

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 33116 of 2009**

Nitish Kumar, Son of Late Ram Lakhan Singh, Resident of Village-  
Hakikatpur, P.S. Bhakhtiyarpur, District- Patna, present residing at 1-Anne  
Marg, P.S.- Sachiwalay, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ashok Singh, Son of Late Bir Bhadur Singh, Resident of Village- Dhibar,  
P.O. Chak Nawadah, P.S. Pandarakh, District- Nawadah.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Surendra Singh, Sr. Advocate  
Mr. Krishna Prasad Singh, Sr. Advocate  
Mr. Gopal Singh, Advocate  
Mr. Bhaskar Shankar, Advocate  
Mr. Rakesh Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Proposed Intervenor : Ms. Ritika Rani, Advocate  
Mr. Vijay Kumar Vimal, Advocate  
Mr. Arvind Kumar Sharma, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN**  
**AMANULLAH**

**CAV JUDGMENT**

**Date : 15-03-2019**

Heard Mr. Surendra Singh, learned senior counsel  
along with Mr. Gopal Singh, learned counsel for the petitioner;  
Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor  
(hereinafter referred to as the 'APP') for the State and Ms.  
Ritika Rani, learned counsel for the applicant in Interlocutory  
Application No. 9 of 2019.

2. Though the present case was being taken up with  
Cr. Misc. No. 14435 of 2009 in view of the order dated  
17.05.2010 [Coram: Sheema Ali Khan, J.] in Cr. Misc. No.



33116 of 2009, however, this Bench, *vide* separate orders dated 14.12.2018 in Cr. Misc. Nos. 33116 of 2009 and 14435 of 2009, de-linked the cases as the petitioner in Cr. Misc. No. 14435 of 2009 sought time/adjournment, whereas Mr. Surendra Singh, learned senior counsel having come from outside the state was heard in the present case, as has been recorded in the order of even date. However, on that day, time was sought in Cr. Misc. No. 14435 of 2009 on the ground of illness of learned senior counsel appearing on behalf of the petitioner therein. Thus, separately, the next date fixed in both the cases was 17.01.2019. On that day, Mr. Surendra Singh, learned senior counsel was heard at length in the present case and as arguments could not be concluded, the matter was fixed for 31.01.2019, but on prayer made on behalf of learned counsel for the petitioner of Cr. Misc. No. 14435 of 2009, the next date in the said case was fixed for 07.02.2019. Accordingly, in the present case, on 31.01.2019, arguments were concluded by learned counsel for the parties and judgement reserved. Thus, the de-linking is solely attributable to the petitioner of Cr. Misc. No. 14435 of 2009.

3. Be that as it may, a decision to link/tag two or more matters, more so when both are pending consideration by the



same Bench, vests in the absolute discretion of the Court concerned. No party has a right to get matters tagged and heard together. Any such de-linking/linking is for the Court's convenience, not the parties'. The aforesaid sequence of events have been recorded, not as a explanation of any sort, of which there exists no need, rather only to set the record straight, since Judges do not enjoy the luxury of ventilating their point of view, and judgements are their only weapon.

4. The petitioner has moved this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') seeking the following relief:

*“This is an application on behalf of abovenamed petitioner for quashing the entire proceeding in Complaint Case 41(C) of 2009 arising out of Pandarakh P.S. Case No. 131/91 including order dated 31.08.2009 pending in the Court of Additional Chief Judicial Magistrate, Barh. The petitioner further prays to declare that entire proceeding in Complaint Case no. 41(C) of 2009 is non-est and void in the eye of law.”*

5. During the by-election for the Barh Parliamentary Constituency held on 16.11.1991, an incident of firing occurred at Booth No. 163 in Middle School Dhibar. The petitioner was



the candidate of the Janta Dal party. With regard to the incident, one Raja Ram Singh gave *fardbeyan* alleging that at 3.00 PM, when he and his brother had gone to the booth to cast their votes, the petitioner along with Dilip Singh, Member of the Legislative Assembly from Mokama, Dular Chand Yadav, Yogendra Yadav, Baudhu Yadav, Shiv Narayan Yadav and other miscreants armed with gun, rifle and pistol came and all of a sudden, the petitioner fired at his brother with the intention to kill which hit his brother who died at the spot. It was further alleged that the informant along with Ashok Singh and four other people, namely, Suresh Singh, Mauli Singh, Mannu Singh and Rambabu, were injured. Based on the said written statement, Pandarak PS Case No. 131 of 1991 was instituted under Sections 147, 148, 149, 302, 307 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and 27 of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act'). The petitioner, as soon as he came to know about the First Information Report (hereinafter referred to as the 'FIR'), filed an application before the Investigating Officer that at the relevant moment in time, he was with the District Magistrate and the Superintendent of Police, Nalanda and, thus, could not have been present at Barh. After investigation, the police



submitted Final Report No. 9 of 1993 dated 31.01.1993. No evidence was found with regard to the involvement of the petitioner and Dular Chand Yadav. However, it was mentioned that the accusation against Dilip Singh, Yogendra Yadav and Baudhu Yadav was true but there was inadequate evidence against them. The Additional Chief Judicial Magistrate, Barh (hereinafter referred to as the 'ACJM') by order dated 30.10.1993 issued notice to the informant in light of the Final Report submitted by the police. The matter was thereafter adjourned from time to time and *vide* order dated 14.07.2008, the ACJM recorded that service report of notice on informant was available on record and the matter was fixed for 05.08.2008 for hearing on the Final Report. On 05.08.2008, the ACJM accepted the Final Report submitted by the police. Thereafter, the order notes that the ACJM had perused the case diary and excluding the petitioner and Dular Chand Yadav, against Dilip Singh, Yogendra Yadav and Baudhu Yadav *prima facie* offences under Sections 147, 148, 149, 302, 307 of the IPC and 27 of the Arms Act were made out and accordingly, non-bailable warrants of arrest were issued against the said three persons fixing the next date as 05.09.2008. Opposite party no. 2 (Ashok Singh), who is not the informant, filed a Protest-cum-Complaint Petition



on 20.01.2009 in the said case which came to be numbered as Complaint Case No. 41(C) of 2009. The ACJM, on the same day, directed for registering the said as a complaint case and for posting it for the purpose of enquiry. Further, on the same day, the statement of Ashok Singh and also of a witness, Ramanand Singh, was recorded. Subsequently, on several dates, there was either no attendance on behalf of the opposite party no. 2 nor time petition was filed on his behalf. On 20.07.2009, Kailu Mahto was examined as a witness. Finally, by order dated 31.08.2009, the ACJM again took cognizance against the petitioner and Dular Chand Yadav.

6. In the meantime, co-accused Yogendra Yadav had moved this Court in Cr. Misc. No. 14435 of 2009, against the order of the ACJM dated 05.08.2008, by which cognizance had been taken and non-bailable warrant of arrest was issued against him and two other accused. By order dated 22.04.2009 in Cr. Misc. No. 14435 of 2009, a co-ordinate Bench of this Court [Coram: Ajay Kumar Tripathi, J.] issued notice to Raja Ram Singh, who was the opposite party no. 2 in the aforesaid case and also the informant of Pandarak PS Case No. 131 of 1991 and stayed further proceedings in Pandarak PS Case No. 131 of 1991, pending before the ACJM. Despite this, the ACJM



continued with the proceedings on 08.05.2009, 08.07.2009, 20.07.2009, 05.08.2009, 13.08.2009, 22.08.2009 and finally by order dated 31.08.2009, again took cognizance for the same offence against the petitioner and another co-accused.

7. The petitioner moved this Court in the present application against the order dated 31.08.2009 and this Court [Coram: Sheema Ali Khan, J.], by order dated 08.09.2009, called for the records of Pandarak PS Case No. 131 of 1991 and Complaint Case No. 41(C) of 2009 while staying further proceedings in Protest-cum-Complaint Case No. 41(C) of 2009. The matter was thereafter taken up on several occasions and various Interlocutory Applications were filed. Interlocutory Application No. 2033 of 2009 was filed on 16.09.2009, on behalf of opposite party no. 2, *“for enquiry under Section 340 of the Code”; “for punishing the petitioner under Sections 181, 191, 192, 193, 196, 199” of the IPC; “for making false statement, fasle [sic] affidavit, giving false certificate before this Hon’ble Court”*. Interlocutory Application No. 2058 of 2009 was filed on 18.09.2009, again on behalf of the opposite party no. 2, for adding the *“Union of India Through the Home Secretary, Government of India, New Delhi”; “The Central Bureau of Investigation Through its Director, New Delhi”; “The*



*Superintendent of Police (C.B.I.), Patna”; “The Secretary, Information and Broadcasting Department, Government of India, New Delhi” [sic]; and “the ‘Sahara Samay’ Through its Bureau Chief, Government of Bihar, Patna” [sic] as opposite parties. Further, Interlocutory Application No. 116 of 2010 was filed on 22.01.2010 by one Radhey Shyam Singh, “for punishing the petitioner for interfering in Judicial Administration, pressurising the O.Ps. to get the Vakalatnama of Mr. Dinu Kumar Advocate by way of ‘No Objection’ and also for scandalising/lowering down the prestige of court, threatening the complainant/witnesses and not maintain the dignity of Court” [sic]. Interlocutory Application No. 206 of 2010 was filed on 02.02.2010, on behalf of one Manoj Kumar, for initiating criminal contempt against the petitioner for tampering with evidence of Complaint Case No. 41(C) of 2009 and punishing the petitioner. Interlocutory Application No. 207 of 2010 was also filed on 02.02.2010 on behalf of Manoj Kumar for adding him as opposite party no. 3 and for punishing the petitioner for making and swearing false affidavit. Interlocutory Application No. 214 of 2010 was filed on 02.02.2010 through Akhileshwar Prasad Singh, learned counsel on behalf of Radhey Shyam Singh, praying to cancel/ignore the Vakalatnama filed on*



his behalf by Mr. Dinu Kumar, learned Advocate or his junior counsel and also to ignore the counter-affidavit and interim application purportedly filed on behalf of opposite party no. 2 sworn by the applicant or Radha Krishna Singh and also to order for an enquiry under Section 340 of the Code. Thereafter, Interlocutory Application No. 227 of 2010 was filed on 03.02.2010, on behalf of the opposite party no. 2 through another learned counsel namely, Akhileshwar Prasad Singh, praying to cancel/ignore the Vakalatnama filed on behalf of opposite party no. 2 by Mr. Dinu Kumar, learned Advocate or his junior counsel purportedly representing the opposite party no. 2 and also to ignore the counter-affidavit and interim application purportedly filed on his behalf as also for ordering an enquiry under Section 340 of the Code. Interlocutory Application No. 3388 of 2018 was filed on 11.12.2018, on behalf of Radha Krishna Singh for the following:

*“I. To vacate the stay order dated 08-09-2009 passed in the present case read with order dated 17-05-2010 passed in the present case by which order passed by Learned ACJM, Barh on 08-09-2009 in complaint case no. 41C/2009.*

*II. And also for appropriate relief for which the Intervener petitioner is entitled in the eye of law.”*

[sic]



Lastly, Interlocutory Application No. 9 of 2019 was filed on 29.01.2019, on behalf of Radha Krishna Singh to add him as opposite party no. 3.

