2026:AHC:229628

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 46499 of 2025

Gaurang Garg

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kunal Shah, Saumitra Dwivedi, Sr. Advocate
Counsel for Opposite Party(s)	:	Alok Ranjan Mishra, Amrita Rai Mishra, G.A.

AND

APPLICATION U/S 482 No. - 35335 of 2022

Romendra Mehta

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	:	Kunal Shah, Rajrshi Gupta, Abhinav Gaur, Mohd. Rashid Siddiqui, Sr. Advocate
Counsel for Opposite Party(s)	:	Alok Ranjan Mishra, G.A.

AND

APPLICATION U/S 482 No. - 11879 of 2021

Somendra Mehta And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Abhinav Gaur, Anoop Trivedi (Senior Adv.), Kunal Shah, Mohd. Rashid Siddiqui
Counsel for Opposite Party(s)	:	Alok Ranjan Mishra, G.A., Javed Husain Khan, Tatwesh Agarwal

Reserved on 29.09.2026

Delivered on : 04.11.2026

Court No. - 80

HON'BLE CHAWAN PRAKASH, J.

1. Heard Sri Purnendu Chakravarty, learned Senior Counsel assisted by Sri Kunal Shah, Sri Rohit Kanaujiya and Sri Aryan Singh learned counsels for applicant, Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Alok Ranjan Mishra, learned counsel for opposite party No.2 and Sri Jyoti Kumar Singh, learned AGA assisted by Sri Durgesh Kumar Tripathi, Brief Holder for the State and perused the record.

2. These are three applications filed under Section 528 of the BNSS and Section 482 of the Cr.P.C. Out of these, two applications arise out of the same Case Crime Number and seek the same relief, namely, quashing of the proceedings of Case No. 95 of 2021, whereas the third application arises out of Complaint Case No. 1 of 2018. Although the three applications arise out of two separate proceedings, namely, a criminal case and a complaint case, all three emanate from the same underlying dispute and involve substantially identical facts and allegations.

3. Application under Section 528 of B.N.S.S. No.46499 of 2025 filed by Gaurang Garg with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the instant application and quash the impugned order dated 15.03.2022 (Annexure-29) passed by the Court of Additional District and Sessions Judge, Court No. 12, Kanpur Nagar in Criminal Revision No. 283 of 2021 (Rajiv Talreja v. Sate of U.P. and Others) as well as the summoning order dated 23.09.2022 (Annexure-30) passed by the Special Chief Judicial Magistrate, Kanpur Nagar in Case No. 95 of 2021 (State of U.P v. Somendra Mehta and Others) and the entire proceedings arising out of Case Crime No. 128 of 2018 under Sections 406, 409, 420, 467, 468, 471 and 120B of the Indian Penal Code, Police Station: Swaroop Nagar, District: Kanpur Nagar, including the impugned order dated 28.04.2025 (Annexure-32) passed by the Special Chief Judicial Magistrate, Kanpur Nagar rejecting the discharge

Application of the Applicant in Case No. 95 of 2021 (State of U.P v. Somendra Mehta and Others)."

4. Application under Section 482 of Cr.P.C. No.35335 of 2022 filed by Romendra Mehta with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to allow the present 482 Cr.P.C. application and set-aside the order dated 23.09.2022 passed by of Special Chief Judicial Magistrate, Kanpur Nagar in Misc. Case No.95/2021 arising out of Case Crime No. 128/2018 and EOW No. 35/2018 under section 406, 409, 420, 467, 468, 471, 120B IPC relating to Police Station Swaroop Nagar, District Kanpur Nagar as well as the entire proceeding of Misc. Case No.95/2021 pending in the court Special Chief Judicial Magistrate, Kanpur Nagar."

5. Application under Section 482 of Cr.P.C. No.11879 of 2021 filed by Somendra Mehta and Sandeep Kumar Garg with the following prayer:

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to allow this application and quash the Impugned Order dated 19.02.2019 passed by the Additional District and Sessions Judge IX, Kanpur Nagar in Complaint Case No. 1/2018 under section 420, 467, 468, 471 I.P.C. read with Section 447 of the Companies Act, 2013 (Rajeev Talreja Versus Somendra Mehta and others) as well as the entire proceedings of Complaint Case No. 1/2018 under section 420, 467, 468, 471 I.P.C. read with Section 447 of the Companies Act, 2013 (Rajeev Talreja Versus Somendra Mehta and others) pending before the Court of Additional District and Sessions Judge IX, Kanpur Nagar."

6. Since, the disposal of the three applications shall involves a discussion of the same facts, these applications are being decided by this common order.

7. The dispute arises from a complaint and a First Information Report lodged by opposite party No. 2. Opposite party No. 2 filed Complaint Case No. 1/18 (Rajeev Talreja vs. Somendra Mehta and Another) under Sections 420, 467, 468 and 471 of the IPC, read with Section 447 of the Companies Act. In the complaint, he stated that he is a member,

