madhas Banerjee: ILR1901 28 Kolkata 652,

13. Bindeshwari Prasad Singh Vs Kali Singh: (1977) 1 SCC 57.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Ashutosh Yadav, learned counsel for the petitioners, Sri Vimlendu Tripathi, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. Both the aforesaid cases are arising out of the same cause of action and facts of both the cases are similar to each other. In view thereof, both the cases are being decided by this common judgement.

3. The writ petition under Article 227 of the Constitution of India has been filed by the petitioners seeking quashing of the order dated 28.04.2018 passed by the Additional Sessions Judge, Court No.5, Bulandshahar in Criminal Revision No. 2 of 2018 (Yogeshwar Raj Nagar and Another vs. State of U.P. and Another) as well as the order dated 06.10.2017 passed by the Additional Chief Judicial Magistrate, Court No. 3, Bulandshahar, in Complaint Case No. 536 of 2017 (Shailja vs. Yogeshwar) under Section 406 of I.P.C. Vide order dated 06.10.2017, the petitioners were summoned for the offence under Section 406 I.P.C. in the aforesaid complaint case filed by the opposite party no. 2 against which a criminal revision was preferred by the petitioner which was also dismissed vide order dated 28.04.2018.

4. The application under Section 482 Cr.P.C., has been filed by the applicant- Smt. Shailja Nagar, who is the opposite party no. 2 in the writ petition seeking quashing of the order dated 22.11.2012, passed by the Chief Judicial Magistrate, Bulandshahar, in Misc. Case (Final Report) No. 679 of 2007 (Smt. Shailja Nagar and Others) arising out of Case Crime No. 33 of 2005 under Sections 406, 420, 465, 476 and 506 I.P.C., Police Station-Sikandarabad, District-Bulandshahar, whereby the Final Report submitted by the Investigation Officer has been accepted.

5. The brief facts of the case are that the petitioner no.1 and the husband of the opposite party no. 2 are the real brothers. The father of the petitioner no.1 and the husband of the opposite party no. 2 had established a Society known as *'Spring Dale Academy'* at Railway Colony Road, Sikandrabad, District- Bulandshahar, with an aim and object to impart education by establishing a reputed public school. In pursuance of the object of establishment of Society, the school was duly established and affiliated to the CBSE Board. The father of petitioner no. 1 had executed a *Will* on 06.03.2003 in favour of petitioner

no. 1 and another Will on 10.03.2003 and subsequent thereto, he had died on 17.03.2003. Thereafter, the name of the said Society was changed as *'Rajbala Spring Dale Academy'*.

6. After the death of Major Deshraj Singh, father of the petitioner no. 1, there arose a dispute with regard to the management and affairs of the said Society and the school, which was established by the Society. It appears that the management of the Society was taken over by the petitioner no. 1. Aggrieved by the same various proceedings were initiated by the opposite party no. 2 including the registration of the First Information Report being Case Crime No. C-33 of 2005 on 03.09.2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. at Police Station- Sikandrabad, District- Bulandshahar.

7. Investigation of the aforesaid F.I.R. was concluded and thereafter a Charge-Sheet No. 226 of 2006 dated 27.06.2006 was submitted. Thereupon, an order for further investigation was passed. After the further investigation and on the basis of statements of witnesses and verification of documents, sufficient evidence was not found against the accused persons. Thereupon, the Final Report was submitted. Against the Final Report, the opposite party no. 2 had submitted a protest petition. After submission of the protest petition and despite opportunity granted, opposite party no. 2 failed to appear before the Court. Accordingly, by an ex-parte order dated 22.11.2012 the Final Report was accepted by the Court. Thereupon, various other disputes continued between the parties. However, the opposite party no. 2 did not choose to challenge the said order dated 22.11.2012 for sufficiently long time.

8. Subsequently, the opposite party no. 2 filed a Complaint Case No. 536 of 2017 (Shailja vs. Yogeshwar) on identical facts claiming therein that the order dated 22.11.2012 was passed accepting the Final Report without any knowledge to the opposite party no. 2. In the aforesaid complaint the prayer was made that by taking into consideration the facts of Case Crime No. C-33 of 2005 on 03.09.2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. at Police Station- Sikandrabad, District- Bulandshahr and the investigation report submitted in the said case after recording the statements of witnesses, the petitioners be punished.