8. Learned counsel for the petitioner submitted that the order impugned is totally unsustainable. On facts, he contended that Ashok Singh was not the informant and still the Protest-cum-Complaint Petition filed by him in Pandarak PS Case No. 131 of 1991 has been entertained, which is impermissible in law. For such contention, he relied upon the decisions of the Hon'ble Supreme Court in **Gangadhar Janardan Mhatre v. State of Maharashtra** reported as (2004) 7 SCC 768, the relevant being at paragraph no. 12 and **Minu Kumari v. State of Bihar** reported as (2006) 4 SCC 359, the relevant being at paragraphs no. 5, 12, 15 and 18. Learned counsel submitted that from the bare reading of the plaint of the Protest-cum-Complaint Case No. 41(C) of 2009, it is clear that the said is basically a protest in Pandarak PS Case No. 131 of 1991, as stated in the petition itself and, thus, there has been a serious transgression of jurisdiction by the ACJM that he proceeded in a proceeding directly connected with Pandarak PS Case No. 131 of 1991, as the Protest-cum-Complaint case was filed in the said case, despite a co-ordinate Bench of this Court



by order dated 22.04.2009 in Cr. Misc. No. 14435 of 2009, having ordered stay of further proceedings in Pandarak PS Case No. 131 of 1991, pending before the ACJM. It was submitted that the very fact that the said complaint case has been filed after an inordinate delay of 17 years, which has also not been explained, and that too by a person, who is not the informant raised questions with regard to the *bona fide* and real intention of filing such Protest-cum-Complaint Petition. At this juncture, learned counsel submitted that the petitioner assumed office as Chief Minister of the State of Bihar in late 2005 and, thus, due to political rivalry, such petition was filed to damage him personally and politically, which were clearly oblique reasons. Learned counsel submitted that there is no explanation as to why the opposite party no. 2 had not approached the Court earlier if the Police/Investigating Officer had not recorded his statement or if the same was wrongly recorded. For such proposition, learned counsel relied upon the decisions of the Hon'ble Supreme Court in **Dilawar Singh v. State of Delhi** reported as (2007) 12 SCC 641, the relevant being at paragraphs no. 5, 8, 9, 12 and 13 as well as in the case of **Minu Kumari** (*supra*). It was further submitted that if the present Protest-cum-Complaint Petition is treated as a separate complaint case, once



the police have investigated with regard to the same incident and the Court has taken cognizance based on the police report, any further action on a complaint petition for the same incident would violate Section 210 of the Code. Learned counsel submitted that in the Protest-cum-Complaint Petition, the opposite party no. 2 has, in effect, sought a review of the earlier order dated 05.08.2008 passed by the ACJM, as would be clear from the averments made in paragraphs no. 9, 10, 11 and 13 of the Protest-cum-Complaint Petition. It was submitted that the same is impermissible under Section 362 of the Code. Learned counsel drew the attention of the Court to the striking out of the names typed in paragraphs no. 4, 6, 12 and 13 of the Protest-cum-Complaint Petition, inasmuch as, at paragraph no. 4, it has been stated that the complainant was in the queue for casting his vote along with Balram Singh (son of Ratan Singh) and Bipul Singh (son of Mohan Singh), but their names have been struck off and replaced in hand by those of Ramanand Singh and Jitendra Paswan. The same has been done at paragraphs no. 6, 12 and 13. It was submitted that in the Protest-cum-Complaint Petition, despite Jitendra Paswan being made one of the witnesses, he was not examined and one Kailu Mahto deposed, who was not even named and there is also no explanation for the



said Jitendra Paswan not turning up for recording his statement. Learned counsel submitted that the conduct of the opposite party no. 2 clearly puts him in the category of an unreliable witness for the reason that during investigation by the police, he had stated that at the time of incident, he was in his village where he was informed that unidentified miscreants had indulged in arson at the booth and that from the cattle-shed of Narsing Singh, they had fled towards the village in which Sitaram Singh died due to gunshot injury and Chandramauli Singh, Suresh Singh, Rambabu Singh and Mannu Singh were injured. He further said that he was not aware who the miscreants were.

9. Learned counsel submitted that this is in total contrast to the stand taken by him in the Protest-cum-Complaint Petition and before the Court in the enquiry under Section 202 of the Code where he says that he was also injured. It was submitted that this blatant lie was itself a good and valid ground for dismissal of the Protest-cum-Complaint Petition. Learned counsel also drew the attention of the Court to the affidavits filed by the informant Raja Ram Singh as well as the alleged injured persons Rambabu, Suresh Singh and Chandramauli Singh before the Court below stating that they had no grievance



against the Final Report submitted by the police. It was submitted, that in the affidavit filed before the ACJM by the informant in Pandarak PS Case No. 131 of 1991 on 01.10.2008, he had stated that he was aware of the Final Report submitted by the police against which he had not submitted any protest before any Court or officer and that the perpetrator of the crime was late Dilip Singh, who was dead and that he had no complaint against any other person and further, that he did not want to fight the case as God had punished the person who killed his brother (the deceased), obviously referring to late Dilip Singh. He had further stated that after the incident, he was not in good mental condition and people had taken advantage of him to settle political scores. Similarly, it was submitted that Rambabu in his affidavit had stated that Dilip Singh had committed the offence and had also caused injury to him and that he had taken only his name before the police. He also stated that due to political rivalry and reasons, as it was the election season, Yogendra Yadav and other innocent persons had been dragged in the case and the truth was that neither were they present at the place of occurrence nor had they committed the offence. He had also stated that the moment he came to know that innocent persons were framed in the present case, he was submitting the



affidavit as he himself was an eye-witness, who was also injured. He had further written that he was ready to depose in the aforementioned terms before the Court. It was submitted that similar affidavit was submitted by Suresh Singh and Chandramauli Singh.

10. Learned counsel submitted that the irony is that the witnesses examined in the Protest-cum-Complaint Case, namely Ramanand Singh and Jitendra Paswan, were neither named in the FIR nor examined by the police under Section 161 of the Code. In fact, learned counsel submitted, that the statement of Ramanand Singh was recorded by the Court under Section 164 of the Code in another case i.e., Pandarak PS Case No. 106 of 2009 on 10.09.2009, in which he had stated that in the case of Chief Minister Nitish Kumar, three months earlier, at the behest of one Gopal and one Amrish and the greed for money, he had deposed and for which he felt deeply guilty. In this connection, learned counsel submitted that reference was to the statement of Ramanand Singh in the present Protest-cum-Complaint Petition recorded on 20.01.2009.

11. Learned counsel submitted that from a legal point of view as well, the order dated 05.08.2008, by which cognizance was taken in the case is a final order not open to



review in light of the bar cast by Section 362 of the Code making the impugned order dated 31.08.2009 unsustainable in the eyes of law. Learned counsel submitted that the orders dated 20.01.2009 and 31.08.2009 show that the Court below has not appreciated the settled position in law about cognizance being taken of the offence and not of the offender. For such proposition, he relied upon the decisions of the Hon'ble Supreme Court in **Kishun Singh v. State of Bihar** reported as (1993) 2 SCC 16, the relevant being at paragraphs no. 2, 3, 7, 8, 10 and 13 to 16; **Anil Saran v. State of Bihar** reported as (1995) 6 SCC 142, the relevant being at paragraph no. 5; **Dharam Pal v. State of Haryana** reported as (2014) 3 SCC 306, the relevant being at paragraphs no. 33 to 35, 38, 39 and 40 and **Balveer Singh v. State of Rajasthan** reported as (2016) 6 SCC 680, the relevant being at paragraphs no. 18, 19, 23 and 24. Learned counsel submitted that the law stipulates cognizance of an offence to be taken only once and, thus, in such view of the matter, the second cognizance order dated 31.08.2009 is impermissible. Reliance was placed on the decisions of the Hon'ble Supreme Court in **Dharam Pal** (*supra*) and in **Balveer Singh** (*supra*). Similarly, it was contended that there cannot be two FIRs and/or complaint case(s) for the same



incident narrating the same and similar facts against the same offence instituted by the same complainant or others, reliance being placed on the decision of the Hon'ble Supreme Court in **Surender Kaushik v. State of Uttar Pradesh** reported as **(2013) 5 SCC 148**, the relevant being at paragraphs no. 24 and 25. Learned counsel submitted that though a second complaint is not barred, but the same can be entertained in very exceptional circumstances and only if the first complaint or FIR has been closed. It was submitted that in the present case, the first FIR had not been closed as cognizance had been taken against three accused persons and, thus, cognizance taken for the second time in the Protest-cum-Complaint Petition filed by the opposite party no. 2, which itself was not maintainable, is non-est. In this connection, reliance was placed on the decision of the Hon'ble Supreme Court in **Mahesh Chand v. B. Janardhan Reddy** reported as **(2003) 1 SCC 734**, the relevant being at paragraph no. 19.

