

Neutral Citation No. - 2024:AHC-LKO:12337

A.F.R.

Reserved On 16.11.2023

Delivered On 09.02.2024

Court No. - 07

Case :- APPLICATION U/S 482 No. - 10136 of 2023

**Applicant :- Kamlesh Singh (In Adhaar Kamlesh Kumar Singh)
And Another**

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko.
And Another**

Counsel for Applicant :- Dharendra Pratap Singh

Counsel for Opposite Party :- G.A., Shishir Pradhan

Hon'ble Saurabh Lavania, J.

1. Third application for Interim relief filed in the Court today, is taken on record.

2. Heard Sri Dharendra Pratap Singh, learned counsel for the applicants, Sri Anirudha Kumar Singh, learned AGA for the State and Sri Shishir Pradhan, Advocate, learned counsel for the opposite party No.2.

3. By means of instant application under Section 482 Cr.P.C. Kamlesh Singh and Bhagauti Singh, have approached this Court impeaching the order dated 27.03.2023 passed by the Chief Judicial Magistrate, Court No.9, Raebareli (in short "C.J.M.") in Case No.8528 of 2020 and have also assailed the order dated 30.09.2023 passed by the Additional District and Sessions Judge-II, Raebareli (in short "revisional court") in Criminal Revision No.139 of 2023 as also the Charge Sheet No.369 dated 12.11.1992, Charge Sheet No.49 dated 26.11.1998 and Charge Sheet No.49A dated 12.04.2001, arising out of Case

Crime No.373 of 1991 under Sections 147, 148, 149 & 302 IPC, P.S.-Kotwali, District-Raebareli.

4. Vide impugned order dated 27.03.2023, C.J.M. took cognizance against all the accused persons and abated the proceedings against Ashok Kumar Singh and Akhilesh Singh on account of the fact that during pendency of the trial these accused were expired.

5. Vide order dated 30.09.2023 the revisional court dismissed the Criminal Revision No.139 of 2023, which was filed assailing the order dated 27.03.2023 passed by the C.J.M.

6. Brief facts, which are relevant for the purposes of disposal of present application, are to the effect that after lodging of an FIR dated 27.07.1991 of murder of Iqbal Haider Raza implicating Akhilesh Singh, Kamlesh Singh, Ashok Singh (in documents on record name of the accused is also indicated as Ashok Kumar Singh) and Bhagauti Singh, the local police started the investigation. The investigation subsequently was transferred to CBCID from local police on 01.08.1991, as indicated in the application. Thereafter, investigation was again transferred from CBCID to local police on 15.10.1991. The order of transferring the investigation from CBCID to local police was assailed before this Court by means of Writ Petition No.3523 (M/B) of 1991, which was subsequently dismissed as not pressed vide order dated 01.10.1992. After dismissal of aforesaid writ petition on 01.10.1992, Charge Sheet No.369 dated 12.11.1992 was prepared by the local police, however, the same was not filed before the trial Court on account of interim order dated 13.11.1992 passed in Writ Petition No.4672

(M/B) of 1992 and this Court provided liberty to CBCID to investigate the case. After the order of this Court dated 13.11.1992, the local police on 26.07.1997 sent the entire documents/case diary to CBCID and thereafter, the CBCID started the investigation on 23.05.1998 and after due investigation, the CBCID submitted the Charge Sheet No.49 dated 26.11.1998 before the competent court of jurisdiction upon which the cognizance was taken on 02.12.1998.

7. At this stage, this Court finds it appropriate to reproduce the relevant contents of the Parcha No.25/Charge Sheet dated 26.11.1998, as available on record (Annexure No.10), which reads as under:-

"अब तक की की तमामी विवेचना से संकलित साक्ष्य के आधार पर अभियुक्त अखिलेश सिंह पुत्र धुन्नी सिंह कमलेश सिंह पुत्र धुन्नी सिंह अशोक सिंह पुत्र देवेन्द्र सिंह निवासी लालपुर चौहान थाना महाराजगंज एवं भगवती सिंह पुत्र श्री देवी बक्स सिंह निवासी पूरे आदमपुर थाना महाराजगंज जनपद रायबरेली के विरुद्ध दिनांक 27 जुलाई 91 को श्री इकबाल हैदर रजा को रात्रि 8:30 बजे उनके घर में दरवाजा खुलवाकर गोली मारकर हत्या करने का अपराध प्रथम दृष्टिया धारा 147 148 149 302 भारतीय दंड विधान के अंतर्गत प्रथम दृष्टिया होना सिद्ध है अभियुक्त अखिलेश सिंह व कमलेश सिंह के विरुद्ध दिनांक 12 नवंबर 92 को स्थानीय पुलिस द्वारा माह फरवरी में आरोप पत्र संख्या 369 दिनांक 12 नवंबर 92 को प्रेषित किया गया विवेचना से ताईद एवं तस्दीक की जाती है।