shareholder, promoter and director of M/s. M.T.G. Infra Power Ltd. and a commercial director of M/s. S.P.B.L. Energies Pvt. Ltd. The applicants are directors of S.P.B.L. Energies Pvt. Ltd. and manage its day-to-day affairs. Under the agreement dated 30.09.2013, all government tenders obtained by M/s. S.P.B.L. Energies Pvt. Ltd. were to be subcontracted to M/s. M.T.G. Infra Power Ltd., and all payments pertaining to such contracts were to be deposited in a jointly operated bank account for which opposite party No. 2 was to be a mandate holder.The signature requirement was initially adhered to. However, the applicant subsequently diverted tender-related funds into unauthorised bank accounts that were neither jointly operated nor accessible to the informant. The accused fabricated invoices and delivery challans in the names of fictitious suppliers to simulate the procurement of materials for the S.P.B.L. contracts. On the strength of these fabricated documents, payments totalling approximately Rs. 50 crores were allegedly made from the company's funds to fictitious suppliers. The applicants were preparing to misappropriate a further Rs. 40 crores in anticipated government funds. Two BMW vehicles were purchased using the allegedly embezzled company funds. Additionally, a new unauthorised bank account (A/c No. 0043002100062099) was allegedly opened at Punjab National Bank, Bareilly, into which approximately Rs. 19 crores earmarked for a government project was deposited without the authorisation of opposite party No. 2. It is further alleged in the FIR and the complaint that, in May–June 2018, a Toyota Fortuner worth Rs. 35 lakhs was purchased using S.P.B.L. funds. When confronted, two of the applicants, namely Somendra Mehta and Gourang Garg, admitted their misconduct and executed a single affidavit dated 18.04.2017, undertaking not to repeat such conduct. However, despite these assurances, in September–October 2017, they allegedly opened another unauthorised account at Canara Bank (A/c No. 4845214000005), into which approximately Rs. 30 crores was deposited and subsequently misappropriated.

8. The statement of opposite party No. 2 was recorded under Section 200 Cr.P.C., and the statements of the witnesses were recorded under Section 202 Cr.P.C. Thereupon, the learned Additional Sessions Judge summoned the applicants, namely, Somendra Mehta and Sandeep Garg, under

Sections 420, 467, 468, 471 I.P.C. read with Section 447 of the Companies Act, 2013, vide order dated 19.02.2019.

9. During the pendency of the above-mentioned complaint case, opposite party No. 2 lodged a First Information Report, registered as Case Crime No. 128 of 2018, under Sections 406, 409, 420, 467, 468 and 120B IPC at the police station Swaroop Nagar, District Kanpur Nagar against the applicants, namely, Somendra Mehta, Romendra Mehta, Sandeep Garg and Gaurang Garg. The FIR contained substantially the same allegations as the above-mentioned complaint case, with the additional allegation that the applicants, as directors of M/s S.B.B.L. Energies Private Limited, had forged seven bank guarantees and submitted them to secure the award of work contracts worth crores of rupees through tenders issued by Dakshinanchal Vidyut Vitran Nigam Ltd. (hereinafter referred as D.V.V.N.L.)

10. After the registration of the First Information Report, the investigation was handed over to Sub-Inspector Kailash Chandra Dubey. The Investigating Officer commenced the investigation.

11. During the pendency of the investigation, the SSP, Kanpur Nagar, by letter dated 20.9.2018, requested the Inspector General, Kanpur Nagar Zone, to transfer the investigation to the Economic Offences Wing (hereinafter referred to as "E.O.W."), in view of the complexity of the subject matter and the voluminous financial records involved. Pursuant to the said recommendation, the State Government, through its Under Secretary, Department-8, Ministry of Home Affairs, sanctioned the transfer of the investigation to the E.O.W. by Order No. MLA-13/25-08-2018-17 (54)/2018. Thereafter, by letter dated 31.10.2018 addressed to the S.P., Kanpur Nagar (West), the SSP, Kanpur Nagar, directed the Investigating Officer to hand over the investigation and the entire record to the E.O.W.

12. The E.O.W. formally commenced the investigation on 3.11.2018. The Investigating Officer recorded the statements of witnesses and collected documentary evidence. He then filed a final report on 28.12.2020, concluding that no case was made out against the applicants.

13. Opposite party No. 2 filed a protest petition against the final report filed by the E.O.W. The learned Special CJM, Kanpur Nagar, while considering the protest petition, rejected the final report prepared by the E.O.W. He summoned the applicants under Sections 406, 420 and 120B IPC vide order dated 29.10.2021.

14. Opposite party No. 2 filed Criminal Revision No. 283 of 2021 against the order dated 29.10.2021. The revisional court set aside that order and directed the learned Magistrate to pass a fresh order in compliance with the directions given in the revision. Thereafter, the learned Special CJM summoned the applicants under Sections 406, 420, 467, 468, 471 and 120B IPC vide order dated 23.9.2022.

15. The applicants filed an application for discharge, which was rejected vide orders dated 28.04.2025. Aggrieved by the said order, the applicants filed the present application.

16. Learned counsel for the applicants challenges the impugned orders on the following grounds:

(i) The orders dated 19.2.2019, 15.3.2022, 23.9.2022 and 28.4.2025 suffer from serious legal infirmities, as there was no material to justify summoning the applicants. Opposite party No. 2 suppressed material facts in filing the complaint and lodging the FIR.

(ii) that, following the rejection of the discharge application, the applicant filed the present application. The existence of a revisional remedy does not completely oust the inherent jurisdiction of the High Court under Section 528 BNSS, particularly when the impugned order results in a clear miscarriage of justice or an abuse of the process of the court.

(iii) that the dispute between the parties is essentially civil in nature and that the allegations made in the complaint and the FIR are materially identical. The core allegations forming the basis of the FIR dated 12.7.2018 pertain to alleged breaches of contractual obligations, primarily the purported failure to distribute profits in accordance with the agreement dated 30.09.2013. Under the terms and conditions of the agreement, these disputes had already been referred for adjudication to a

mutually appointed arbitrator. The arbitration proceedings were initiated well before the registration of the FIR. Opposite No.2 actively participated in multiple hearings before the arbitrator. The arbitration proceedings culminated in an award dated 15.8.2018, in which it was categorically held that the "Talreja Group" would be entitled to a share in the profits only to the extent of the legitimate bank guarantee furnished by them. The said award dated 15.8.2018 was subsequently set aside by the commercial court in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, by an order dated 01.06.2023. Appeals, being A.R.P.L. Nos. 692/693 of 2023, have been preferred against that order and are presently pending adjudication before this Hon'ble Court.The dispute between the parties is purely civil in nature but has been drawn into criminal litigation.