12. Learned counsel, coming back to the propriety of the ACJM in proceeding with the Protest-cum-Complaint Petition culminating in order dated 31.08.2009, submitted that the said Protest-cum-Complaint Petition was filed in Pandarak PS Case No. 131 of 1991, in which a co-ordinate Bench of this



Court had already ordered for stay of further proceedings *vide* order dated 22.04.2009 in Cr. Misc. No. 14435 of 2009. Thus, the same was not only beyond jurisdiction but clearly contemptuous for which the then ACJM is facing contempt proceeding for such act of gross judicial misconduct. Learned counsel submitted that the incident of 16.11.1991, which was converted into an FIR on the basis of written *fardbeyan* on 17.11.1991, followed by submission of police report under Section 173 of the Code on 31.01.1993, the admitted position till date is that no Protest Petition has been filed by the informant against such submission of Final Report by the police. It was contended that once the Final Report of the police has been accepted by the Court and cognizance having been taken on 05.08.2008, without any objection from the informant, the same has attained finality and no other person is competent to object to the same, that too, 15 years after submission of the Final Report. Learned counsel emphasised the fact that the opposite party no. 2 in his Protest-cum-Complaint Petition has neither indicated his opposition to nor taken any stand that his statement recorded by the police under Section 161 of the Code has been done erroneously or incorrectly and rather, on the contrary, in his petition at paragraph no. 13, he has taken the



stand that for taking cognizance against the petitioner and Dular Chand Yadav, there was evidence and material in the case diary. It was submitted that once the opposite party no. 2 himself was relying upon the evidence and material in the case diary for taking cognizance against the petitioner and the ACJM having gone through the case diary and upon application of his judicial mind not issuing summons against the petitioner is proof of the fact that he did not find cogent ground(s) to make out a case against the petitioner and, thus, consciously, process was not issued *qua* the petitioner. Learned counsel submitted that besides the names of the witnesses Ramanand Singh and Jitendra Paswan having been written by hand after striking off the names of Balram Singh and Bipul Singh, they were never witnesses in the case and had also never approached any of the authorities with the plea that they were also witnesses and their statement had not been recorded, and having appeared after about 18 years of the incident in support of the Protest-cum-Complaint Petition, clearly makes their testimonies unreliable. It was submitted that in fact, Ramanand Singh was clearly a managed witness, to which he himself had admitted before the Court in his deposition under Section 164 of the Code in another case, as already indicated above. Learned counsel submitted that



the statement of opposite party no. 2 was recorded under Section 161 of the Code by the police on 17.11.1991 itself and, thus, he cannot claim that he was unaware of what had been recorded and further, that he has relied on such statement before the police in his Protest-cum-Complaint Petition. Thus, according to learned counsel, the assertion of the opposite party no. 2 that he had supported the prosecution case as disclosed in the FIR stands falsified. It was submitted that though in the Protest-cum-Complaint Petition, it has been stated that Ramanand Singh, Jitendra Paswan, Ram Niwas Singh, Shyam Kishore Singh and Vijay Singh had been examined by the Investigating Officer in his presence but there is no recording of the statements of Ramanand Singh and Jitendra Paswan and nobody had protested or represented against the failure of the Investigating Officer to record their statement which clearly shows that such assertion is absolutely wrong. Learned counsel submitted that interestingly, even Ram Niwas Singh, Shyam Kishore Singh and Vijay Singh did not support the allegations against the petitioner in their statement recorded under Section 161 of the Code during investigation by the police and more importantly, they have never stated before any authority or Court that their statement has not been recorded correctly by the



police. Learned counsel further submitted that even the averment with regard to Radhey Shyam Singh disclosing before the Investigating Officer that the petitioner had fired is falsified as the said Radhey Shyam Singh had stated to the contrary in his statement recorded by the police during investigation and which forms part of the Final Report of the police.

13. Learned counsel also drew the attention of the Court to the averments made in paragraph no. 8 of the Protest-cum-Complaint Petition and submitted that the personal bias and vendetta of the opposite party no. 2 against the petitioner is made bare as it has been stated that the Investigating Officer and Supervisory Officer/Authority has not correctly recorded the statement of injured witnesses, eye-witnesses and hearsay witnesses and the plea of alibi of the petitioner has been accepted. However, it was submitted that no names of such persons whose statements have been incorrectly recorded have been mentioned and also no such person has filed any plea before any Court or Authority that his statement has not been correctly recorded by the Investigating Agency. Learned counsel submitted that in paragraph no. 10 of the Protest-cum-Complaint Petition, the contention that the petitioner had gained over the informant and the injured witnesses, is not fit to be



believed for the simple reason that a person who had lost his brother and others who have sustained injuries would not help the alleged culprit escape the rigours of punishment. Learned counsel pointed out that in the solemn affirmation before the Court below, the opposite party no. 2 has not stated about being injured in firing but has only stated that Baudhu Yadav had hit him with the butt of a gun. Moreover, it was submitted that in the further statement of the informant before the police, the opposite party no. 2 has not been named as an injured.

14. Learned counsel submitted that certain developments in the present case are required to be taken note of. It was submitted that though counter-affidavit has been filed on behalf of the opposite party no. 2, but the same has been filed by one Ramanand Singh claiming to be the *pairvikar* though without stating that he had been authorized by the opposite party no. 2. It was submitted that one Radhey Shyam Singh had sent a letter to Hon'ble the Chief Justice of this Court in which he had not even made a whisper with regard to the police incorrectly recording his statement under Section 161 of the Code and in fact, supported the case diary. It was further submitted that Interlocutory Application No. 2033 of 2009 was filed by Radha Krishna Singh on behalf of opposite party no. 2, but again,



without authorization. It was submitted that no intervention in a criminal proceeding is permissible and that too in a proceeding where quashing is sought of an order taking cognizance. Learned counsel submitted that the statement/affidavit of the injured witnesses before the Court is enough to establish that the Protest-cum-Complaint Petition is malicious as it does not satisfy the requirement of Section 202 of the Code and the ACJM had no sufficient ground for proceeding against the petitioner. For such proposition, the decision of the Hon'ble Supreme Court in **Mehmood Ul Rehman v. Khazir Mohammad Tunda** reported as **(2015) 12 SCC 420**, the relevant being at paragraphs no. 11, 19 and 20 to 23, was relied upon.

15. Learned counsel submitted that an important factual aspect which cannot be ignored is that the then District Magistrate, Nalanda-cum-Returning Officer of Barh Parliamentary Constituency and the then Superintendent of Police, Nalanda had given statement to the police under Section 161 of the Code. It was submitted that the then District Magistrate, Nalanda had stated that the petitioner had met him on the fateful day between 12.00 and 12.30 PM and thereafter, had gone towards Biharsharif and also that he had met the then



Superintendent of Police, Nalanda at Biharsharif between 2.30 and 3.00 PM and according to his information, the petitioner had gone from Harnaut to Biharsharif and met administrative officials during the period when the incident allegedly occurred. Similarly, it was submitted that the then Superintendent of Police, Nalanda had also given his statement that between 2.30 and 2.45 PM, he had met the petitioner near Hospital Turning at Biharsharif and further, that the petitioner on the day of polling, for the entire period, was moving in the Nalanda area.

16. Learned counsel finally summed up his argument by stating that the Court would take note of the fact that it was the same Judicial Officer (the then ACJM) who had initially accepted the Final Report of the police by order dated 05.08.2008 and issued process only against the co-accused Yogendra Yadav, Dilip Kumar and Baudhu Yadav, after examining the case diary and records and applying his judicial mind, taking cognizance of the offence and thereafter, bereft of any authority conferred by law had again taken cognizance for the second time on 31.08.2009 and issued summons for appearance and most glaringly, and in blatant overreach of his authority had done so in a Protest-cum-Complaint Petition filed in Pandarak PS Case No. 131 of 1991, despite a co-ordinate



Bench of this Court in Cr. Misc. No. 14435 of 2009, having stayed further proceedings in Pandarak PS Case No. 131 of 1991, by order dated 22.04.2009. It was submitted that such aspect was taken note of by a Co-ordinate Bench of this Court [Coram: Ajay Kumar Tripathi, J.] in Cr. Misc. No. 14435 of 2009, in which the Court had issued notice to the then ACJM, namely, Mr. Ranjan Kumar Singh, by order dated 28.10.2009, asking him to show cause as to under what circumstances he had violated the order of stay passed by the Court and pursuant to the show cause submitted by him, *vide* order dated 01.02.2012, in the said case, the Court [Coram: Ajay Kumar Tripathi, J.] had recorded that it was *prima facie* satisfied that effort had been made by the said ACJM to overreach the order of stay which was passed by the High Court by giving his own interpretation to the said order without seeking any clarification in this regard from the High Court, if there was any confusion on the issue in his mind. It was submitted that the Court has further recorded that in the *prima facie* opinion of the Court, an effort has been deliberately and intentionally made in committing flagrant violation of the order of stay dated 22.04.2009 and had issued notice to him as to why a proceeding for contempt should not be initiated against him and such aspect



of the matter is pending consideration in the other case i.e. Cr. Misc. No. 14435 of 2009.

17. Learned counsel submitted that the manner in which various persons have tried to interfere in the matter and at every stage, the Court by orders earlier passed had dismissed their plea(s) and still the manner in which the present Interlocutory Application is being sought to be pressed is a clear indication that the petitioner is being targeted and harassed for oblique reasons and for the motive of settling personal and political scores, as he happens to be the incumbent Chief Minister of the State of Bihar.

18. With regard to Interlocutory Application No. 9 of 2019, learned counsel submitted that repeatedly an attempt is being made by Mr. Dinu Kumar, learned counsel, either directly by him or through his Chamber juniors to file petitions one after the other in the matter through various different persons despite the Court having twice taken strict notice of such conduct and also there being direct aspersion(s) cast on his conduct by the very persons themselves on whose behalf earlier Mr. Dinu Kumar, learned counsel had filed petitions, as later they had filed petitions in the case distancing and disassociating themselves from all such petitions filed by Mr. Dinu Kumar,



learned counsel or his juniors and taking the plea that they had not authorized him to do so and on some wrong pretext, their power was taken and they had executed Vakalatnama which had been grossly misused. Learned counsel submitted that the present case is purely a personalized, motivated and vindictive exercise against the petitioner in which, unfortunately, a learned advocate of this Court is instrumental in setting-up various persons and also making an attempt to either sensationalize the case or to deliberately create a controversy, and not resting at that, having also gone to the extent of creating undue pressure even on the Court by not only filing false and frivolous petitions before various authorities insinuating motives against the Bench and also posting and circulating highly objectionable posts on social media.