अभियुक्त अशोक कुमार सिंह पुत्र देवेन्द्र सिंह उर्फ छोटे लाल सिंह निवासी ग्राम लालपुर चौहान थाना महाराजगंज एवं भगवती सिंह पुत्र देवी बक्स सिंह ग्राम पूरे गोसाईं माजरा आदमपुर थाना महाराजगंज जिला रायबरेली के विरुद्ध इकबाल हैदर रजा की हत्या करने और प्रथम दृष्टिया सिद्ध होने के फलस्वरूप धारा 147 148 149 302 भारतीय दंड विधान के अंतर्गत आरोप पत्र प्रेषित।

विवेचना समाप्त की जाती है"

8. The earlier part of above quoted Charge Sheet dated 26.11.1998 indicates that therein Investigating Officer (in short "I.O.") specifically observed that after due investigation, prima facie, offence of murder of Iqbal Haider Raza is made out

against accused Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh and thereafter confirmed and verified the Parcha No.369/Charge Sheet dated 12.11.1992, which was with regard to two accused namely Akhilesh Singh and Kamlesh Singh, the same reads as under:-

"श्रीमान जी से निवेदन है कि दि० 27.7.91 को वादी मुकदमा खाना नं० 1 श्री नदीम इकबाल पुत्र श्री इकबाल रजा हैदर के मकान स्थित मो० दक्षिणी जहानाबाद थाना कोतवाली रायबरेली पर लगभग 8.30 बजे रात मुल्जिमान खाना नं० 3 मय अपने साथियों मुल्जिमान खाना नं० 2 के साथ एक राय होकर सस्त्रों से सुसज्जित पुरानी दुश्मनी के कारण उसके माकन पर पहुंचे और वादी के पिता श्री इकबाल रजा हैदर पुत्र श्री हाजी अब्दुल गफूर को फायर करके गोलियों से मौके पर ही जान से मार डाले। मुल्जिमान वादी व गवाहान द्वारा मौके पर बिजली की रोशनी में देखे व पहचाने वादी की तहरीरी सूचना पर दिनांक 27.7.91 को 21.30 बजे थाना स्थानीय पर मुल्जिमान के विरुद्ध अभियोग पंजीकृत हुआ। विवेचना की गयी। विवेचना से बयानात गवाहान, निरीक्षण घटनास्थल, नतीजा PM से मुल्जिमान के विरुद्ध जुर्म धारा 147/148/149/302 IPC बनता है। अस्तु गिरफ्तार न होने कारण चालान मफरूरी में किया जाता है। गवाहान सबूत तलब करके इनके विरुद्ध कार्यवाही करने की कृपा की जाय।"

9. From a conjoint reading of contents of the FIR and the above quoted portion(s) of the Charge Sheet(s) dated 26.11.1998 and 12.11.1992, it is apparent that all the accused committed crime against whom the FIR was lodged namely Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh and therefore in the earlier part of Charge Sheet dated 26.11.1998 the I.O. in specific terms indicated that the Charge Sheet dated 12.11.1992 is confirmed and verified and thereafter in later part of Charge Sheet dated 26.11.1998 the I.O. indicated the names of accused namely Ashok Singh and Bhagauti Singh, against whom the Charge Sheet was not prepared earlier.

10. It is evident from the above quoted portion of Charge Sheet dated 26.11.1998 that I.O. has not indicated therein that the sufficient material/evidence is not available against accused namely Akhilesh Singh and Kamlesh Singh.

11. It would further be relevant to indicate that vide order dated 02.12.1998 the cognizance was taken by the C.J.M. against all the accused persons. The order dated 02.12.1998 on reproduction reads as under:-

"आज आरोप पत्र अन्तर्गत आ० सं० 373/91, धारा 147, 148, 149, 302 भा०द०वि०, थाना-कोतवाली, रायबरेली के अभियुक्तगण अशोक सिंह व भगौती सिंह, अखिलेश कुमार सिंह व कमलेश के विरुद्ध, C.B.C.I.D. द्वारा प्राप्त हुआ। पढ़ा।

आदेश हुआ कि प्रसंज्ञान किया गया। दर्ज रजिस्टर हो। नकलें बनवायी जायें। दि० 10.12.98 के वास्ते आदेश पेश हों।"