(iv) that, initially the investigation was handled over the Kailash Chandra Dubey. while the investigation of the present case was pending, the S.S.P., Kanpur Nagar, recommended to the I.G., Kanpur Nagar Zone, by a letter dated 20.9.2018, that the investigation of Case Crime No. 128 of 2018 be transferred to the EOW. In Pursuant to this recommendation, the State Government, through its Under Secretary, sanctioned the transfer of the investigation from the Investigating Officer to the EOW by an order dated 25.10.2018. Thereafter, the S.S.P., by a letter dated 31.10.2018 addressed to the S.P., Kanpur Nagar (West), directed the Investigating Officer, Kailash Chandra Dubey, to cease all further investigation and hand over the complete case diary to the EOW. The EOW formally commenced the investigation on 3.1.2018. Thereafter, the earlier Investigating Officer had no authority to prepare the charge sheet; nevertheless, he hastily prepared it.

(v) that the Investigating Officer of the EOW recorded the statements of Anand Kumar Srivastava, the incumbent Bank Manager; Shivakant Tripathi, Deputy Manager; and Kiran Kumar Kapoor, Bank Manager, under whose signatures the disputed bank guarantees were purported to have been issued. They stated that they had not given any statements to the previous Investigating Officer, Kailash Chandra Dubey, and that any statements shown as having been recorded by him were false. The EOW, after a comprehensive investigation, found that the allegations made in

the FIR were unsubstantiated and unsupported by any credible evidence. The final report was filed before the learned Special Judicial Magistrate, Kanpur Nagar.

(vi) that the allegations, even if taken at face value, do not disclose the commission of any cognizable offence. Opposite Party No. 2, who is also a director along with the applicants, lodged the FIR solely to harass the applicants. He submitted only the photocopies of the allegedly forged bank guarantees along with the FIR. No original bank guarantees were available for verification and that all the alleged bank guarantees had expired long before the said complaint was filed. These guarantees had never been questioned during their validity and had been prepared in due course after the requisite fees had been deposited. The bank officials, in their statements, have clearly and categorically stated that the applicants are longstanding customers of the banks and had sufficient funds in their bank accounts for the preparation of the bank guarantees.

(vii) that, after filing of the final report by the E.O.W., opposite party No. 2 filed a protest petition. The opposite party No.2 confined his grievance solely to the issuance of the bank guarantees. There is no allegation whatsoever regarding non-payment of profits, non-adherence to contractual terms, or fabrication of any invoice or bill. The learned Magistrate rejected the final report and summoned the applicants under Sections 406, 420 and 120B of the I.P.C.

(viii) that opposite party No. 2 filed Criminal Revision No. 283 of 2021. The applicants requested the learned Revisional Court to summon the entire case diary, but the Revisional Court did not do so and decided the revision solely on the basis of the order dated 29.10.2021 passed by the learned Magistrate. The Revisional Court, on the basis of the investigation conducted by Kailash Chandra Dubey, and without considering the evidence collected by the EOW, formed the opinion that the learned Magistrate had committed an illegality by not summoning the applicants under Sections 467, 468 and 471 of the IPC. It directed the learned Magistrate to pass a fresh order in compliance with its observations. The learned Magistrate thereafter summoned the applicants under Sections 406, 420, 467, 468, 471 and 120B of the IPC without taking into

consideration the evidence collected by the EOW.

(ix) that it is trite law that, before issuing process, the Magistrate is under an obligation to assess conjointly the entire material placed on record by the prosecution and cannot selectively rely on an isolated part of the investigation, particularly when the selected parts are the outcome of a tentative investigation. The learned Magistrate failed to appreciate that, on the basis of the further investigation conducted by the EOW, no prima facie case is made out against the applicants. The learned Magistrate rejected the discharge application.

(x) that even taking the prosecution's case at its strongest, without accepting any part of it, no offence under Sections 406, 409, 420, 467, 468, 471, and 120B of the IPC is made out against the applicants by any stretch of the imagination. The informant neither acted nor parted with any property in reliance on any misrepresentation made by the applicants, nor did he refrain from doing anything that he would otherwise have done. The applicants have neither forged any bank guarantee nor submitted any forged bank guarantee to obtain tenders. Neither D.V.V.N.L. nor the bank has filed any complaint against the applicants; hence, no offence under Sections 406, 409, 420, 467, 468, 471, and 120B of the IPC is made out at all.

(xi) that the continuation of the criminal proceedings at the instance of opposite party No. 2 is motivated and constitutes an abuse of the process of the court, warranting the exercise of the Court's inherent jurisdiction under Section 528 of the BNSS to quash the impugned orders. Reliance in this regard is placed on State of Haryana and Others v. Bhajan Lal and Others, AIR 1992 SC 604, and Pradeep Kumar Kesarwani v. State of U.P., 2025 SCC OnLine SC 1947.

17. Per contra, learned Senior Counsel for opposite party No. 2 and the learned AGA support the order of the learned Revisional Court, the summoning order passed by the learned Special Chief Judicial Magistrate, and the order passed by the learned Magistrate on the discharge application.

18. Learned Senior Counsel for opposite party No. 2 raises a preliminary

objection regarding the maintainability of this application under Section 528 of the BNSS. It is submitted that an order rejecting an application for discharge is subject to revision under Section 438 of the BNSS and that, therefore, the applicants ought to have filed a criminal revision. The invocation of the inherent powers of the Court under Section 528 of the BNSS is barred when a specific revisional remedy is available under .

19. Ld counsel further submits as follows :

(i) that the applicants are fully conversant with the criminal proceedings in the present case and the impugned order. They have availed themselves of all available remedies in law, alongside their father, close family members, and business partners. Consequently, they are not entitled to seek relief from this Court at this stage under Section 528 of the BNSS, and the application is liable to be dismissed. He relies upon the judgment of the Hon'ble Supreme Court in State of Punjab v. Devender Pal Singh Bhullar, (2011) 14 SCC 776.

