



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL MISC. WRIT PETITION No. - 8317 of 2026

Krishna Kant Pandey And Another

.....Petitioner(s)

Versus

State Of U.P. Thru Prin. Secy. Home Lko And
Others

.....Respondent(s)

Counsel for Petitioner(s)	: Anuj Dayal, Ankit Kumar Trivedi
Counsel for Respondent(s)	: G.A., Ashish Gautam

Court No. - 11

HON'BLE ABDUL MOIN, J.

HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

1. Short counter affidavit filed by Sri Sumit Kumar Ojha, Advocate on behalf of respondent No.4 is taken on record.

2. Heard learned counsel for the petitioners as well as learned counsel for the respondent No.4 and learned A.G.A. appearing for the State.

3. Learned counsel for the respondent No.4 and learned A.G.A. prays for and is granted four weeks' time to file counter affidavit(s). Two weeks' time thereafter shall be available to the learned counsel for the petitioners to file a rejoinder affidavit.

4. List thereafter before the appropriate Bench.

5. Under challenge is the F.I.R. dated 23.07.2026 bearing FIR/Case Crime No. 0193 of 2026, under Section 356(2) of BNS and Section 66-C of Information Technology (Amendment) Act, 2008 (herein after referred to as "Act, 2008"), lodged at Police Station Aaspur Devsara, District Pratapgarh.

6. The contention of learned counsel for the petitioners is that a perusal of the impugned F.I.R. would indicate that the FIR has been lodged under Section 356(2) of BNS, 2023 and Section 66-C of Act, 2008.

7. So far as Section 356(2) of the BNS, 2023 is concerned, it is contended that the same pertains to defamation. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of **Subramanian Swamy v.**

Union of India (2016) 7 SCC 221, the argument is that the Hon'ble Supreme Court has categorically held that in the case of criminal defamation, neither can an FIR be filed nor can a direction be issued under Section 156(3) of the Cr.P.C. and the proceedings have to be initiated by way of a complaint by the person aggrieved.

8. So far as Section 66-C of the Act, 2008 is concerned, the contention is that the same pertains to punishment for identity theft and the Section categorically provides that whoever fraudulently or dishonestly make use of electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years etc.

9. The contention is that Section 66-C of the Act, 2008 categorically provides for fraudulently or dishonestly creating or making use of the electronic signature, password or other unique identification.

10. The argument is that the perusal of the impugned FIR would indicate that the petitioners are alleged to have created an e-mail ID in the name of a third person and to have sent fake complaints from the same.

11. However, creation of an e-mail ID would neither be the use of an electronic signature nor a password nor any unique identification, in as much as, there is no bar that an e-mail ID cannot be created in the name of a particular individual by any other individual.

12. On the other hand, the argument of Sri Sumit Kumar Ojha, learned counsel for the respondent No. 4 is that the petitioners knowingly have created an e-mail ID in the name of a particular individual and are using that e-mail ID in order to send fake messages and complaints to various persons including the Lok Ayukta and therefore it would amount to using the unique identification feature of a third person, which would be an offence under Section 66-C of the Act, 2008.

13. Prima facie, the argument of Shri Ojha is found to be fallacious and misconceived, inasmuch as once the legislature in its wisdom has used the words "electronic signature", "password" or "unique identification feature" under Section 66-C of the Act, 2008 and the legislature in its wisdom has not used the words "e-mail ID", consequently, prima facie it cannot be said that any offence under Section 66-C of the Act, 2008 has

also been committed by the petitioners.

14. Keeping in view the aforesaid discussion, prima facie a case for interference is made out. As such until further orders, the impugned FIR dated 23.07.2026 bearing FIR/Case Crime No. 0193 of 2026, under Section 356(2) of BNS and Section 66-C of Information Technology (Amendment) Act, 2008, lodged at Police Station Aaspur Devsara, District Pratapgarh shall remain stayed. Further, no action shall be taken against the petitioners by the authorities in pursuance of the impugned FIR.

15. This case shall not be treated to be tied up/part heard to this Bench.

(Pramod Kumar Srivastava,J.) (Abdul Moin,J.)

September 1, 2026

Arvind