12. The order dated 02.12.1998 was assailed by means of Criminal Revision No.6 of 1999. This revision was filed by all the accused namely Kamlesh Singh, Akhilesh Singh, Bhagauti Singh and Ashok Singh. The revisional Court allowed the revision vide order dated 11.05.1999 and remanded the matter back to the C.J.M. for re-consideration in the light of the observation made in the order dated 11.05.1999. The observation being relevant, as pointed by the learned counsel for the applicants, on reproduction, reads as under:-

"As said above, the chargesheet, in which cognizance has been taken, only two accused are named, namely, Ashok singh and Bhagauti Singh, and in the other Charge Sheet Akhilesh Kumar Singh and Kamlesh Singh are accused and Ashok Singh and Bhagauti Singh are named as suspected accused. The subsequent chargesheet (paper no.5Ka/3) is neither duly filed in the court by the investigating agency nor cognizance has been taken by the learned Chief Judicial Magistrate, Raebareli, but all the four accused, mentioned above, have been summoned. In the

circumstances, aforementioned, there appears to be material irregularity in exercise of Jurisdiction and it does not appear that mind has been applied by the learned Chief Judicial Magistrate, Rae Bareli on paper no. 5Ka/3 aforementioned.

In view of the aforementioned circumstances, the case deserves to be sent back for reconsideration by the learned Chief Judicial Magistrate, Rae Bareli. The learned Chief Judicial Magistrate, Rae Bareli, shall make enquiry as to who scored out the signature and date on paper no. 5Ka/3 and thereafter, after applying his mind on paper no.5Ka/3 (chargesheet) and its validity, he shall pass necessary orders. The revisions are directed to appear and object before the Chief Judicial Magistrate, Rae Bareli, and if they do so, their submission shall be considered.

ORDER

The revision is allowed and order impugned is set aside. The case is sent back to the learned Chief Judicial Magistrate, Rae Bareli for reconsideration in the light of observations made above."

13. After the aforesaid direction of the revisional Court dated 11.05.1999, the trial Court passed the order of cognizance dated 02.05.2005. This order was again assailed by the accused persons namely Kamlesh Singh, Akhilesh Singh, Bhagauti Singh and Ashok Kumar Singh by preferring the Criminal Revision No.118 of 2005. The revisional Court again interfered in the order of cognizance dated 02.05.2005 and remanded the matter back to the trial Court for reconsideration vide its order dated 07.12.2005. The observation made by the revisional Court in its order dated 07.12.2005 indicates that while taking cognizance in the matter vide order dated 02.05.2005 the concerned Court failed to take note of observations made by the revisional court in its earlier order dated 11.05.1999.

14. After the aforesaid order dated 07.12.2005, the C.J.M. by the impugned order dated 27.03.2023 took cognizance. The

relevant portion of the impugned order dated 27.03.2023 is reproduced hereinunder:-

"On perusal of case diary parcha number 5 the special secretary Home UP Lucknow in case Crime number 373/91 U/S 147/148 and 149/302 IPC Reg at PS Kotwali District Raebareli entrusted to CID for investigation. The investigation by local police was stayed and the copy for compliance was sent to the state official dated August 1st 1991. On perusal of case diary the investigation was forwarded to the concerned and the investigation was closed by the local police. Meanwhile the charge sheet was filed by the local police but on perusal it was not filed by in consonance with section 158 CRPC. Later on two charge sheet were filed by CBCID naming four accused as above mentioned. By one order of this court the Cognizance was again taken but it was reverted back for rehearing giving direction above mentioned for reconsideration and set aside the order passed by this court.

Section 460 of CRPC clearly States about the irregularities which do not vitiate proceeding in which mere irregularities in taking Cognizance can be caused.

Now coming on the fact of several charge sheet filed both by local police and CBCID. When due investigation was transferred to CBCID in 1991 and CBCID after investigation file two Charge sheet naming all the four accused. Firstly CBCID has filed charge sheet naming two accused and later on supplementary cahrgesheet naming other 2 accused.

The charge sheet filed by the local police in mere irregularities and it may not be taken in account because the whole investigation was transferred to CB CID and later on CBCID has filed their Charge sheet naming all the four accused.

The Honorable Allahabad High Court in case application under section 482 CrPC number 12578 of 2021 Badri Prasad and 3 others vs. State of UP and another; has stated that "at a stage where it is to be decided as to whether process should be issued, the magistrate would not be required to enter into a detailed discussion on merits or demerits of the case and it would suffice if the evidence led by the complainant in support of the allegation is taken into consideration and determining the question whether any process is to be issued or not, what the magistrate

has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient grounds for conviction."