(ii) that, when summoning any person, the Magistrate is required only to form an opinion that there are sufficient grounds to proceed and is not mandated to record detailed reasons. The impugned summoning order is, in any event, a detailed and speaking order. The learned Magistrate has taken into consideration all the evidence collected during the investigation and found that a prima facie case is made out against the applicants.

(iii) that the applicants prepared seven forged bank guarantees and dishonestly used them as genuine before D.V.V.N.L., a public sector undertaking, to obtain tenders. They did so with the intention of securing wrongful gain and causing wrongful loss to the State. After the registration of the FIR, the investigation was handed over to Kailash Chandra Dubey, who commenced the investigation. He visited the office of D.V.V.N.L., Agra and recorded the statement of Arun Kumar Rawal and Pankaj Kela. They provided him with a total of 23 bank guarantees deposited by the applicants, eight of which were issued by the Punjab and Sindh Bank. The Investigating Officer visited the Punjab and Sindh Bank branch at Transport Nagar, Kanpur Nagar, to verify the genuineness of the said bank guarantees. Seven bank guarantees were found to be forged

and not to have been issued by the bank. He recorded the statements of Anand Kumar Srivastava, Shivakant Tirpathi, and Kiran Kumar Kapoor.

(iv) that the investigation was thereafter transferred to the EOW. A copy of the transfer order was received by the previous Investigating Officer on 05.11.2018. Prior to that date, the Investigating Officer had no knowledge of the transfer. The Investigating Officer of the EOW commenced the investigation and collected evidence. The EOW, with a clear intent to extend undue favour to the applicants and shield them from criminal liability, deliberately turned a blind eye to the clinching evidence. Its Investigating Officer intentionally disregarded the material collected by the local police and filed a final report in favour of the applicants. The applicants' allegation that the investigation by the local police was defective is an afterthought, made with an oblique motive to shield themselves.

(v) that upon completion of the investigation, the EOW filed the final report along with all relevant documents.The applicant filed protest petition Thereafter,the learned Magistrate summoned the applicants under Sections 406, 420, and 120B of the IPC. Opposite party No. 2 filed a criminal revision against that summoning order. The learned Revisional Court, after examining the documents on record, found that a prima facie offence under Sections 467, 468 and 471 of the IPC was also made out against the applicants and directed the learned Magistrate to pass a fresh order. Thereafter, the learned Magistrate summoned the applicants under Sections 406, 420, 467, 468, 471 and 120B of the IPC by an order dated 23.09.2022. The applicants filed an application for discharge, which was also dismissed by a well-reasoned order.

(vi) that it is a well-settled principle of criminal jurisprudence that the court is the ultimate authority in a criminal matter and is not bound by the evidence collected during the investigation. In the present case, the learned Magistrate, upon independently applying its judicial mind, rejected the final report submitted by the EOW. Any error, illegality, or defect in the investigation conducted by the investigating agency cannot have an overarching or vitiating effect on the validity of the criminal proceedings emanating therefrom. In Union of India v. Prakash P.

Hinduja and Another, AIR 2003 SC 2612, the Hon'ble Supreme Court categorically held that the fields of investigation and trial are distinct. Mere lapses, technical omissions, irregularities, or even illegalities on the part of the investigating officer do not render the prosecution case doubtful at the threshold, nor do they invalidate the order taking cognizance under Section 190 of the CrPC. Further, the inherent jurisdiction under Section 528 of the BNSS (corresponding to Section 482 of the CrPC) is extraordinary and is to be exercised sparingly, with circumspection, and only in rare cases. In Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra, 2021 SCC OnLine SC 315, the Hon'ble Supreme Court held that where the complaint or FIR prima facie discloses the commission of a cognizable offence, legitimate prosecution must not be stifled, and the High Court must not short-circuit the proceedings at the threshold by conducting a mini-trial on disputed facts. The Ld Magistrate and Ld revision Court did not commit any illegality in passing of the impugned orders. The application is liable to be dismissed.

20. After hearing the submissions of both sides and perusing the record, the following questions arise for consideration in this application:

(I) Whether an application under Section 528 of the BNSS is maintainable against an order rejecting a discharge application, despite the availability of revisional jurisdiction under Section 438 of the BNSS.

(II) Whether, in the totality of the circumstances, the continuation of the criminal proceedings amounts to an abuse of process warranting interference under Section 528 of the BNSS.

21. The bar against entertaining revisional applications applies to purely interlocutory orders. However, as settled by the Hon'ble Supreme Court in a long line of decisions, including Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551, and Asian Resurfacing of Road Agency v. CBI, (2018) 16 SCC 299, an order rejecting a discharge application is not a purely interlocutory order. It is an intermediate order. If the discharge application had been allowed, the proceedings against the accused would have terminated. Hence, an order rejecting such an application substantially affects the rights of the accused and is amenable to

revisional jurisdiction.

22. The core question is whether the availability of the revisional remedy under Section 438 of the BNSS completely bars an application under Section 528 of the BNSS. The legal position on the interplay between Sections 528 and 438 of the BNSS is well settled. The High Court possesses inherent power under Section 528 of the BNSS to prevent abuse of the process of any court and to secure the ends of justice. In Dhariwal Tobacco Products Ltd. v. State of Maharashtra, (2009) 2 SCC 370, and Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30, the Hon'ble Supreme Court explicitly held that the availability of a revisional remedy under Section 438 of the BNSS does not create an absolute bar against invoking inherent jurisdiction under Section 528 of the BNSS. The inherent power remains available, provided the applicant can demonstrate that non-interference would cause a failure of justice or amount to an abuse of the process of the court.