9. After recording the statements of witnesses under Sections 202 Cr.P.C. learned Additional Chief Judicial Magistrate vide order dated 06.10.2017 summoned the petitioners herein under Section 406 I.P.C. Against which Criminal Revision No. 2 of 2018 was filed by the petitioners, which was also dismissed. Being aggrieved by the said order, the instant criminal misc. writ petition has been filed by the petitioners. After filing of the aforesaid writ petition the opposite party no. 2 has also filled an application under Section 482 Cr.P.C. seeking quashing of the order dated 22.11.2012 passed by the Chief Judicial Magistrate, Bulandshahar in Misc. Case Crime No. 679 of 2007 arising out of Case Crime No. C-33 of 2005 under Sections 406, 420, 465, 468, 471 and 506 I.P.C. after a delay of about 6 years. In the entire application under Section 482 Cr.P.C. filed by the opposite party no. 2, no explanation has been offered for delay of about six years in approaching this Court for quashing of the order dated 22.11.2012.

10. Learned counsel for the petitioners has submitted that in the instant case the petitioners have been summoned for the offence under Section 406 I.P.C. on

a complaint which was filed in the year, 2017 for the same cause of action for which the criminal proceedings initiated by the opposite party no. 2, were concluded by order dated 22.11.2012, whereby the Final Report was accepted by the trial court. The opposite party no. 2 was fully aware about the proceedings as continuously various other litigations were pending between the parties with regard to management of affairs of the Society and the opposite party no. 2 was continuously contesting those cases. Therefore, for the offence under Section 406 I.P.C., the cognizance ought not to have been taken by the learned Magistrate, vide order dated 06.10.2017, as the same is barred under Section 468 Cr.P.C. and the maximum punishment for the offence under Section 406 I.P.C. is 3 years and the cause of action for the same has arisen in the year, 2005 itself and the complaint has been lodged by the opposite party no. 2 after 12 years from initial cause of action for which the F.I.R. was lodged, which has been concluded against the opposite party no. 2 on 22.11.2012. Even from that point of time the complaint filed by the opposite party no. 2 is delayed by 6 years. Therefore, by no stretch of imagination the cognizance can be taken by the Magistrate in view of the prohibition under Section 468 Cr.P.C. Learned counsel for the petitioner further submits that for the same cause of action the prosecution of the petitioners has finally been concluded by accepting the Final Report on 22.11.2012. Thus, filing of complaint that too after 6 years for the same cause of action amounts to double jeopardy which is hit by Article 20 of the Constitution of India.

11. Learned counsel for the petitioner further submits that the order dated 06.10.2017 passed by the learned Magistrate, summoning the petitioners herein is a cryptic order and cannot be sustained in law as the same has been passed without assigning any reason or without considering the material available on record. In view thereof, learned counsel for the petitioners seeks quashing of the order dated 06.10.2017 passed by the Additional Chief Judicial Magistrate as well as the order dated 28.04.2018 passed by the Revisional Court.

12. Learned counsel for the petitioners further submits that the entire controversy between the parties is with regard to management of affairs of the Society and the school and the petitioners claim right on the basis of the *Will* executed by the father of the petitioner in his favour exclusively whereas the opposite party no. 2 claims right on the basis of subsequent Will to manage the affairs of the Society. Therefore, the dispute between the parties is purely of a civil nature and the instant proceedings were initiated with intent to give criminal colour to a civil dispute, to create pressure with *mala fide* intentions.

13. Learned counsel for the petitioner further submits that for constituting the offence under Section 406 I.P.C., there must be some entrustment on the part of the complainant and in the instant case there is no such allegation that any entrustment was made by the opposite party no. 2. Even the offence under Section 406 I.P.C., is not made out against the petitioners for wants of entrustment. The dispute is only with regard to succession of the right to manage the society. Therefore, the courts below have failed to appreciate the facts and circumstances of the instant case in its true perspective.

14. In support of his submissions learned counsel for the petitioners has

relied upon judgements of the Apex Court passed in ***Lalan Kumar Singh and Others vs. State of Maharashtra: 2022 SCC OnLine SC 1383, Delhi Race Club Ltd. vs. State of U.P. : (2024) 10 SCC 690*** and also upon the judgement of this Court at Lucknow Bench in ***Mahboob and Others vs. State of U.P. and Another : 2016 SCC OnLine All 4468***

15. Learned counsel for the petitioner has further submitted that summoning of the persons for a criminal offence is a very serious matter and it should not be done in a mechanical manner. Application of mind must reflect in the order summoning the accused.