19. At this juncture, this Court would only indicate that no Judge has a personal interest in any matter except to ensure that the ends of justice are served. This Court has no inclination or affinity to take up particular cases nor a disinclination or antipathy to skip assigned cases. On elevation, this Bench had solemnly affirmed to 'bear true faith and allegiance to the Constitution of India as by law established', 'uphold the sovereignty and integrity of India', to 'duly and



faithfully and to the best of my ability, knowledge, and judgment perform the duties of my office without fear or favour, affection or ill-will' and to 'uphold the Constitution and the laws.' [See **Article 219** and the **Third Schedule, Constitution of India.**]

20. In **Chetak Construction Ltd. v. Om Prakash** reported as **(1998) 4 SCC 577**, the Hon'ble Supreme Court, at paragraph no. 16 held:

*“16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be permitted to 'terrorise' or 'intimidate' Judges with a view to 'secure' orders which they want. This is basic and fundamental and no civilized system of administration of justice can permit it.”*

21. The Hon'ble Supreme Court in **Radha Mohan Lal v. Rajasthan High Court** reported as **(2003) 3 SCC 427** has come down heavily on parties trying to prevent a particular Judge from hearing the matter.



22. Under similar circumstances, the Hon'ble Supreme Court in **Subrata Roy Sahara v. Union of India & Ors.** reported as **AIR 2014 SC 3241** held, at paragraphs no. 9, 10, 11 and 14, as under:

*“9. But Mr. C.A. Sundaram, another Senior Counsel representing the petitioner, distanced himself from the above submissions. He informed the Court, “... I am not invoking the doctrine of bias, as has been alleged ...” We are of the view, that a genuine plea of bias alone, could have caused us to withdraw from the matter, and require it to be heard by some other Bench. Detailed submissions on the allegations constituting bias, were addressed well after proceedings had gone on for a few weeks, the same have been dealt with separately (under heading VIII, “Whether the impugned order dated 4.3.2014, is vitiated on account of bias?”). Based on the submissions advanced by learned counsel, we could not persuade ourselves in accepting the prayer for recusal.*

*10. We have recorded the above narration, lest we are accused of not correctly depicting the submissions, as they were canvassed before us. In our understanding, the oath of our office, required us to go ahead with the hearing. And not to be overawed by such submissions. In our view, not hearing the matter, would constitute an act in*



*breach of our oath of office, which mandates us to perform the duties of our office, to the best of our ability, without fear or favour, affection or ill will. This is certainly not the first time, when solicitation for recusal has been sought by learned counsel. Such a recorded peremptory prayer, was made by Mr. R.K. Anand, an eminent Senior Advocate, before the High Court of Delhi, seeking the recusal of Mr. Justice Manmohan Sarin from hearing his personal case. Mr. Justice Manmohan Sarin while declining the request made by Mr. R.K. Anand, observed as under: “The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Article 219 of the Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting/Bench preference or brow-beating the Court, then, succumbing to such a pressure would tantamount to not fulfilling the oath of office.”*

*The above determination of the High Court of Delhi was assailed before this Court in R.K.*



*Anand v. Delhi High Court, (2009) 8 SCC 106: 2009 AIR SCW 6876. The determination of the High Court whereby Mr. Justice Manmohan Sarin declined to withdraw from the hearing of the case came to be upheld, with the following observations:*

*“The above passage, in our view, correctly sums up what should be the Court's response in the face of a request for recusal made with the intent to intimidate the court or to get better of an ‘inconvenient’ judge or to obfuscate the issues or to cause obstruction and delay the proceedings or in any other way frustrate or obstruct the course of justice.” (Emphasis is ours)*

*11. In fact, the observations of the High Court of Delhi and those of this Court reflected, exactly how it felt, when learned counsel addressed the Court, at the commencement of the hearing. If it was learned counsel's posturing antics, aimed at bench-hunting or bench-hopping (or should we say, bench-avoiding), we would not allow that. Affronts, jibes and carefully and consciously planned snubs could not deter us, from discharging our onerous responsibility. We could at any time, during the course of hearing, walk out and make way, for another Bench to decide the matter, if ever we felt that, that would be the righteous course to follow. Whether or not, it would be better for another Bench to hear this case, will emerge from the conclusions, we will*



*draw, in the course of the present determination.*

xx                      xx                      xx                      xx

*14. One of the reasons for retaining the instant petition for hearing with ourselves was, that we had heard eminent Senior Counsel engaged by the two companies exclusively for over three weeks during the summer vacation of 2012. We had been taken through thousands of pages of pleadings. We had the occasion to watch the demeanour and defences adopted by the two companies and the contemnors from time to time, from close quarters. Writing the judgment, had occupied the entire remaining period of the summer vacation of 2012, as also, about two months of further time. The judgment dated 31.8.2012 runs into 269 printed pages. Both of us had rendered separate judgments, concurring with one another, on each aspect of the matter. During the course of writing the judgment, we had the occasion to minutely examine numerous communications, exchanged between the rival parties. That too had resulted in a different kind of understanding, about the controversy. For any other Bench to understand the nuances of the controversy determined through our order dated 31.8.2012, would require prolonged hearing of the matter. Months of time, just in the same manner as we had taken while passing the order dated 31.8.2012, would have to be spent again. Possibly the submissions made by the learned*



*counsel seeking our recusal, was consciously aimed at the above objective. Was this the reason for the theatrics, of some of the learned Senior Counsel? Difficult to say for sure. But deep within, don't we all understand? It was also for the sake of saving precious time of this Court, that we decided to bear the brunt and the rhetoric, of some of the learned Senior Counsel representing the petitioner. We are therefore satisfied, that it would not be better, for another Bench to hear this case."*

23. To get 'non-pliable' or 'unfavourable' judges to refrain from hearing matters is a practice that must not be allowed to prosper. It would be apt to quote Hon'ble Justice J. S. Khehar in **Supreme Court Advocates-on-Record Association and Anr. v. Union of India** reported as (2016) 5 SCC 808, wherein it was observed as under:

*"..... A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a*



*prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws. My decision to continue to be part of the Bench, flows from the oath which I took, at the time of my elevation to this Court.”*

24. In this connection, the attention of the Court was also drawn to the recent decision of the Hon’ble Supreme Court in **R. Muthukrishnan v. Registrar General of the High Court of Judicature at Madras** reported as **2019 SCC OnLine SC 105**, the relevant being at paragraph no. 88, wherein it has been held that such conduct of the members of the Bar is nothing less than an act of contempt of gravest form. The same reads as follows:

*“88. It has been seen from time to time that various attacks have been made on the judicial system. It has become very common to the members of the Bar to go to the press/media to criticize the judges in person and to commit sheer contempt by attributing political colours to the judgments. It is nothing less than an act of contempt of gravest form. Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are*



*nothing, but an act of denigrating the judiciary itself and destroys the faith of the common man which he reposes in the judicial system. In case of genuine grievance against any judge, the appropriate process is to lodge a complaint to the concerned higher authorities who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view.”*

25. This Court would say no more.

26. Be that as it may, the Court, purely by way of indulgence, has heard Ms. Ritika Rani, learned counsel for Radha Krishna Singh, the applicant of Interlocutory Application No. 9 of 2019. The only point canvassed by her was that somebody had died and justice had to be done and that Radha Krishna Singh should be allowed to be made opposite party no. 3 to oppose the prayer of the petitioner. At this juncture, on a specific query of the Court to learned counsel as to why, even after the Court had specifically observed through order dated 17.05.2010 that an application was yet to be made on his behalf for being added as a party, the same was not done and only after the present matter was heard on four more occasions and at



length on two occasions, such application has been filed and why the Court should not draw adverse inferences, both with regard to the timing of filing of the Interlocutory Application and the real intention of the applicant, there was no satisfactory explanation, except for the bare statement that for the ends of justice, he may be heard. An argument in exasperation was also made attributing misconduct on the part of Mr. Gopal Singh, learned counsel.

27. The Court has no hesitation to record that the said Interlocutory Application appears to be lacking *bona fide*. First and foremost, the said applicant had never filed any application before the Court below at any point of time till the acceptance of the Final Report of the police in Pandarak PS Case No. 131 of 1991, by which the Court after taking cognizance did not issue any summons or warrant against the petitioner. Even thereafter, he was nowhere to be found or seen in the picture. However, he was the signatory of the affidavit in Interlocutory Application No. 2033 of 2009, filed on behalf of opposite party no. 2. Thereafter, he also filed an affidavit affirmed on 23.02.2010. Later, Interlocutory Application No. 3388 of 2018 was filed on his behalf on 11.12.2018 to vacate the stay order passed in the present case dated 08.09.2009.



28. In order dated 22.02.2010, in the present case, the Court [Coram: Sheema Ali Khan, J.] had noticed the unfortunate circumstances created by filing of repeated applications and the role of Mr. Dinu Kumar, learned counsel and also in Cr. Misc. No. 14435 of 2009 which too concerns Pandarak PS Case No. 131 of 1991. In fact, the Court did not proceed on such aspect of the matter in view of Mr. Dinu Kumar, learned counsel, himself withdrawing from the present case way back on 22.02.2010, as recorded in the order of the same date. However, it appears that even thereafter, applications were filed in the present case through the office of Mr. Dinu Kumar, learned counsel on which his juniors have signed which would be obvious from the notices on all such pleadings, many showing that the name of Mr. Dinu Kumar, learned counsel has been cancelled out. Such aspect of the matter should have, in the proper course of events, held back and stopped Mr. Dinu Kumar, learned counsel and his office from having to do anything with the present case. However, and most unfortunately so, once again on 11.12.2018, Interlocutory Application No. 3388 of 2018 was filed through Mr. Dinu Kumar, learned counsel and his other juniors on behalf of Radha Krishna Singh. It would be relevant to note here that prior to the filing of Interlocutory Application No. 3388 of 2018,



the matter was taken up by this Bench on 29.11.2018 and 30.11.2018 and till that time, no such Interlocutory Application had been filed.