23. In light of these binding precedents, the primary objection raised by learned counsel for opposite party No.2 that an application under Section 528 of the BNSS is automatically non-maintainable due to the availability of a criminal revision under Section 438 of the BNSS is untenable and is rejected. The present application, filed by the applicants against the rejection of their discharge application, is maintainable.

24. Before considering the rival contentions, it is apposite to note that this Court has inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), to quash criminal proceedings in appropriate cases. Such power is extraordinary in nature and is to be exercised sparingly and cautiously, and only where intervention is necessary to prevent abuse of the process of law or to secure the ends of justice.

25. One of the well-recognised grounds for quashing criminal proceedings is that, even if the allegations in the complaint or FIR are taken at face value and accepted in their entirety, they do not disclose the commission of any offence or make out a case against the accused. At the same time, while exercising jurisdiction under Section 528 of the BNSS, this Court is

not expected to undertake a meticulous examination of the evidence, assess the probative value of the material collected during the investigation, or conduct a mini-trial. The scope of inquiry is limited to examining whether the allegations, on a plain reading and in light of the material on record, disclose the essential ingredients of the offence alleged. If the allegations raise disputed questions of fact requiring appreciation of evidence, such matters are ordinarily to be adjudicated by the trial court in a full-fledged trial.

26. According to the facts of this case, opposite party No. 2 filed a complaint stating that he is a member, shareholder, promoter and director of M/s. M.T.G. Infra Power Ltd. and is a commercial director of M/s. S.P.B.L. Energies Pvt. Ltd. The applicants are directors of S.P.B.L. Energies Pvt. Ltd. and look after its day-to-day affairs. Under the agreement dated 30.09.2013, all government tenders obtained by M/s. S.P.B.L. Energies Pvt. Ltd. were to be subcontracted to M/s. M.T.G. Infra Power Ltd., and all payments pertaining to such contracts were to be deposited in a jointly operated bank account, for which opposite party No. 2 was to be a mandate holder.The signature requirement was initially adhered to. However, the applicant subsequently diverted tender-related funds into unauthorised bank accounts that were not jointly operated and were inaccessible to the informant. The accused fabricated invoices and delivery challans in the names of fictitious suppliers to simulate material procurement for the S.P.B.L. contracts.On the strength of these fabricated documents, payments totalling approximately Rs. 50 crores were allegedly made from the company's funds to fictitious suppliers. The applicants were preparing to misappropriate a further Rs. 40 crores in anticipated government funds. Two BMW vehicles were purchased using the allegedly embezzled company funds. Additionally, a new unauthorised bank account (A/c No. 0043002100062099) was allegedly opened at Punjab National Bank, Bareilly, into which approximately Rs. 19 crores earmarked for a government project was deposited without the authorisation of opposite party No. 2. It is further alleged in the FIR and the complaint that, in May–June 2018, a Toyota Fortuner worth Rs. 35 lakhs was purchased using S.P.B.L. funds. When confronted, two of the applicants, namely Somendra Mehta and Gourang Garg, admitted their

misconduct and executed a single affidavit dated 18.04.2017, undertaking not to repeat such conduct. However, despite these assurances, in September–October 2017, they allegedly opened another unauthorised account at Canara Bank (A/c No. 4845214000005), into which approximately Rs. 30 crores was deposited and subsequently misappropriated.

27. As per the facts of the case, some dispute arose between the applicants and Opposite non2 ,due to financial and managerial discord. To resolve the dispute, the parties, i.e., the applicants and opposite party No. 2, mutually agreed, under an agreement dated 29.6.2017, to refer the matter to arbitration. Accordingly, they appointed Sri Ashok Garg as the arbitrator by mutual consent. Opposite party No. 2 actively participated in the arbitration proceedings. The arbitral proceedings culminated in an award dated 15.08.2018. The arbitral award was subsequently set aside by the learned Commercial Court, Kanpur Nagar, in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, by an order dated 01.06.2023. Aggrieved by that order, the applicants preferred appeals bearing A.R.P.L. Nos. 692 and 693 of 2023, which are presently pending adjudication before this Court. The arbitration clause, the arbitration proceedings, the arbitral award, and the filing of objections under Section 34 of the Arbitration and Conciliation Act, 1996, shows that the main dispute between the parties is essentially civil in nature but has been drawn into criminal proceedings.

28. Opposite party no 2 lodged a first information report with substantially the same allegations as mentioned in the complaint with an additional allegation that the applicants used seven forged bank guarantees to obtain tenders from D.V.V.N.L., Agra.

29. After the registration of the FIR, the investigation was handed over to Kailash Chandra Dubey (hereinafter referred to as "the local police"). The Local Police visited the office of D.V.V.N.L., Agra, and recorded the statements of Arun Kumar Rawal and Pankaj Kela. As per the investigation ,they provided the investigation officer total 23 bank guarantees deposited by the applicants,out of which 8 were issued by the Punjab and Sindh Bank. The local police also visited the Punjab and

Sindh Bank branch at Transport Nagar, District Kanpur Nagar, to verify the genuineness of the bank guarantees. As per the said investigation, 7 bank guarantees were forged. The local police also recorded the statements of Anand Kumar Srivastava, Shivakant Tripathi, and Kiran Kumar Kapoor. It is also relevant to note that, although the investigation was transferred to the EOW on 03.11.2018, the local police continued their investigation and prepared a charge sheet on 04.11.2018.

30. While the investigation was still pending, the SSP, Kanpur Nagar, by a letter dated 20.09.2018, recommended to the Inspector General, Kanpur Zone, that the investigation be transferred to the EOW.Pursuant to this recommendation, the State Government, through its Under Secretary, Department-8, Ministry of Home Affairs, sanctioned the transfer of the investigation to the EOW by Order No. MLA-13/25-08-2018-17 (54)/2018. In furtherance of the Government Order, the SSP, by a letter dated 31.10.2018 addressed to the S.P., Kanpur Nagar (West), directed the Investigating Officer of the local police to cease further proceedings and immediately hand over the complete case record to the EOW.