16. Per contra, learned counsel for the opposite party no.2 relying upon the judgements of the Apex Court in ***Bhagirath Kanoria and Others vs. State of M.P. : (1984) 4 SCC 222, krishna Bhattacharjee vs. Sarthi Choudhary***: (2016) 2 SCC 705, judgment of the Punjab and Haryana High Court in ***Balram Singh vs. Sukhwant Kaur and Another : 1991 SCC OnLine P&H 37***, judgements of this Court in ***Shailesh Tripathi and 5 Others vs. State of U.P. and Another (Application under Section 482 Cr.P.C. No. 12792 of 2015)*** submits that the offence under Section 406 I.P.C., is a continuous offence.

17. Learned counsel for the opposite party no. 2 further submits that the order dated 22.11.2012 was passed by Chief Judicial Magistrate- Bulandshahar, without giving any opportunity to the petitioners herein and she was not aware about the conclusion of the proceedings whereby the protest petition filed by the opposite party no. 2 was rejected and the Final Report was accepted. Learned counsel for the opposite party no. 2 further submits that the offence under Section 406 I.P.C. is a continuous offence by the petitioners, as they were continuously carrying on the affairs of the management of the Society and the school despite their right to manage the affairs of the Society was rejected upto the Apex Court on various proceedings initiated by both the parties. Since, it is an offence of continuing nature the opposite party no. 2 had every right to file the complaint case and therefore, the provisions of Section 468 Cr.P.C. would not attract in the instant case.

18. Learned counsel for the opposite party no.2 has further submitted that the complaint case is maintainable even after the acceptance of the final report in the police case.. He has relied upon the judgement of ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, 1961 SCC OnLine SC 155, Shivshankar Singh v. State of Bihar, (2012) 1 SCC 130, Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570 and Subrata Choudhury v. State of Assam, 2024 SCC OnLine SC 3126.***

19. Having heard the rival submissions made by both parties this Court has carefully gone through the record of the case.

20. The first issue for consideration is whether a complaint would lie after acceptance of the Final Report in a police case on the same cause of action. A submission of final report exonerating the accused persons named in the F.I.R. on a protest petition filed by a person, disputing the findings recorded by the Investigation Officer in its final report when the same is decided against the complainant, who has filed the protest petition and the final report is accepted. Generally, the second

complaint on the same cause of action and the same material ought not to have been entertained, though, there is no specific bar for filing the second complaint. The Apex Court in ***Pramatha Nath Talukdar (supra)***, has observed as under:

"50. Under the Code of Criminal Procedure the subject of "Complaints to Magistrates" is dealt with in Chapter 16 of the Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker. The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202, of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously. An order of dismissal under Section 203, of the Criminal Procedure Code, is, ***however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interests of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint enquired into.*** *Allah Ditto v. Karam Baksh Ram Narain Chaubey v. Panachand Jain; Hansabai v. Ananda Doraisami v. Subramania. In regard to the adducing of new facts for the bringing of a fresh complaint the Special Bench in the judgment under appeal did not accept the view of the Bombay High Court or the Patna High Court in the cases above quoted and adopted the opinion of Maclean, C.J. in Queen Empress v. Dolegobinda Das affirmed by a Full Bench in Dwarka Nath Mandal v. Benimadhas Banerji. It held therefore that a fresh complaint can be entertained where there is manifest error, or manifest miscarriage of justice in the previous order or when fresh evidence is forthcoming."*

21. In the Full Bench Judgement of Kolkata High Court in ***Dwarka Nath Mandal vs. Beni Madhas Banerjee: ILR1901 28 Kolkata 652***, it was held that a fresh complaint can be entertained where there is a manifest error or manifest miscarriage of justice in the previous order or fresh evidence available is forthcoming.

22. Relying upon the aforesaid judgement in ***Pramatha Nath Talukdar***

(supra), the Apex Court in ***Bindeshwari Prasad Singh v. Kali Singh : (1977) 1 SCC 57*** has held that the second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.