29. The most disturbing factor is that on 14.12.2018, it was again Mr. Dinu Kumar, learned counsel who stood up to press Interlocutory Application No. 3388 of 2018. During the course of arguments, when the previous orders and the circumstances in which they were passed were pointed out by learned counsel for the petitioner as also the developments which had taken place at various points of time in the present proceedings, Mr. Dinu Kumar, learned counsel once again himself took the stand that he shall not appear on behalf of any of the parties in the present case and the Court had appreciated such stand. This is borne out from the order dated 14.12.2018 in the present case. However, the matter was heard at length on 17.01.2019 and thereafter, since arguments could not be concluded, it was fixed for 31.01.2019, as agreed to by the parties, in view of the convenience of Mr. Surendra Singh, learned senior counsel who was engaged to appear from outside. In the meantime, Interlocutory Application No. 9 of 2019 was filed on behalf of Radha Krishna Singh seeking to add him as opposite party no. 3 for the purpose of opposing the prayer of



the petitioner. The striking, nay, shocking feature was that it was also filed by the office of Mr. Dinu Kumar, learned counsel, albeit through his junior(s) which would be clear from the notice on which his name, being at the top, has been scratched off. Further, the lack of *bona fide* of the application and the oblique reasons for which it has been filed would be clear from the fact that in order dated 17.05.2010, the Co-ordinate Bench of this Court [Coram: Sheema Ali Khan, J.] had in categorical terms recorded that the manner in which the case was proceeding was surprising and not conducive to a healthy legal system and tradition. It proceeded to record that an application to add Radha Krishna Singh as opposite party in this application was yet to be made and that the Court may decide the issue as to whether they have any right to pursue the matter after they have been added in the case. Thus, the aforesaid clear-cut observation of the Court in the order dated 17.05.2010 and the Interlocutory Application No. 9 of 2019 being filed by Radha Krishna Singh only on 29.01.2019 and that too, after the matter had been taken up by this Bench on 29.11.2018 and 30.11.2018 and thereafter, heard at length on 14.12.2018 and 17.01.2019, speaks volumes.

30. Having given the matter its anxious consideration, the Court is convinced that Interlocutory Application No. 9 of



2019 is devoid of merit. Besides there being very limited scope of a third party to interfere or intervene in a criminal matter, the prominent factor militating against the proposed intervenor is his conduct of conveniently remaining dormant, right from 17.05.2010 and thereafter, when Interlocutory Application No. 3388 of 2018 filed by him, that too on 11.12.2018, was rejected by order dated 14.12.2018, he appears to have suddenly become wiser by filing the present Interlocutory Application seeking intervention.

31. The Court, though at the cost of embarrassment being caused to an officer of the Court, finds that it would be failing in its duty if it does not record its opinion that one common thread in the case is that all persons, who have filed various applications, either for intervention or for opposing the prayer made by the petitioner in the present application, have done so or routed it through the office of Mr. Dinu Kumar, learned counsel. This aspect cannot be lightly brushed away or swept under the carpet since the Court had earlier recorded that a proper enquiry was required into all aspect(s), especially when some persons at the behest of whom Mr. Dinu Kumar, learned counsel had purportedly filed petitions in the present case had later moved this Court bringing to its notice that applications on



their behalf either by Mr. Dinu Kumar, learned counsel or his juniors be ignored and the power executed by them had been misused by Mr. Dinu Kumar, learned counsel and/or his juniors; and only because of Mr. Dinu Kumar, learned counsel himself withdrawing from the case, the Court had deemed it appropriate not to proceed on the issue. At this stage, at the cost of repetition, the Court would only observe that once Mr. Dinu Kumar, learned counsel had himself withdrawn from the case, it was not appropriate for him to be associated in any manner and persist with appearing in the matter by changing the persons by whom various petitions were filed. This, in the considered opinion of the Court, is indicative, both, of a personal vendetta to target the petitioner as well as the misuse of the process of the Court, clearly for oblique reasons, which totally lack any element of *bona fide* whatsoever.

32. On this issue, it cannot be lost sight of that the proceedings have been initiated at the instance of opposite party no. 2, who had filed the Protest-cum-Complaint Petition in Pandarak PS Case No. 131 of 1991. Thus, when he himself, in the present proceeding has unequivocally taken the stand that not only there was no authorisation for Mr. Dinu Kumar, learned counsel and/or his juniors who had filed power on his behalf,



initially by filing Interlocutory Application No. 227 of 2010 through another advocate, Mr. Akhileshwar Prasad Singh, learned counsel, praying to cancel/ignore the Vakalatnama and ignore the counter-affidavit and interim application filed purportedly on his behalf by Mr. Dinu Kumar, learned counsel and has also stated that he (opposite party no. 2) had no grievance against the petitioner and did not want to oppose the petitioner's prayer. In fact, the opposite party no. 2 has categorically denied that he had seen the alleged occurrence in which accusation was levelled against the petitioner and under influence and persuasion to secure compensation for the deceased, he was goaded into making his statement in Complaint Case No. 41(C) of 2009 arising out of the Protest-cum-Complaint Petition. He has further stated that he had realised his mistake of having made untrue statement and was repentant for accusing the petitioner of complicity in the alleged offence. Most importantly, in the present case, he has brought on record the statement made by him as well as the other two witnesses, namely Ramanand Singh and Kailu Mahto, recorded under Section 164 of the Code in Pandarak PS Case No. 106 of 2009, where all three have stated that for some extraneous reason they had been made to implicate the petitioner and



depose against him (petitioner) in the present case. Thus, when opposite party no. 2 has himself filed such Interlocutory Application in the present proceeding which has not been retracted or withdrawn by him till date, as far as the present case is concerned, neither any other person has any right to contest nor even otherwise is required to be heard, and, thus, on this ground also, prayer made in Interlocutory Application No. 9 of 2019 filed on behalf of Radha Krishna Singh seeking to intervene, deserves to be rejected.

33. Moreover, once the Court has been assisted by the learned APP and all facts have been laid before it, which are not in dispute, the Court finds that Radha Krishna Singh neither has any *locus* nor any justification, much less any legal right, for being added as an opposite party to oppose the prayer of the petitioner.

34. It appears the Court is being taken for a ride and a game is being played in the Court proceedings where one after the other, persons are trying to intervene in the matter, without any legal or justifiable reason, as if it is a kind of race where one person passes the baton to another once his game stands exposed and he is ousted from the race. Such conduct not only needs to be thoroughly deprecated but is also required to be



effectively and strictly dealt with so as to prevent such blatant and clear misuse and abuse of the process of the Court, as has been attempted by all the persons who have tried to unnecessarily and clearly with hidden agendas endeavoured to interfere in the present proceeding and in which they have been more than actively encouraged and supported by forces operating in the shadows.

35. Accordingly, in light of the discussions recorded in the foregoing paragraphs, Interlocutory Application No. 9 of 2019, being calculated only to delay and impede proceedings in this Court, as also being highly belated and motivated, stands dismissed. Though it was a fit case to impose exemplary cost, but since the Institution prides itself on justice tempered with mercy, the Court persuades itself to take a lenient view, by imposing a token cost of only Rupees 1,000/- (one thousand). The same be deposited in the Juvenile Justice Fund, Department of Social Welfare, Government of Bihar, within one month by Radha Krishna Singh and receipt thereof filed in the Court latest by April 15, 2019.

36. Learned APP submitted that though, on the basis of materials in the Protest-cum-Complaint Petition and the statements recorded in support thereof, of the complainant as



well as other witnesses, the Court below had taken cognizance and issued process against the petitioner and another co-accused Dular Chand Yadav, however, the Protest-cum-Complaint Petition, itself, not having been filed by the informant, ought not to have been entertained. He further submitted that it is the informant alone who has *locus* to do so. He submitted, that in the present case also, when the opposite party no. 2, being the applicant of such Protest-cum-Complaint Petition, has chosen not to pursue the matter, this Court may take note of such fact. On merits, he submitted that the police had rightly submitted Final Report wherein complicity of the petitioner was not found, and, accordingly, the matter needed to be put to a *quietus* at that very stage.

37. He submitted that, on merits as well, the ACJM had lost his authority to proceed further in the matter relating to Pandarak PS Case No. 131 of 1991 due to stay granted by this Court *vide* order dated 22.04.2009 in Cr. Misc. No. 14435 of 2009. Moreover, he fairly submitted that the contentions of learned counsel for the petitioner were difficult to counter and controvert, both on facts as well as in law.

38. On a conspectus of the facts and applicable case-laws, having considered the circumstances of the case and



submissions of learned counsel for the parties, the Court finds that a case for interference has been made out by the petitioner.

39. First and foremost, the Court below had given sufficient time to the informant of Pandarak PS Case No. 131 of 1991, for filing any objection on the Final Report of the police dated 31.01.1993, right from 30.10.1993 and after recording in its order dated 14.07.2008 that notice was already served on the informant, had fixed the matter for 05.08.2008 for hearing on the Final Report and on such date having proceeded to consider the Final Report and after taking cognizance issuing processes only against Dilip Singh, Yogendra Singh and Baudhu Yadav, the ACJM had become *functus officio*, as the matter had to be committed to the Court of Sessions in light of the Sections of the IPC under which cognizance has been taken in the case. This has not been done for no valid reason. Perusal of the order dated 05.08.2008 further discloses that the ACJM has recorded that after perusing the case diary, offences under Sections 147, 148, 149, 302, 307 of the IPC and 27 of the Arms Act were made out only against Dilip Singh, Yogendra Singh and Baudhu Yadav. Thus, it is clear that against the petitioner, the Final Report of the police stood accepted by the Court below. Thereafter, the Protest-cum-Complaint Petition filed by opposite party no. 2 on



20.01.2009 clearly was impermissible, as Ashok Singh, the complainant/opposite party no. 2 was not the informant, who only had such right to file any protest. In this connection, learned counsel for the petitioner has rightly drawn support from the decision of the Hon'ble Supreme Court in the case of **Gangadhar Janardan Mhatre** (*supra*) where at paragraph no. 12, it has been held:

*“12. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh case the right is conferred on the informant and none else.”*

and also in **Minu Kumari** (*supra*), where at paragraphs no. 12 and 15, the following has been held:

*“12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in*



*respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commr. of Police held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.*

.....  
*15. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh case the right is conferred on the informant and none else.”*

40. Further, the ACJM having already taken cognizance of the offence on 05.08.2008, taking cognizance again on 31.08.2009, was clearly not in accordance with law, as cognizance is taken of the offence and not of the offender.