The Honorable court has stated a distinction drawn between taking Cognizance based upon charge sheet filed by the police under section 190 (1) (b) of the code and taking Cognizance based on a complaint under section 190 (1) (a). As for Cognizance based on a police report is concerned, the magistrate would have the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. The fact that after investigation of the case, the police has filed a charge sheet along with the material thereon, may be considered as sufficient ground for proceeding for issuance of summon under section 204 of the code.

Thus, coming to the conclusion of this court, the investigating agency in this case is CBCID and CBCID has filed chargesheet against all the accused. Perused all the document filed by CBCID and this court finds that there are sufficient material and evidence against the accused for proceeding and taking Cognizance and issuance of process against all the accused. The charge sheet filed by local police is mere irregularity and was cured subsequently by filing chargesheet by CBCID. The matter is grave in nature and oldest and this court is of no view for further delaying the case only based on technical grounds. There is sufficient ground for issuance of process against accused.

Order

Cognizance against all the accused is taken by this court under section 147/148/149/302 of IPC in the light of direction given by the Revisional court. The accused have knowledge as the legal representative are arguing and objecting on Cognizance. Thus, issuance of B.W. of 10000 against two accused. Two of the accused have expired during this stage and the proceeding has abated against them by the previous order of the court. Issue Bailable warrant 10000 against Kamlesh Singh and Bhagauti Singh. Case is put up on 21.4.23."

15. At this stage, it would be relevant to indicate that after the order of the revisional Court dated 11.05.1999, it appears that S.P., CBCID, U.P., Lucknow, directed the Circle Officer, CBCID, Lucknow vide his letter dated 18.03.2001 to

file the Supplementary Charge Sheet (तितिम्मा आरोप पत्र) and for this purpose the S.P., CBCID in his letter dated 18.03.2001 took note of the fact that the Charge Sheet of CBCID itself indicates that there is sufficient evidence against all the accused persons namely Kamlesh Singh, Akhilesh Singh, Bhagauti Singh and Kamlesh Singh and thereafter in terms of the letter dated 18.03.2001 of S.P., CBCID, the Charge Sheet No. 49A dated 12.04.2001 was filed against Akhilesh Singh and Kamlesh Singh.

16. In the aforesaid background of the case, as per submissions advanced by the learned counsel for the applicants, the present application has been filed under Section 482 of Cr.P.C. on the following main grounds:-

(i) Section 460 of Cr.P.C. would not be attracted as in fact irregularity was committed by the Investigating Agency.

(ii) For filing supplementary Charge Sheet No.49A dated 12.04.2001 no order was passed by the concerned Magistrate under Section 173(8) of Cr.P.C.

(iii) The Charge Sheet No.49A dated 12.04.2001 was filed without further investigation in the matter. In other words, based upon the earlier evidence available with the prosecution fresh Charge Sheet No. 49A was filed.

(iv) The Court while taking cognizance by the impugned order dated 27.03.2023 failed to observe on the issues indicated by the revisional Court in the order dated 11.05.1999, according to which, the trial Court was under obligation to make an inquiry in respect of Parcha No.5Ka-3 and in this

case, no inquiry was carried out, as such, the trial Court failed to conduct the proceedings in accordance with the order of remand dated 11.05.1999 and it is settled principle of law that the subordinate court/authority is under obligation to conduct the proceedings in terms of order of remand.

17. In support of aforesaid submissions, reliance has been placed by the learned counsel appearing for the applicants on the judgment passed by the Hon'ble Apex Court in the case of **Hasanbhai Valibhai Qureshi vs. State of Gujarat And Others; (2004) 5 SCC 347**. Relevant paragraphs 12 and 13 of the same on reproduction read as under:-

"12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further

investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

18. Opposing the present application, learned AGA says that the orders impugned as also the charge sheet(s), in issue, are not liable to be interfered with by this Court. Elaborating the same, learned AGA says that with regard to Charge Sheet No. 369 dated 12.11.1992, the applicants have not pleaded in entire application regarding illegality committed by the prosecution. In regard to the Charge Sheet dated 26.11.1998 only this much has been indicated in the application that while filing the charge sheet, CBCID in the case diary observed that the Charge Sheet prepared by the local police dated 12.11.1992 is confirmed and verified and alleging this, the Charge Sheet dated 26.11.1998 has been assailed in this application.