31. Thereafter, the Investigating Officer of the EOW commenced the investigation on 03.11.2018 and prepared Parcha No. 1, in which the details of the first information report and other proceedings were recorded. The Investigating Officer of the EOW recorded the statements of Anand Kumar Srivastava, Branch Manager, Punjab and Sindh Bank; Kiran Kumar Kapoor; Shivakant Tripathi; Arun Kumar Rawal, Superintending Engineer in the office of the Managing Director of D.V.V.N.L., Agra; and Pankaj Kela, Executive Engineer in the office of the Managing Director of D.V.V.N.L., Agra.

32. Anand Kumar Srivastava, Senior Branch Manager, Punjab and Sindh Bank, Transport Nagar, Kanpur Nagar, stated in a statement given to the EOW that the local police had asked him to authenticate a photocopy of the 2013 bank guarantee of M/s S.P.B.L. Private Limited, Kanpur Nagar, bearing No. PSIB0000425/PBG-09/2013-14, dated 21.6.2013. He informed the Investigating Officer that the bank guarantee had been issued on 21.6.2013 and that considerable time had elapsed since its expiration. The bank would authenticate only the original document or

verify a photocopy against the original. He requested that the local police produce the original bank guarantee, as only then would it be possible to authenticate the photocopy. He also stated that M/s SPBL Energy Private Limited had maintained Account No.07271300000712 with Punjab & Sindh Bank for a long time. The local police asked him on which dates bank guarantees had been issued for the said firm and what property had been mortgaged with the bank as security for those guarantees. He informed the Investigating Officer that the bank had issued bank guarantees for M/s SPBL Energy Private Limited from time to time and held sufficient mortgaged property as security for those guarantees.

33. Kiran Kumar Kapoor, in his statement recorded by the EOW under Section 161 Cr.P.C., stated that the Investigating Officer of the local police had asked him to verify the signature on the photocopy of Bank Guarantee No. PSIB0000425/PBG-09/2013-14, dated 21.6.2013, and that he had verified the signature appearing on the photocopy. He was asked to verify the authenticity of the photocopy, but he requested that the original bank guarantee be produced along with the photocopies. M/s SPBL Energy Private Limited has maintained Account No. 07271300000712 since 17.6.2008. The aforesaid firm and its director, Mr. Somendra Mehta, were valued customers of the bank during his tenure. The bank regularly issued bank guarantees for the said firm during that period. On 19/04/2012, he obtained approval from the Zonal Office for the issuance of a bank guarantee of Rs. 5 crores for the said firm. He also obtained verbal approval by telephone from the Zonal Office to issue bank guarantees for the firm. The Zonal Officer never refused approval because the firm was a valued customer and brought substantial business to the bank. He issued several bank guarantees for the firm without debiting the corresponding bank guarantee charges from its account because the bank had already charged excess interest on the firm's credit limit account, contrary to its credit rating. To offset the excess interest charged, the deponent did not debit the firm's account for the charges associated with those bank guarantees. During his tenure, the value of the mortgaged property held by the bank exceeded the security required to issue bank guarantees for the aforesaid firm. He did not make any statement to the Investigating Officer, Kailash Chandra Dubey, other than

the statements given to the EOW. If the Investigating Officer, Kailash Chandra Dubey, has recorded any other statement attributed to him under Section 161 Cr.P.C. that is contrary to the foregoing, it shall be considered false and fabricated.

34. Arun Kumar Rawal, Superintending Engineer in the Office of the Managing Director, DVVNL, Agra, and Pankaj Kela, Executive Engineer in the Office of the Managing Director, DVVNL, stated in their statements recorded under section 161 cr.p.c by the EOW, that M/s SPBL Energy Private Limited was awarded various work contracts through tenders under DVVNL between 2012 and 2014, during the tenure of their predecessors. The firm submitted approximately 28 bank guarantees.The work under Tender No. DDVNL-MM/786-2012, listed at serial numbers 1 through 4, was completed in March 2017. As the required bank guarantee was not available, Rs. 2.90 crore has been withheld from the payments due to the executing agency. The amount withheld exceeds the value of the required bank guarantee. The work under Tender No. DVVNL-MM/794-2012, listed at serial numbers 5 and 6, was completed in 2014, and the guarantee period for this work has also expired. The work under Tender No. DVVNL-MM/782-2012, listed at serial numbers 7 to 14, has been completed, and bank guarantees totaling Rs. 6.82 crore for this tender are available in the office.The work under Tender No. DVVNL-MM/1307-2014, listed at serial numbers 21 to 24, has been completed, and bank guarantees totaling Rs. 14.45 crore for this tender are available in the office. The work under Tender No. DVVNL-MM/1308-2014, listed at serial numbers 25 to 28, has been completed, and bank guarantees totaling Rs. 10.94 crore for this tender are available in the office. In addition to the current bank guarantees, office records indicate that the expired bank guarantee listed at serial number 7 had previously been verified by the then Executive Engineer, A. K. Tyagi, during a visit to the bank. In this regard, the bank confirmed in its unnumbered letter dated 24.06.2013 that it had issued the guarantee.