41. In **Kishun Singh** (*supra*) at paragraphs no. 2, 3, 7, 8, 10, 13 to 16, the following has been held:

*“2. Whether a Court of Session to which a case is committed for trial by a Magistrate can, without itself recording evidence, summon a person not named in the police report presented under Section 173 of the Code of Criminal Procedure, 1973 (‘the Code’ for short) to stand trial along with those already named therein, in exercise of power conferred by Section 319 of the Code? This neat question of law arises in the backdrop of the following allegations.*

*3. On the evening of February 27, 1990 Umakant Thakur, younger brother of the informant, was attacked by twenty persons including the present two appellants with sticks, etc. A First Information Report was lodged at about 9.30 p.m. on the same day in which all the twenty persons were named as the assailants. The injured Umakant Thakur died in the Patna Hospital on the next day. In the course of investigation statements of the informant as well as others came to be recorded and a charge-sheet dated June 10, 1990 was forwarded to the Court of the learned Magistrate on June 17, 1990 wherein eighteen persons other than the two appellants were shown as the offenders. The names of the present two appellants were not*



*included in the said report as in the opinion of the investigating officer their involvement in the commission of the crime was not established. A final report to that effect was submitted on September 4, 1990 to the Chief Judicial Magistrate on which no orders were passed. The concerned Magistrate committed the eighteen persons named in the report to the Court of Session, Darbhanga, under Section 209 of the Code to stand trial. When the matter came up before the learned Sessions Judge, Darbhanga, an application was presented under Section 319 of the Code praying that the material on record annexed to the report under Section 173 of the Code revealed the involvement of the two appellants also and hence they should be summoned and arraigned before the Court as accused persons along with the eighteen already named in the charge-sheet. Thereupon a show-cause notice was issued to the present two appellants in response where to they contended that though they were not present at the place of occurrence, they were falsely named in the First Information Report and the investigating officer had rightly omitted their names from the charge-sheet filed in Court. The learned Sessions Judge rejected the plea put forth by the appellants and exercised the discretion vested in him under Section 319 of the Code by impleading the appellants as co-accused along with the*



*eighteen others. Indisputably this was done before any evidence was recorded i.e. before the commencement of the actual trial. The appellants thereupon filed a criminal revision application before the High Court of Patna assailing the order passed by the learned Sessions Judge taking cognizance against them. The High Court after hearing counsel for the parties dismissed the revision application relying on the ratio of the Full Bench decision of that Court in Sk. Lutfur Rahman v. State [1985 PLJR 640 : 1985 Cri LJ 1238 (Pat HC) (FB)]. It is against this order passed by the learned Single Judge of the High Court that the appellants have moved this Court by special leave under Article 136 of the Constitution of India.*

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*7. In order to appreciate the contention urged before us, it is necessary to notice a few provisions. Section 190 of the Code sets out the different ways in which a Magistrate can take cognizance of an offence, that is to say, take notice of an allegation disclosing commission of a crime with a view to setting the law in motion to bring the offender to book. Under this provision cognizance can be taken in three ways enumerated in clauses (a), (b) and (c) of the offence alleged to have been committed. The object is to ensure the safety of a*



*citizen against the vagaries of the police by giving him the right to approach the Magistrate directly if the police does not take action or he has reason to believe that no such action will be taken by the police. Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Sections 200/204 of the Code (see Jamuna Singh v. Bhadai Sah). It is, therefore, obvious that if on receipt of a complaint under Section 154 of the Code in regard to a cognizable offence, an offence is registered and the concerned police officer embarks on an investigation and ultimately submits a police report under Section 173 of the Code, the Magistrate may take cognizance and if the offence is exclusively triable by a Court of Sessions, he must follow the procedure set out in Section 209. That*



*section provides that when in a case instituted on a police report, as defined in Section 2(r), or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session and remand the accused to custody. Section 193 of the old Code and as it presently stands have a bearing and may be extracted at this stage:*

***“Old Code***

*193. Cognizance of offences by Courts of Session.— (1) 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 accused has been committed to it by a Magistrate duly empowered in that behalf.*

***New Code***

*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.”*

*It may immediately be noticed that under the old provision a Court of Session could not take cognizance of an offence as a court of original jurisdiction unless the accused was committed to it whereas under the recast section as it presently stands the expression the accused has been replaced by the words the case. As has been pointed out earlier, under Section 190 cognizance has to be taken for the offence and not the offender; so also under Section 193 the emphasis now is to the committal of the case and no more on the offender. So also Section 209 speaks of committing the case to the Court of Session. On a conjoint reading of these provisions it becomes clear that while under the old Code in view of the language of Section 193 unless an accused was committed to the Court of Session the said court could not take cognizance of an offence as a court of original jurisdiction; now under Section 193 as it presently stands once the case is committed the restriction disappears. More of it later but first the case-law.*

*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. L.R. Kapur observed as under:*

*“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.”*

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*10. The learned counsel for the appellants submitted that once a Court*



*of Session takes cognizance in the limited sense explained in Gulati case the power to summon or arrest a person not named in the police report can be exercised under Section 319 of the Code only if the condition precedent, namely, the commencement of the trial and recording of evidence, is satisfied. This, he contends, is manifest from the last-mentioned two cases in which the power was exercised only after the condition precedent was satisfied and the complicity of a person not shown as an offender in the police report surfaced from the evidence recorded in the course of the trial. That prima facie appears to be so but it must at the same time be remembered that in both the cases the Court was not called upon to consider whether a Court of Session to which a case is committed for trial under Section 209 of the Code can, while taking cognizance, summon a person to stand trial along with others even though he is not shown as an offender in the police report if the court on a perusal of the case papers prima facie finds his complicity in the commission of the crime and the omission of his name as an offender by the investigating officer not proper.*

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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 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 was affirmed in Hareram Satpathy v. Tikaram Agarwala. Thus far there is no difficulty.*

*14. We have now reached the crucial point in our journey. After cognizance is taken under Section 190(1) of the Code, in warrant-cases the Court is required to frame a charge containing particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed. But before framing the charge Section 227 of the Code provides that if, upon a*



*consideration of the record of the case and the documents submitted therewith, the Sessions Judge considers that there is not sufficient ground for proceeding against the accused, he shall, for reasons to be recorded, discharge the accused. It is only when the Judge is of opinion that there is ground for presuming that the accused has committed an offence that he will proceed to frame a charge and record the plea of the accused (vide Section 228). It becomes immediately clear that for the limited purpose of deciding whether or not to frame a charge against the accused, the Judge would be required to examine the record of the case and the documents submitted therewith, which would comprise the police report, the statements of witnesses recorded under Section 161 of the Code, the seizure-memoranda, etc., etc. If, on application of mind for this limited purpose, the Judge finds that besides the accused arraigned before him the complicity or involvement of others in the commission of the crime prima facie surfaces from the material placed before him, what course of action should he adopt?*

*15. The learned counsel for the State, therefore, argued that even if two*



*views are possible, this being a matter of procedure not likely to cause prejudice to the person or persons proposed to be summoned, the court should accept the view which would advance the cause of justice, namely, to bring the real offender to book. If such an approach is not adopted, the matter will slip into the hands of the investigation officer who may or may not send up for trial an offender even if prima facie evidence exists, which may in a given situation cause avoidable difficulties to the trial court. Take for example a case where two persons A and B attack and kill X and it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challaned by the police, the Judge may find it difficult to charge B for the murder of X with the aid of Section 34 IPC. If he cannot summon A, how does he frame the charge against B? In such a case he may have to wait till evidence is laid at the trial to enable him to invoke Section 319 of the Code. Then he would have to commence the proceedings afresh in respect of the added accused and recall the witnesses. This, submitted counsel for the State,*



*would result in avoidable waste of public time. He, therefore, submitted that this Court should place a construction which would advance the cause of justice rather than stifle it.*

*16. We have already indicated earlier from the ratio of this Court's decisions in the cases of Raghubans Dubey and Hareram that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words the accused by the words the case. Thus, on a plain reading of Section*



*193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. The Full Bench of the High Court of Patna rightly appreciated the shift in Section 193 of the Code from that under the old Code in the case of Sk. Lutfur Rahman as under:*

*“Therefore, what the law under Section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed*



*against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well .... Once the case has been committed, the bar of Section 193 is removed or, to put it in other words, the condition therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime.” We are in respectful agreement with the distinction brought out between the old Section 193 and the provision as it now stands.”*

42. Similarly, at paragraph no. 5, the Hon’ble Supreme Court in **Anil Saran** (*supra*) has held as under:

*“5. We find no force in the contention. Though the Code defines “cognizable offence” and “non-cognizable offence”, the word ‘cognizance’ has not been defined in the Code. But it is now settled law that the court takes cognizance of the offence and not the offender. As soon as the Magistrate applies his judicial mind to the offence stated in the complaint or the police report etc. cognizance is said to be taken. Cognizance of the offence takes place when the Magistrate takes judicial notice of the offence. Whether the Magistrate has taken cognizance of offence on a complaint or on a*



*police report or upon information of a person other than the police officer, depends upon further steps taken pursuant thereto and the attending circumstances of the particular case including the mode in which case is sought to be dealt with or the nature of the action taken by the Magistrate. Under sub-section (1) of Section 190 of the Code, any Magistrate may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”*

43. In **Dharam Pal** (*supra*), a Constitution Bench of the Hon’ble Supreme Court at paragraphs no. 32 to 35, 38, 39 and 40 has held as under:

*“32. Section 190, which has been extracted hereinbefore, empowers any Magistrate of the First Class or the Second Class specially empowered in this behalf under sub-section (2) to take cognizance of any offence in three contingencies. In the instant case, we are concerned with the provisions of Section 190(1)(b) since a police report has been submitted by the police, under Section 173(2) of the Code sending up one accused for*



*trial, while including the names of the other accused in column 2 of the report. The facts as revealed from the materials on record and the oral submissions made on behalf of the respective parties indicate that, on receiving such police report, the learned Magistrate did not straightaway proceed to commit the case to the Court of Session but, on an objection taken on behalf of the complainant, treated as a protest petition, issued summons to those accused who had been named in column 2 of the charge-sheet, without holding any further inquiry, as contemplated under Sections 190, 200 or even 202 of the Code, but proceeded to issue summons on the basis of the police report only. The learned Magistrate did not accept the final report filed by the investigating officer against the accused, whose names were included in column 2, as he was convinced that a prima facie case to go to trial had been made out against them as well, and issued summons to them to stand trial with the other accused, Nafe Singh. The questions which have arisen from the procedure adopted by the learned Magistrate in summoning the appellants to stand trial along with Nafe Singh, have already been set out hereinbefore in para 7 of this judgment.*

*33. As far as the first question is concerned, we are unable to accept the*



*submissions made by Mr Chahar and Mr Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate has no other function, but to commit the case for trial to the Court of Session, which could only resort to Section 319 of the Code to array any other person as accused in the trial. In other words, according to Mr Dave, there could be no intermediary stage between taking of cognizance under Section 190(1) (b) and Section 204 of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Sessions Judge, till the Section 319 stage was reached in the trial. Furthermore, in the event the Sessions Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same.*

*34. The view expressed in Kishun Singh case [Kishun Singh v. State of Bihar], in our view, is more acceptable since, as has been held by this Court in the*



*cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.*

*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.*

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*38. Section 193 of the Code speaks of cognizance of offences by the Court of Session and provides as follows:*

***“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.”***

*The key words in the section are that “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”. The above provision entails*



*that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.*

*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.*

*40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be*



*evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.”*

44. Also, in **Balveer Singh** (*supra*), the Hon’ble Supreme Court at paragraphs no. 18, 19, 23 and 24 has held thus:

*“18. Discussion up to this stage in Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159], answers the powers of the Magistrate by laying down the principle that even if the case is triable by the Court of Session, the function of the Magistrate is not to act merely as a post office and commit the case to the Court of Session, but he is also empowered to take cognizance, issue process and summon the accused and thereafter commit the case to the Court of Session. The position with regard to that would become clearer once we find the answer that was given by the Constitution Bench to questions at paras 7.4 to 7.6 extracted above. We would like to reproduce paras 37 to 41 of the said judgment in this behalf, which are as follows: (SCC pp. 319-20)*

*“37. Questions 4, 5 and 6 are more or less*



*interlinked. The answer to Question 4 must be in the affirmative, namely, that the Sessions Judge was entitled to issue summons under Section 193 CrPC upon the case being committed to him by the learned Magistrate.*

*38. Section 193 of the Code speaks of cognizance of offences by the Court of Session and provides as follows:*

*‘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.’*

*The key words in the section are that ‘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’. The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an*



*offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.*

*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.*

*40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein.*

*41. We are also unable to accept Mr Dave's submission that the Sessions Court would have no alternative, but to wait till the stage under Section 319 CrPC was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session."*

*19. It is manifest from the above that the question at para 7.4 was specifically answered in the affirmative holding that the Sessions Judge is entitled to issue summons under*



*Section 193 of the Code “as a court of original jurisdiction”. This was notwithstanding the fact that the Magistrate had taken cognizance and only thereafter committed the case to the Court of Session, as is clear from the facts of the said case already noted above. This seems to be in conflict with the other well-settled position in law viz. cognizance of an offence can only be taken once and in the event a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking first cognizance of the offence thereafter would not be in accordance with law. In order to resolve this seeming contradiction, the Court provided the answer by clarifying that the provisions of Section 209 of the Code will have to be understood to mean that the Magistrate plays 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.*

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*23. This view further gets strengthened from another judgment of this Court in Ajay Kumar Parmar v. State of Rajasthan. In that case, the Court held that when the offence is exclusively triable by the Sessions Court, the Magistrate must commit the case to the Sessions Court and cannot refuse to take*



*cognizance of the offence and acquit the accused on the basis of material produced before it. It would be useful to reproduce the following discussion in the said judgment: (SCC pp. 413-15, paras 14-15 & 17-19)*

*“14. In Sanjay Gandhi v. Union of India, this Court while dealing with the competence of the Magistrate to discharge an accused, in a case like the instant one at hand, held: (SCC pp. 40-41, para 3)*

*‘3. ... it is not open to the committal court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. Therefore, to hold that he can go into the merits even for a prima facie satisfaction is to frustrate Parliament's purpose in remoulding Section 207-A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view, the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by*



*the Court of Session. Assuming the facts to be correct as stated in the police report ... the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. ... If made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under Section 227 CrPC to discharge the accused. This provision takes care of the alleged grievance of the accused.'*

*Thus, it is evident from the aforesaid judgment that when an offence is cognizable by the Sessions Court, the Magistrate cannot probe into the matter and discharge the accused. It is not permissible for him to do so, even after considering the evidence on record, as he has no jurisdiction to probe or look into the matter at all. His concern should be to see what provisions of the penal statute have been mentioned and in case an offence triable by the Sessions Court has been mentioned, he must commit the case to the Sessions Court and do nothing else.*

*15. Thus, we are of the considered opinion that the Magistrate had no business to discharge the appellant. In fact, Section 207-A in the old CrPC, empowered the Magistrate to*



*exercise such a power. However, in CrPC, 1973, there is no provision analogous to the said Section 207-A. He was bound under law, to commit the case to the Sessions Court, where such application for discharge would be considered. The order of discharge is therefore, a nullity, being without jurisdiction.*

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*17. The court should not pass an order of acquittal by resorting to a course of not taking cognizance, where prima facie case is made out by the investigating agency. More so, it is the duty of the court to safeguard the rights and interests of the victim, who does not participate in the discharge proceedings. At the stage of application of Section 227, the court has to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. Thus, appreciation of evidence at this stage, is not permissible. (Vide P. Vijayan v. State of Kerala and R.S. Mishra v. State of Orissa.)*

*18. The scheme of the Code, particularly, the provisions of Sections 207 to 209 CrPC, mandate the Magistrate to commit the case to the Court of Session, when the charge-sheet is filed. A conjoint reading of these provisions makes it crystal clear that the committal of a case exclusively triable by the Court of Session,*



*in a case instituted by the police is mandatory. The scheme of the Code simply provides that the Magistrate can determine, whether the facts stated in the report make out an offence triable exclusively, by the Court of Session. Once he reaches the conclusion that the facts alleged in the report, make out an offence triable exclusively by the Court of Session, he must commit the case to the Sessions Court.*

*19. The Magistrate, in exercise of its power under Section 190 CrPC, can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 CrPC, if any, do not make out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case.”*

*(emphasis supplied)*

*24. Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the*



*Sessions Judge. Here is a case where the police report which was submitted to the Magistrate, the investigating officer had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/charge-sheet filed under Section 173(8) of the Code implicated the appellants and the appellants contended that they are wrongly implicated. On the contrary, the police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that the order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the*



*Magistrate had played “passive role” while committing the case to the Court of Session. He had, thus, taken cognizance after due application of mind and played an “active role” in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Session while committing the case. In this scenario, we are of the opinion that it would be a case where the Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible.”*

45. Moreover, there cannot be two F.I.Rs. and/or complaint cases for the same incident narrating the same or similar facts against the same accused, either by the complainant or others, as has been held by the Hon’ble Supreme Court at paragraphs no. 24 and 25 in the case of **Surender Kaushik** (*supra*).

*“24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence.*



*What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.*

*25. In the case at hand, the appellants lodged FIR No. 274 of 2012 against four accused persons alleging that they had prepared fake and fraudulent documents. The second FIR came to be registered on the basis of the direction issued by the learned Additional Chief Judicial Magistrate in exercise of power under Section 156(3) of the Code at the instance of another person alleging, inter alia, that he was neither present in the meetings nor had he signed any of the resolutions of the meetings and the accused persons, five in number, including Appellant 1 herein, had*



*fabricated documents and filed the same before the competent authority. FIR No. 442 of 2012 (which gave rise to Crime No. 491 of 2012) was registered because of an order passed by the learned Magistrate. Be it noted, the complaint was filed by another member of the governing body of the Society and the allegation was that the accused persons, twelve in number, had entered into a conspiracy and prepared forged documents relating to the meetings held on different dates. There was allegation of fabrication of the signatures of the members and filing of forged documents before the Registrar of Societies with the common intention to grab the property/funds of the Society. If the involvement of the number of accused persons and the nature of the allegations are scrutinised, it becomes crystal clear that every FIR has a different spectrum. The allegations made are distinct and separate. It may be regarded as a counter-complaint and cannot be stated that an effort has been made to improve the allegations that find place in the first FIR. It is well-nigh impossible to say that the principle of sameness gets attracted. We are inclined to think so, for if the said principle is made applicable to the case at hand and the investigation is scuttled by quashing the FIRs, the complainants in the other two FIRs would*



*be deprived of justice. The appellants have lodged the FIR making the allegations against certain persons, but that does not debar the other aggrieved persons to move the court for direction of registration of an FIR as there have been other accused persons including the complainant in the first FIR involved in the forgery and fabrication of documents and getting benefits from the statutory authority. In the ultimate eventuate, how the trial would commence and be concluded is up to the court concerned. The appellants or any of the other complainants or the accused persons may move the appropriate court for a trial in one court. That is another aspect altogether. But to say that it is a second FIR relating to the same cause of action and the same incident and there is sameness of occurrence and an attempt has been made to improvise the case is not correct. Hence, we conclude and hold that the submission that the FIR lodged by the fourth respondent is a second FIR and is, therefore, liable to be quashed, does not merit acceptance.”*

46. Only upon the Court accepting the Final Report and closing the police case by not taking cognizance, can a separate complaint on the same facts based on a Protest-cum-Complaint Petition be legally valid and maintainable. In the



present case, once cognizance was taken and process also issued against three named accused, the said case being still alive, a separate complaint was impermissible.