19. Learned AGA further submitted that Supplementary Charge Sheet No. 49A dated 12.04.2001 is also not liable to be interfered by this Court on the grounds taken by the applicants in the instant application for the reason that from a bare perusal of charge sheet dated 26.11.1998, it is apparent that the I.O. in specific terms observed that after due investigation, prima facie, offence against all accused is made out and in the same, the names of all accused namely Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh and were specifically indicated and in this regard, he drawn the attention of the Court on the relevant contents of Charge Sheet dated 26.11.1998, at the cost of repetition, the same is extracted hereinunder:-

"अब तक की की तमामी विवेचना से संकलित साक्ष्य के आधार पर अभियुक्त अखिलेश सिंह पुत्र धुन्नी सिंह कमलेश सिंह पुत्र धुन्नी सिंह अशोक सिंह पुत्र देवेन्द्र सिंह निवासी लालूपुर चौहान थाना महाराजगंज एवं भगवती सिंह पुत्र श्री देवी बक्स सिंह निवासी पूरे आदमपुर थाना महाराजगंज जनपद रायबरेली के विरुद्ध दिनांक 27 जुलाई 91 को श्री इकबाल हैदर रजा को रात्रि 8:30 बजे उनके घर में दरवाजा खुलवाकर गोली मारकर हत्या करने का अपराध प्रथम दृष्टिया धारा 147 148 149 302 भारतीय दंड विधान के अंतर्गत प्रथम दृष्टिया होना सिद्ध है अभियुक्त अखिलेश सिंह व कमलेश सिंह के विरुद्ध दिनांक 12 नवंबर 92 को स्थानीय पुलिस द्वारा माह फरवरी में आरोप पत्र संख्या 369 दिनांक 12 नवंबर 92 को प्रेषित किया गया विवेचना से तार्किक एवं तस्दीक की जाती है।"

20. He further submitted that the submissions of the learned counsel for the applicant which are to the effect that for the purposes of submitting the Supplementary/Additional Charge Sheet the order of competent Court/Magistrate is required and Parcha No.49-A/Charge Sheet dated 12.04.2001 was submitted without the leave of the Court/Magistrate, as such, the cognizance taken by the Magistrate on the basis of Parcha No.49-A/Charge Sheet dated 12.04.2001 is liable to be interfered with, are completely fallacious.

21. Elaborating the aforesaid, learned AGA submitted that in the instant case, Parcha No.49-A/Charge Sheet dated 12.04.2001 was placed before the Court in the light of letter of S.P., CBCID, dated 18.03.2001 and a perusal of this letter dated 18.03.2001 would show wherein the observations are that sufficient evidence to prosecute all the accused namely Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh was available but in the later part of Charge Sheet dated 26.11.1998 the name of Akhilesh Singh and Kamlesh Singh was not indicated, though, should have been indicated and for this reason, a direction was issued to file Supplementary/Additional Charge Sheet and therefore, Supplementary/Additional Parcha

No.49A/Charge Sheet dated 12.04.2001 was filed before the Court concerned.

22. In continuation, he submitted that the leave of the Court, as per law laid down by the Hon'ble Apex Court in the case of **Vinay Tyagi vs. Irshad Ali @ Deepak and Others ; (2013) 5 SCC 762**, is required for further investigation and in the instant case, no further investigation was carried out by the Investigating Officer for the purpose of filing of Supplementary/ Additional Charge Sheet. The Investigating Officer based upon the evidence collected during investigation prior to filing of Charge Sheet dated 26.11.1998 filed the Additional Parcha No.49A/Charge Sheet 12.04.2001. Thus, no illegality was committed in filing the Parcha No.49A/Charge Sheet dated 12.04.2001.

23. It is also stated that if it is presumed that the said Charge Sheet dated 12.04.2001 ought not to have been taken note of while taking cognizance by the Magistrate concerned even then in view of the evidence available against all the accused the C.J.M. was/is empowered to summon all the accused after taking cognizance against all the accused.

24. He further submitted that in view of law laid by the Hon'ble Apex Court in the case of **Nahar Singh vs. State of U.P. And Another; (2022) 2 SCC (Cri) 328**, the Magistrate is empowered to take cognizance and issue summons to the accused against whom Charge Sheet was not filed if the material is available before the Magistrate/Court concerned.

Para(s) 17 to 30 of the judgment, referred above, are extracted hereinunder:-

"17. As regards scope of jurisdiction of the Magistrate in a situation of this nature, it was held by the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] : (SCC p. 319, paras 35-36)

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2)CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in Column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court."

18. Another Constitution Bench in Hardeep Singh v. State of Punjab [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] followed Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] . It was opined by the Constitution Bench in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC p. 139, para 111)"

111. Even the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] has held that the

Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.”