23. In ***Mahesh Chand (supra),*** the Apex Court has held as under:

"19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. ***Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced.*** *In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not."*

24. In ***Shivshankar Singh (supra)***, the Apex Court has held as under:

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. ***However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.***

19. The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. ***Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable."***

25. In ***Jatinder Singh (supra),*** the Apex Court has observed as under:

"9. There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a

second trial, has taken care to explain that "the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section". ***However, when a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance."***

26. In ***Subrata Choudhury (supra)***, the Apex Court has held as under:

"10. As noted at the outset, the question of law raised before and decided by the High Court was whether after the acceptance of the Final Report filed under Section 173, Cr. P.C., upon considering the written objection/protest petition and hearing the complainant, a fresh complaint on the same set of facts is maintainable or not. ***There can be no two views as relates the position that there can be no blanket bar for filing a second complaint on the same set of facts. We will deal with the moot question and the aforesaid position a little later.***

*23. In view of the plethora of decisions****, there can be no doubt that even when Final Report filed after investigation based on the FIR registered pursuant to the receipt of complaint forwarded by a Court for investigation under Section 156 (3) of the Cr. P.C., is accepted and protest petition thereto is rejected, the Magistrate can still take cognizance upon a second complaint or second protest petition, on the same or similar allegations or facts. But this position is subject to conditions."***

27. Thus, from the aforesaid judgements it is crystal clear that even after the acceptance of the Final Report and rejection of the protest petition it is open for the Magistrate to take cognizance upon a second complaint or the second protest petition, however, this position is subject to the condition that there is subsequent discovery of new facts or there is manifest error or manifest miscarriage of justice. Thus, though there is no absolute bar in taking cognizance on the second complaint but the same could be done only in exceptional circumstances and not in a routine manner. There has to be very exceptional circumstances for entertaining and taking cognizance on the second complaint.

28. In the instant case, from the perusal of the F.I.R., final report, protest petition and the second complaint, it is apparent that there is no special or exceptional circumstances, which give a subsequent cause of action to the complainant to file the complaint rather the protest petition was rejected in the year, 2012 and Final Report was accepted and the instant complaint has been filed in the year, 2017 after a delay of more than five years without there being any explanation for the same. Not even a single new circumstances has been pointed, while filing the complaint after five years for the same cause of action. Thus, in the facts and circumstances of the case this Court is of the view that the second complaint ought not to have been entertained in the instant case without there being any special circumstances warranting, taking cognizance on the second complaint on the same facts.

29. Next question which has been argued in the instant case is, since the offence under Section 406 I.P.C. is a continuous offence, therefore, the delay in

filing the second complaint on the part of the complainant would not be fatal to the complainant. Thus, the said complaint is maintainable. Section 406 I.P.C. reads as under:

"Section 406 Punishment for criminal breach of trust- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

30. The basic requirement for attracting the offence under Section 406 I.P.C. is that there should be an entrustment on the part of the complainant with the accused persons. In the instant case, there is a dispute with regard to the management of the society and the educational institution. Both the parties are claiming their right to manage the institutions on the basis of succession. Thus, in the facts of the case there can't be any entrustment by either of the parties in favour of another. There was continuous civil dispute, which was contested by both the parties with regard to management of institution continuously upto the Apex Court. Thus, it was purely a dispute of civil nature with regard to management of the institution and the society. By filing the F.I.R. in the instant complaint case the criminal colour is being given by the complainant to the civil dispute with oblique motive of creating undue pressure on the petitioners herein. Even, if offence under Section 406 I.P.C. is considered to be a continuous offence, the same would not be attracted in the facts of the instant case. Therefore, in the considered opinion of this Court that issue is not required to be gone into.

31. The prosecution initiated by the opposite party no. 2 had resulted in submission of the Final Report, which was duly accepted in accordance with law by the competent court vide order 22.11.2012. The said order has been challenged by the opposite party no. 2 by filing the Application under Section 482 Cr.P.C. after more than 6 years, without even adverting any facts with regard to delay in filing the instant application after such a long delay.