35. The above-mentioned statements by the bank officials clearly show that the photocopies of the alleged forged bank guarantees could not be verified because the originals were not available. These witnesses did not authenticate that the bank guarantees were forged. Anand Kumar

Srivastava stated that M/s SPBL Energy Private Limited has maintained a bank account with Punjab and Sindh Bank for a long time. The bank issued guarantees for the firm from time to time and held sufficient mortgaged property as security for their issuance. Kiran Kumar Kapoor also stated that he was working as a bank manager at the relevant time. He served as Senior Branch Manager from 14.08.2010 to 30.07.2013. He verified the signature on the bank guarantee dated 21.06.2013. He told the Investigating Officer of the local police that the photocopies in question could be verified only if the original bank guarantees were produced. He also stated that the firm is a valued customer and has held a bank account since 17.06.2008. Bank guarantees were issued from time to time during his tenure. On 19.04.2012, he obtained approval from the bank's Zonal Office for the issuance of bank guarantees totaling Rs. 5 crore. He also obtained approval by telephone from the Zonal Office for the firm. The Zonal Office never refused approval, as the firm was a valued customer that brought substantial business to the bank. The bank issued several bank guarantees for the firm without debiting the corresponding bank guarantee charges from the firm's account. The bank had charged excess interest on the firm's credit limit account, contrary to its credit rating. To offset the excess interest charged, the bank did not debit the firm's account for the charges associated with those bank guarantees. The bank held mortgaged property exceeding the security required to issue bank guarantees for the aforesaid firm.

36. Sections 420 IPC is not stand-alone offences. It is in consequences of cheating as defined in Section 415 IPC. Section 420 deals with cheating coupled with dishonest inducement leading to the delivery of property or interference with a valuable security. The statutory sequencing is explicit: Section 420 begins with the words, "whoever cheats and thereby dishonestly induces..." Unless the ingredients of Section 415 are first disclosed, Section 420 can be pressed into service.

37. Section 415 embodies a defined structure for construing the offence. The prosecution must show deception, followed by inducement of the kind the statute recognizes, backed by the requisite mens rea at the inception. In one branch, the inducement must be "fraudulent or dishonest" and must result in the delivery of property or consent to the

retention of property. In the other branch, the inducement must lead the deceived person to do or omit an act that he would not otherwise do or omit, and the act or omission must cause, or be likely to cause, harm to body, mind, reputation, or property. This is not a provision that criminalizes every act of sharp practice; it criminalizes deception only when it is tethered to the particular consequences the statute identifies.

38. The Code itself preserves the distinction between "dishonestly" and "fraudulently." Section 24 defines "dishonestly" by reference to wrongful gain or wrongful loss. Section 25 defines "fraudulently" as acting with intent to defraud. The Supreme Court, in Dr. Vimla v. Delhi Admn, (1962) SCC OnLine 172, explains that "defraud" is not exhausted by deceit. It requires deceit followed by injury to the person deceived, and that injury need not be purely economic; it can include harm to body, mind, reputation, or other legally cognizable detriment. But the injury cannot be assumed. It must be anchored in the facts alleged and the statutory consequence asserted.

39. On the complainant's own case, the "dishonesty" limb fails at the threshold. Dishonesty under Section 24 IPC requires an intention to cause "wrongful gain" or "wrongful loss," as defined in Section 23 IPC, namely, gain of property by unlawful means to which the person gaining is not legally entitled, or loss of property by unlawful means to which the person losing it is legally entitled.

40. According to the First Information Report, the main allegation against the applicants is that they submitted 7 forged bank guarantees to obtain tendors from D.V.V.N.L., Agra with the intention of causing wrongful gain to themselves and wrongful loss to the State. Neither the D.V.V.N.L., Agra nor the bank has filed a complaint against the applicants alleging that the submitting of the alleged forged bank guarantees caused any wrongful loss. Even the bank officials, in their statements given to the EOW have clearly and categorically stated that the bank guarantees in question could not be verified as forged. The foundational mental element of dishones cheating is, therefore, absent.

41. The Section 420 charge fails for a second, independent reason.

Section 420 is not attracted by every false representation. It is attracted only where cheating results in dishonest inducement leading to the delivery of property or the making, altering, or destruction of a valuable security. The law insists on a clear causal bridge between the deception and a property-centric consequence. In that sense, Section 420 is narrower than it appears at first glance: it punishes cheating only when it culminates in the kind of legally recognisable consequence described in the section.

42. This is why the Supreme Court has repeatedly stated that Section 420 necessarily postulates cheating under Section 415, with dishonest inducement resulting in the delivery of property or interference with a valuable security, as contemplated in the statute. The same caution runs through decisions such as Mohd. Ibrahim v. State of Bihar, (2009) 6 SCC 751: unless the complaint itself discloses the statutory ingredients, the court does not send parties to trial on a theory that the missing links may emerge later.

43. In Jupally Lakshmikantha Reddy v. State of Andhra Pradesh & Ors., 2025 INSC 1096, the Court dealt with a claim that a "false NOC" was used to obtain a recognition certificate from the School Education Department to run their educational institution. The Court found that the NOC was actually not required in the facts, and therefore the alleged false representation did not induce the authority to act in a manner it would not otherwise have acted. The missing link of material inducement and resultant legal prejudice proved fatal. These decisions are reminders that Section 420 is not a net cast wide enough to catch every allegedly false document. The deception must be material, causative, and productive of the statutory consequence.

44. When these principles are applied to the present case, the offence under Section 420 is not made out. The only allegations against the applicants is that they used 7 forged bank guarantees to obtain tendors, whereas the bank officials have not verified those bank guarantees as the forged bank guarantees.

45. To establish the offences of forgery and using forged documents as

genuine, it is imperative to establish that a forged document was created within the meaning of Section 464 of the IPC. It is a settled principle of law that secondary evidence, such as unverified photocopies without any primary report providing forensic or expert validation, cannot form the sole basis for instituting criminal proceedings for serious offences such as those under Sections 467 and 468 of the IPC. In a prosecution for forgery, the prosecution must show that a false document was created with the intent to cause damage or injury.

46. In the present case, Opposite Party No. 2 relied solely on photocopies. Although secondary evidence or circumstantial proof may be admitted at trial under exceptional statutory conditions, there must, at a minimum, be an identifiable original document or an authoritative statement from the issuing authority confirming its existence and forged execution.