19. *Earlier, a Coordinate Bench in Raj Kishore Prasad v. State of Bihar [Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495 : 1996 SCC (Cri) 772] expressed the view that power under Section 209 of the Code to summon a new offender was not vested with a Magistrate. In this decision, the correctness of the view taken in Kishun Singh v. State of Bihar [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] and Nisar v. State of U.P. [Nisar v. State of U.P., (1995) 2 SCC 23 : 1995 SCC (Cri) 306] was doubted. The latter decision followed Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] . The Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] affirmed the view taken by this Court in Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] and overruled Raj Kishore Prasad [Raj Kishore Prasad v. State of Bihar, (1996) 4 SCC 495 : 1996 SCC (Cri) 772] . In fact, again a Coordinate Bench in Balveer Singh v. State of Rajasthan [Balveer Singh v. State of Rajasthan, (2016) 6 SCC 680 : (2016) 2 SCC (Cri) 622] has followed both Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] and Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] . In the latter authority (i.e. Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]), it was, inter alia, held : (Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , SCC pp. 28-29, para 13)*

“13. The question then is whether de hors Section 319 of the Code, can similar power be traced to any other provision in the Code or can such power be implied from the scheme of the Code? We have already

*pointed out earlier the two alternative modes in which the criminal law can be set in motion; by the filing of information with the police under Section 154 of the Code or upon receipt of a complaint or information by a Magistrate. The former would lead to investigation by the police and may culminate in a police report under Section 173 of the Code on the basis whereof cognizance may be taken by the Magistrate under Section 190(1)(b) of the Code. In the latter case, the Magistrate may either order investigation by the police under Section 156(3) of the Code or himself hold an inquiry under Section 202 before taking cognizance of the offence under Section 190(1)(a) or (c), as the case may be, read with Section 204 of the Code. Once the Magistrate takes cognizance of the offence he may proceed to try the offender (except where the case is transferred under Section 191) or commit him for trial under Section 209 of the Code if the offence is triable exclusively by a Court of Session. As pointed out earlier cognizance is taken of the offence and not the offender. This Court in *Raghubans Dubey v. State of Bihar* [*Raghubans Dubey v. State of Bihar*, (1967) 2 SCR 423 : AIR 1967 SC 1167] stated that once cognizance of an offence is taken it becomes the Court's duty 'to find out who the offenders really are' and if the Court finds 'that apart from the persons sent up by the police some other persons are involved, it is its duty to proceed against those persons' by summoning them because 'the summoning of the additional accused is part of the proceeding initiated by its taking cognizance of an offence'. Even after the present Code came into force, the legal position has not undergone a change; on the contrary the ratio of *Dubey* case [*Raghubans Dubey v. State of Bihar*, (1967) 2 SCR 423 : AIR 1967 SC 1167] was affirmed in *Hareram Satpathy v. Tikaram Agarwala* [*Hareram Satpathy v. Tikaram Agarwala*, (1978) 4 SCC 58 : 1978 SCC (Cri) 496] . Thus far there is no difficulty.”*

20. *There is a difference so far as the position of law on which the opinions of the two Constitution Benches were delivered in relation to the facts of the present case. In *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] and *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , summons were issued against the persons whose names had figured in Column (2) of the charge-sheet. Both these authorities also dealt with exercise of jurisdiction of the Court of Session under Section 193 of the Code. This provision reads:*

“193. Cognizance of offences by Courts of Session.— Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

21. It would appear from the Code that the jurisdiction to take cognizance has been vested in the Magistrate (under Section 190 thereof) as also Court of Session under Section 193, which we have quoted above. This question has been examined in *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] and on this point it has been held : (SCC pp. 319-20, para 39)

“39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.”

22. The scope of jurisdiction of the Magistrate in taking cognizance of an offence was earlier examined by a three-Judge Bench of this Court in *Raghubans Dubey v. State of Bihar* [*Raghubans Dubey v. State of Bihar*, (1967) 2 SCR 423 : AIR 1967 SC 1167] . This authority was relied upon by the Coordinate Bench in *Kishun Singh* case [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] . Dealing with broadly similar provisions of the old Code of 1898, it

was observed by this Court : (AIR pp. 1169-70, para 9)

“9. ... In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. As pointed out by this Court in Pravin Chandra Mody v. State of A.P. [Pravin Chandra Mody v. State of A.P., (1965) 1 SCR 269 : AIR 1965 SC 1185 : (1965) 2 Cri LJ 250] the term “complaint” would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(1)(a) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(1)(b).”