32. So far as the instant petition under Article 227 of the Constitution of India filed by the petitioners is concerned, in the instant case the complaint has been filed by the opposite party no. 2 after more than 12 years of the commission of the offence. In the instant case there is no document to show any entrustment on the part of the opposite party no. 2 in favour of the petitioners. Therefore, *prima facie* under Section 406 I.P.C. cannot be said to have been made out against the petitioners herein. Further, the prosecution initiated by lodging F.I.R. by the opposite party no. 2 has already been concluded by order dated 22.11.2012 and thereafter, after a gap of more than 6 years the instant complaint has been filed, which is again hit by Section 468 Cr.P.C., as the maximum punishment for the offence under Section 406 I.P.C. is three years. The complaint has been lodged after full knowledge of the facts of the case to the opposite party no. 2 after gap of six years.

33. The next question for consideration is whether a court can pass the summoning order mechanically, without adverting to the facts of the case. In ***Lalan Kumar Singh (supra),*** the following observations have been made by the Apex Court, which reads as under:

"38. The order of issuance of process is not an empty formality. The

Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words ***"sufficient ground for proceeding"*** *appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.* ***The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."***

34. In ***Delhi Race Club Ltd. (supra),*** the following observations has been made by the Apex Court, which reads as under:

"23. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. [*See : Pepsi Foods Ltd. v.*

Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] .]

31. In Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held thus : (SCC p. 430, para 22)

"22. ***… The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. … In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. … To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."***

32. The principle of law discernible from the aforesaid decision is ***that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.***

33. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482CrPC. In the decisions in Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] and Pepsi Foods [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , this Court held that a petition filed under Section 482 CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that sine qua non for exercise of the power to issue summons is the subjective satisfaction "on the ground for proceeding further" while exercising the power to consider the legality of a summons issued by a Magistrate, ***certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned. In this context****, we think it appropriate to state that one should understand that "taking cognizance", empowered under Section 190CrPC, and "issuing process", empowered under Section 204CrPC, are different and distinct. [See the decision in Sunil Bharti Mittal v. CBI [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687]]."*

35. In the judgement of ***Mahboob (supra)***, this Court has observed as under:

"11) In the present case, the learned Magistrate has not conducted any inquiry so as to satisfy himself that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of such inquiry. There is ground for proceedings against the petitioners under Section 204 CrPC. There is nothing on record to show that the learned Magistrate has applied his mind to arrive at a prima facie conclusion. It must be recalled that summoning of accused to appear the criminal court is a serious matter affecting the dignity self-respect and image in the society. A process of criminal court cannot be made a weapon of harassment.

(12) Learned Magistrate has passed a very cryptic order simply by saying that the statement of complainant as well as witnesses recorded under Sections 200 and 202 CrPC are perused and accused are summoned such order per se itself illegal which could not stand the test of law."

36. Thus, from the aforesaid judgements it is categorically clear that summoning of a person is a very serious matter and ought not to have been done in a routine manner. Before summoning the Magistrate must satisfy himself that there are sufficient grounds for proceeding against the person and summoning cannot be permitted to be done by a cryptic order, which do not reflect the application of mind of learned Magistrate.

37. Thus, from the perusal of the impugned order dated 06.10.2017, passed by learned Magistrate summoning the petitioners herein it is apparent that the same is a cryptic order and has been passed without categorically recording his satisfaction and assigning any reason or its satisfaction whether the offence under Section 406 is made out. Since, in the previous F.I.R. filed by the opposite party no.2 a Final Report was submitted which was protested by the opposite party no.2, which was rejected by the court concerned and after delay of more than five years, the instant complaint has been filed on the same set of facts without there being any special circumstances warranting the second complaint to be entertained. Therefore, in the considered opinion of this Court, the trial court has erred in entertaining the second complaint and further the order impugned is a very cryptic order, whereby the applicants have been summoned. Therefore, the same is not sustainable in law and the same is accordantly ***set-aside***. Consequently, the order passed by Revisional Court is also ***set-aside.***

38. The petition under Article 227 is **allowed** accordingly.

39. In view of the facts and circumstances, since the application under Section 482 Cr.P.C. has been filed with delay of more than six years without their being any explanation for the same and further as already held in the considered opinion of this Court the complainant is trying to give criminal colour to the civil dispute between the parties. In view thereof, the Application under Section 482 Cr.P.C. is ***dismissed.***

(2025) 3 ILRA 84
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.03.2025

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Matters Under Article 227 No. 8117 of 2024
(Civil)

Raj Kumar Chauturvedi ...Petitioner
Versus
U.P. Awas Evam Vikas Parishad & Ors. ...Respondents