47. In the present case, the original bank guarantees were never recovered or submitted. The issuing bank categorically confirmed that no internal record established that the documents were forged. Nor did DVVNL register any grievance concerning fraud or misrepresentation in the tender process. Neither the electricity department nor the bank reported any fraud, breach, loss, or misrepresentation. A co-director of a company cannot arbitrarily allege that "the company defrauded third parties" when those third parties themselves explicitly deny any such fraud or illegality.

48. The record overwhelmingly reveals an ongoing rivalry and boardroom conflict among the directors. The criminal process cannot be permitted to be weaponised as a tool of oppression or vengeance in intra-company disputes. As observed by the Hon'ble Supreme Court in G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, the High Court must exercise vigilance to ensure that criminal proceedings are not converted into an instrument for harassing individuals or settling business scores.

49. As laid down by the Hon'ble Apex Court in Vinay Tyagi v. Irshad Ali @ Deepak and Others, (2013) 5 SCC 762, a Magistrate, upon receiving a final or closure report, undoubtedly has jurisdiction to disagree with the police opinion and issue a summoning order. However, this power must be exercised judicially and strictly on the basis of credible, legally

admissible material collected by the investigating agency: "The Magistrate has the jurisdiction to disagree with the police report and to take cognizance if the statements recorded under Section 161 CrPC or the documents collected during investigation disclose a prima facie commission of an offence. However, such power must be exercised on objective criteria and supported by material evidence on record, not on mere suspicion or the uncorroborated statement of the informant."

50. Significantly, the opposite party No.2, submitted only unverified photo copies of the alleged bank guarantess. The concerned bank officials examine the matter and consistantly maintain that the alleged bank guarantees could not be verified as forged due to the non availability of the original documents and total absence of corresponding adverse records within the bank system. Furthermore, officials from both D.V.V.N.L. and the concerned bank submitted affidavit affirming that they have never given any statement attributing any forgery or fradulent act to the applicants during prior investigation. Consequent to a detail investigation, the EOW concluded that no prima facie offence is made out against the applicants and accordingly, submitted a closure report before the learned Magistrate. The learned Magistrate ignored the statements given to the EOW by the bank and DVVNL officers and proceeded to summon the applicants solely on the basis of the uncorroborated statement and unverified photocopies provided by the informant, who has ongoing business disputes with the applicants. While hearing on the discharge application, the learned Magistrate failed to consider that no prima facie offence is made out against the applicants and dismised the dischare application solely on the basis of the earlier finding given at the time of the summoning of the applicants.

51. The five-year delay in lodging the First Information Report (the alleged tender fraud of 2013 having been reported in 2018), combined with the ongoing business partnership dispute between Opposite Party No. 2 and the applicants, strongly militates against allowing criminal prosecution to be weaponised to settle private commercial grievances.

52. In State of Haryana and Others v. Bhajan Lal and Others, AIR 1992 SC 604, the Hon'ble Supreme Court set out illustrative categories of cases

in which the High Court must exercise its inherent powers to quash proceedings. One such category comprises cases in which the uncontroverted allegations and the material collected do not disclose the commission of any offence.

53. In Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330, the Court formulated a four-stage inquiry to examine the foundation of the defence material, which must be of such sterling quality that no prudent person can ignore it.

54. This framework, which has been followed in later decisions, including Pradeep Kumar Kesarwani v. State of U.P., 2025 SCC OnLine SC 1947, requires the court to consider whether the material relied upon by the accused is sound and indisputable; whether it directly undermines the factual assertions in the complaint; whether it remains unrebutted; and whether, on the face of such material, continuation of the proceedings would amount to an abuse of the process of the court.

55. The inherent jurisdiction under Section 528 of the B.N.S.S. exists to prevent the criminal process from being used where the prosecution, even on its own showing, has no realistic prospect of culminating in a conviction. This is such a case. Allowing the proceedings to continue would not vindicate the criminal law; it would merely prolong a business-related personal dispute in the guise of serious penal charges.

56. In view of the foregoing analysis, the Court is of the considered opinion that allowing the criminal proceedings against the applicants to continue would be an exercise in futility, a waste of judicial time, and a gross abuse of the process of the Court. The orders dated 19.2.2019, 15.3.2022, 23.9.2022 and 28.4.2025 are liable to be quashed.

57. Therefore, impugned order dated 19.2.2019, passed by the Additional District and Sessions Judge IX, Kanpur Nagar, in Complaint Case No. 1/2018 (Rajeev Talreja v. Somendra Mehta and others), under Sections 420, 467, 468, and 471 of the I.P.C., read with Section 447 of the Companies Act, 2013; impugned order dated 15.3.2022, passed by the Additional District and Sessions Judge, Court No. 12, Kanpur Nagar, in Crl. Revision No. 283 of 2021 (Rajiv Talreja v. State of U.P. and Ors.);

impugned summoning order dated 23.9.2022, passed by the Special Chief Judicial Magistrate, Kanpur Nagar, in Case No. 95 of 2021 (State v. Somendra Mehta and Ors.), arising out of Case Crime No. 128 of 2018, under Sections 406, 409, 420, 467, 468, 471, and 120B of the I.P.C., Police Station Swaroop Nagar, District Kanpur Nagar and impugned order dated 28.04.2025 passed by the Special Chief Judicial Magistrate, Kanpur Nagar rejecting the discharge application of the applicants in Case No. 95 of 2021 (State of U.P v. Somendra Mehta and Others), arising out of Case Crime No. 128 of 2018, EOW No.35 of 2018, under Sections 406, 420, 467, 468, 471, and 120B of the I.P.C., Police Station Swaroop Nagar, District Kanpur Nagar are hereby set aside, and the entire proceedings of the aforesaid cases are quashed.

58. Accordingly, the applications are **allowed**.

(Chawan Prakash,J.)

November 4, 2026
Md Faisal

Digitally signed by :-
MOHD FAISAL
High Court of Judicature at Allahabad