23. *In Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , the scope of jurisdiction of the Court of Session under Section 193 of the Code was explained, relying on an authority dealing with similar provision under the 1898 Code (P.C. Gulati v. Lajya Ram [P.C. Gulati v. Lajya Ram, AIR 1966 SC 595 : 1966 Cri LJ 465 : (1966) 1 SCR 560]). The phrase used to explain the implication of taking cognizance by a Court of Session in the judgment of Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] was “cognizance in the limited sense”.*

24. *In para 8 of the Report (in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470]), it has been held observed : (SCC pp. 24-25)*

“8. Section 193 of the old Code placed an embargo on the Court of Session from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it by a Magistrate or there was express provision in the Code or any other law to the contrary. In the context of the said provision this Court in P.C. Gulati v. Lajya Ram [P.C. Gulati v. Lajya Ram, AIR 1966 SC 595 : 1966 Cri LJ

465 : (1966) 1 SCR 560] , SCR p. 568, AIR p. 599, Cri LJ p. 469 observed as under : (AIR p. 599, para 21)

‘21. When a case is committed to the Court of Session, the Court of Session has first to determine whether the commitment of the case is proper. If it be of opinion that the commitment is bad on a point of law, it has to refer the case to the High Court which is competent to quash the proceeding under Section 215 of the Code. It is only when the Sessions Court considers the commitment to be good in law that it proceeds with the trial of the case. It is in this context that the Sessions Court has to take cognizance of the offence as a court of original jurisdiction and it is such a cognizance which is referred to in Section 193 of the Code.’ ”

25. *Jurisdiction of the Magistrate to take cognizance of an offence triable by a Court of Session is not in controversy before us. The course open to a Magistrate on submission of a police report has been discussed in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] . In para 39 of the Report in Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , such power or jurisdiction of the Magistrate has been spelt out. We have quoted this passage earlier in this judgment.*

26. *The other difference so far as this case is concerned in relation to the factual basis on which the decision of the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] as also the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] were delivered is that in both these cases, the names of the persons arraigned as accused had figured in Column (2) of the charge-sheet. This Column, as it appears from the judgment in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , records the name of a person under the heading “not sent up”. In that case, the person concerned was named in the FIR. But that factor, by itself, in our opinion ought not to be considered as a reason for the Court in not summoning an accused not named in the FIR and whose name also does not feature in charge-sheet at all. These judgments were delivered in cases where the names of the persons sought to be arraigned as accused appeared in Column (2) of the police report. In our opinion, the legal*

proposition laid down while dealing with this point was not confined to the power to summon those persons only, whose names featured in Column (2) of the charge-sheet.

27. *In Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the second point formulated (para 7.2) related to persons named in Column (2), but the issue before the Constitution Bench related to that category of persons only. This is the position of law enunciated in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] . In the latter authority, the duty of the Court taking cognizance of an offence has been held “to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons”. Such duty to proceed against other persons cannot be held to be confined to only those whose names figure in Column (2) of the charge-sheet.*

28. *As we have already observed that in the aforesaid authorities, the question of summoning the persons named in Column (2) of the charge-sheet was involved, in our opinion inclusion in Column (2) was not held to be the determinant factor for summoning persons other than those named as accused in the police report or charge-sheet. The principle of law enunciated in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] does not constrict exercise of such power of the Court taking cognizance in respect of this category of persons [i.e. whose names feature in Column (2) of the charge-sheet].*

29. *In Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , SWIL Ltd. [SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670 : 2001 SCC (Cri) 1205] and Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the power or jurisdiction of the court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not*

named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in Column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report.

30. *In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , it has been laid down in clear terms that in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in Column (2) of the charge-sheet, apart from those who are arraigned as accused in the police report. In the subject proceeding, the Magistrate acted on the basis of an independent application filed by the de facto complainant. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in Column (2) of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] . Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] . For summoning persons*

upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge-sheet or the FIR. A statement made under Section 164 of the Code could also be considered for such purpose."

25. Based upon the aforesaid proposition, learned AGA also submitted that taking note of the law on the issue the Charge Sheet(s) aforesaid are not liable to be interfered with nor the summoning order is liable to be interfered with.

26. He further submitted that so far as quashing of proceeding is concerned which includes quashing of Charge Sheet, the law is well settled. In exercise of power under Section 482 Cr.P.C. mini trial is not permissible. If from the material available on record, prima facie, case is made out against the accused the criminal proceedings or Charge Sheet shall not be quashed by the High Court while exercising the power under Section 482 Cr.P.C. Reference can be made to the judgment passed by the Hon'ble Apex Court in the case of **Central Bureau of Investigation vs. Aryan Singh Etc.; 2023 SCC OnLine SC 379**. Thus, no case is made out and the application under consideration, is liable to be dismissed.

27. Considered the submissions of the learned counsel for the parties and perused the record.

28. The record indicates that the FIR was lodged on 27.07.1991 at 20:30 Hours under Sections 147, 148, 149 and 302 IPC, making specific allegations of murder of one Iqbal Haider Raza against the accused namely Akhilesh Singh,

Kamlesh Singh, Ashok Singh and Bhagauti Singh. Thereafter, the I.O. prepared Parcha No. 369/Charge Sheet dated 12.11.1992 and it appears from record that the same was not filed in the Court on account of pending Writ Petition No. 3523 (M/B) of 1991 and in terms of the order of the Writ Court dated 13.11.1992, the entire document/case diary was provided to the CBCID and thereafter the CBCID conducted the investigation and filed the Charge Sheet dated 26.11.1998.

29. Thus, from the aforesaid, it is apparent that before the Magistrate sufficient material was available for summoning all the accused namely Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh.

30. In the Charge Sheet dated 26.11.1998 names of Ashok Singh and Bhagauti Singh have been indicated in the later part. However, in earlier part of this Charge Sheet the I.O. has specifically indicated the name of all the accused and regarding all the accused, named above, also observed that after due investigation, prima facie, offence is made out.

31. From a conjoint reading of documents available on record including FIR dated 27.07.1991, Charge Sheet(s) dated 12.11.1992 and 26.11.1998 it clearly appears that sufficient evidence was available against all the accused namely Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh but in the later part of the Charge Sheet dated 26.11.1998 inadvertently the I.O. failed to indicate the name of accused namely Akhilesh Singh and Kamlesh Singh. It is for the reason that I.O. in earlier part of Charge Sheet dated 26.11.1998

specifically observed that after due investigation, prima facie, offence of murder of one Iqbal Haider Raza is made out against all the accused Akhilesh Singh, Kamlesh Singh, Ashok Singh and Bhagauti Singh.

32. As per settled law, the Magistrate can summon the accused even if his name does not find place in Column (2).

33. Thus, considering the aforesaid, this Court is of the view that Magistrate/Court has not committed any illegality in summoning the accused-applicant(s) namely Bhaguati Singh (whose name finds place in later part/second paragraph of Charge Sheet dated 26.11.1998) and Kamlesh Singh (whose name finds place in earlier part/first paragraph of Charge Sheet dated 26.11.1998).

34. It would be apt to indicate that Parcha No.49A/Charge Sheet dated 12.04.2001 was not filed after further investigation. In fact, as appears, from record that the same was filed on the basis of collected material/evidence during investigation by local police and CBCID and further, the same was filed on the basis of opinion of legal advisor, as is evident from letter dated 18.03.2001 of S.P., CBCID. As such, the submissions of learned counsel for the applicants, which are based on the issue of further investigation to assail this Charge Sheet, are completely misplaced.

35. Considering the material available on record as also the contents of the application under consideration preferred by the applicants under Section 482 Cr.P.C., this Court is of the view that prima facie, the case against the accused applicant(s)

namely Kamlesh Singh and Bhagauti Singh is made out and accordingly, to the view of this Court, any observation made on the material available on record including the statement of Nadim Iqbal S/o deceased Iqbal Haider Raza recorded under Section 164 Cr.P.C. dated 05.04.1999 i.e. after filing of Charge Sheet dated 26.11.1998 would prejudice the trial before the Court concerned.

36. The law on the issue of interference by the High Court in exercise of power under Section 482 Cr.P.C. is settled. In the recent judgment passed in case of **Supriya Jain vs. State of Haryana and Another; (2023) 7 SCC 711**, the Hon'ble Apex Court observed as under:-

"17. The principles to be borne in mind with regard to quashing of a charge/proceedings either in exercise of jurisdiction under Section 397CrPC or Section 482CrPC or together, as the case may be, has engaged the attention of this Court many a time. Reference to each and every precedent is unnecessary. However, we may profitably refer to only one decision of this Court where upon a survey of almost all the precedents on the point, the principles have been summarised by this Court succinctly. In Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , this Court laid down the following guiding principles : (SCC pp. 482-84, para 27)

"27. ... 27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted

therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if

so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to

quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

37. In view of aforesaid, this Court is of the view that grounds seeking prayer, as indicated in para 16 of this judgment, have no force and for the aforesaid reasons, this Court is not inclined to grant the prayer sought in the present application under Section 482 Cr.P.C. It is accordingly **dismissed**. No order as to costs.

38. Considering the entire facts of the case including the fact that the FIR was lodged on 27.07.1991 and CBCID filed the Charge Sheet on 26.11.1998, however, on one pretext and other the trial could not be concluded till date and during this period two accused namely Akhilesh Singh and Kamlesh Singh have already been expired, this Court expects from the trial Court to proceed in the matter expeditiously.

Order Date :-09.02.2024

Vinay/-