47. Further, the duty cast upon the Court for proceeding against the accused, has been clearly spelt out by the Hon'ble Supreme Court in **Mehmood Ul Rehman** (*supra*), where at paragraphs no. 11, 19 and 20 to 23 it has been held as under:

*“11. In one of the early decisions, Emperor v. Sourindra Mohan Chuckerbutty, a Division Bench of the Calcutta High Court has taken the same view: (ILR p. 417)*

*“... taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence.”*

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*19. In Bhushan Kumar v. State (NCT of Delhi), the requirement of application of mind in the process of taking cognizance was reiterated. It was further held that summons is issued to notify an individual of his legal obligation to appear before the Magistrate as a response to the alleged violation of law. It was further held that in the process thus issued, the Magistrate need not explicitly state the*



*reasons. Paras 11 to 13 contain the relevant discussion, which read as follows: (SCC pp. 428-29)*

*“11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression ‘cognizance’ was explained by this Court as ‘it merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.’ It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial*



*and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.*

*12. A 'summons' is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.*

*13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in*



*the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.”*

*20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*

*21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the*



*complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.*

*22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the*



*statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.*

*23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts*



*constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate.”*

48. In this connection, reliance has been correctly placed on **Mahesh Chand** (*supra*), where the Hon’ble Supreme Court at paragraph no. 19 has held as under:

*“19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full*



*consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”*

49. Coming to the facts of the present case, the opposite party no. 2 had filed a petition on 20.01.2009, which he himself has described as a Protest-cum-Complaint Petition in Pandarak PS Case No. 131 of 1991. The same was also taken up by the Court below on the same day in Pandarak PS Case No. 131 of 1991 and thereafter, an order was passed on the same day directing for registering it as a complaint case. This was wholly illegal in view of there being an order of stay of further proceedings by the High Court in Pandarak PS Case No. 131 of 1991 *vide* order dated 22.04.2009 in Cr. Misc. No. 14435 of



2009.

50. Further, from 05.08.2008, after taking cognizance under Sections triable by a Court of Sessions and still not committing the case to the Court of Sessions, was highly improper on the part of the ACJM. Thus, any matter emerging from Pandarak PS Case No. 131 of 1991 was required to be placed before the transferee Court i.e., Court of Sessions and obviously, the Protest-cum-Complaint Petition filed by the opposite party no. 2, which was in Pandarak PS Case No. 131 of 1991, had to be placed before the concerned Court of Sessions where the matter, after commitment, would have been pending. At this stage, the Court is constrained to observe that it was the very same Judicial Officer/Court (ACJM) which had passed order dated 05.08.2008 in Pandarak PS Case No. 131 of 1991 and order dated 31.08.2009, by which cognizance has been taken for the second time for the same offence on the Protest-cum-Complaint Petition filed by the opposite party no. 2 against the petitioner and another co-accused Dular Chand Yadav. This raises a serious question with regard to the fairness, propriety and purity of judicial proceedings and directly points a finger at the concerned Presiding Officer. However, as in Cr. Misc. No. 14435 of 2009, the Court has issued notice to the erstwhile



ACJM as to why a proceeding for contempt should not be initiated against him, this Court, in the current proceeding refrains from going into such aspect of gross judicial impropriety on the part of the then ACJM who is the author of orders dated 05.08.2008, 20.01.2009 and 31.08.2009, which shall be decided in Cr. Misc. No. 14435 of 2009.

51. At this point, the Court cannot and would not lose sight of the over-writings/scribblings in the Protest-cum-Complaint Petition where in the original typed version, the names of witnesses were of Balram Singh and Bipul Singh, but by hand the same have been struck off and the names of Ramanand Singh and Jitendra Paswan were written in hand and even thereafter, only Ramanand Singh and another person, namely Kailu Mahto were examined in support of the Protest-cum-Complaint Petition. Both Ramanand Singh and Kailu Mahto can be said to be rank outsiders for the simple reason that they were neither examined during investigation by the police nor any petition by them was filed before any authority or even the Court below at any point of time, either for recording their evidence claiming themselves as witnesses or raising any grievance that despite being witnesses, the police had not recorded their statements under Section 161 of the Code. Even



the complainant had made statement to the police during investigation, which was recorded under Section 161 of the Code at paragraph no. 24 of the case diary on 17.11.1991 itself, in which he has clearly stated that at the time of the incident, he was at the village where he was informed that unknown miscreants had caused loot at the booth and resorted to firing near the cow-shed of Narsing Singh in which Sita Ram Singh had died due to bullet injury and Chandramauli Singh, Suresh Singh, Rambabu Singh and Mannu Singh were injured. He has also categorically stated that he did not know who the miscreants were. It was also recorded that besides this, the witness Ashok Singh (complainant/opposite party no. 2) had not stated any other relevant thing. He also did not state about having received any injury, though in the Protest-cum-Complaint Petition, he claims to have been injured. It is quite intriguing that opposite party no. 2 in Interlocutory Application No. 227 of 2010, filed by him in the present proceeding had prayed for the following relief:

*“(a) Cancel/ignore Vakalatnama filed on his behalf by Sri Dinu Kumar, learned Advocate or his junior counsel purportedly representing opposite party no. 2.*

*(b) Ignore counter affidavit and interim application purportedly filed on his behalf.*



*(c) Order for an enquiry under Section  
340 of the Cr.P.C.” [sic]*

and had proceeded to state the background of how he had deposed in Complaint Case No. 41(C) of 2009, in the Court of the ACJM which he had attributed to being pressurized by Sanjeet Singh and Manoj Singh, who had persuaded him to do so on the plea that the family of the deceased Sita Ram Singh would be adequately compensated. He has also enumerated the fact that the said two persons had obtained certificates as well from Radha Krishna Singh and Shail Devi which were misutilized in their names. He has further stated that he, along with Radhey Shyam Singh, had approached Mr. Dinu Kumar, learned counsel for taking ‘No Objection’ which was not given on some pretext or the other. He stated the following at paragraphs no. 6 to 12 of the Interlocutory Application No. 227 of 2010:

*“6. That Radhey Shyam Singh, in above background has filed a petition being I.A. No. 145 of 2010 in Cr. Misc. No. 14435/09, wherein he has made a complaint before this Hon’ble Court about misuse of blank Vakalatnama and blank signed paper. On such petition being filed, this Hon’ble Court by its order dt. 27.01.10 has been pleased to direct to seize the register of Oath Commissioner who has administered Oath to said Radhey Shyam*



*Singh. It is also pertinent to bring to the notice of this Hon'ble that on 27.01.10, Radhey Shyam Singh himself appeared before the Court and on being questioned by Hon'ble Judge has stated that he has never come to High court to swear any affidavit.*

*7. That the applicant has not seen the alleged occurrence in which accusation are made against Sri Nitish Kumar. In his statement recorded by the police also he has categorically denied having seen the occurrence. However, under undue influence and persuasion to secure compensation for the deceased, the applicant was goaded into making his statement in complaint case No. 41(c) of 2009 in the Court of ACJM, Barh. However, he realised his mistake of having made untrue statement.*

*8. That the applicant is repentant for having made untrue statement accusing Sri Nitish Kumar of his complicity in the alleged offence. The applicant, therefore, volunteered him to correct the mistake and thereafter his statement was recorded under Section 164 by a Magistrate, wherein he has categorically stated that he does not know who had committed the murder. He has further stated that one Sanjeet has pressurised him and Rama Nand Singh to make the statement and thereafter he made the statement. He has further stated that Rama*



*Nand Singh also realised his mistake and has made mend and has volunteered to make his statement under Section 164 of the Cr.P.C. which has been recorded by the Magistrate, wherein he has categorically denied that he has seen the occurrence or has named Sri Nitish Kumar. In fact, he has stated that he is repentant for having made the statement in the complaint case. Similarly, another witness Kailu Mahto has also categorically denied having seen the occurrence and stated that he was threatened to make the statement.*

*9. That the applicant asserts that he has never come to the High Court before any Oath Commissioner to swear affidavit. Any affidavit, if it is filed is result of manipulation and ought not to be treated as genuine. Moreover, applicant has not authorised Radhey Shyam Singh or Radhey Krishna Singh to swear affidavit on his behalf.*

*10. That after having come to know about the mistake committed in his name, the applicant has instructed another counsel. Learned counsel has narrated in detail about the development of the case. It appears, on behalf of the applicant, two counter affidavit have been filed before this Hon'ble Court. One counter affidavit has been sworn by Rama Nand Singh and other by Radhey Shyam Singh. Two interim applications have been filed one*



*sworn by Radhey Shyam Singh and other by Radhe Krishna Singh. The applicant asserts that to his knowledge none of the above deponent have sworn any affidavit before any Oath Commissioner and their affidavits are also result of manipulations. Moreover, the applicant has not authorised any of the deponents to swear the affidavit on his behalf.*

*11. That as the applicant is neither a witness nor has seen the occurrence much less Sri Nitish Kumar being involved therein, which stands affirmed in the statement under Section 164 Cr.P.C., the applicant does not propose to oppose the present criminal miscellaneous application. Any opposition in his name was without his instruction.*

*12. That as the applicant has bonafide signed on Vakalatnama and bank paper, he prays to this Hon'ble Court that Sri Dinu Kumar, learned counsel, may be directed to return all such papers failing which its use in any case should not be taken on record and be ignored." [sic]*

52. From the aforesaid, it is clear that the opposite party no. 2 has himself filed an application in the present case of which the affidavit has also been affirmed by him and which has neither been withdrawn nor any prayer made to ignore the same in the present case. This leaves no doubt that the opposite



party no. 2 was never a witness to the incident. Thus, all the averments made in the Protest-cum-Complaint Petition automatically lose their sanctity and cease to have value, much less for proceeding against any person in a criminal case, that too, under grave sections of the IPC. Incidentally, Interlocutory Application No. 227 of 2010 has neither been opposed nor any subsequent petition has been filed by opposite party no. 2. Similarly, Radhey Shyam Singh, who had also sought permission to intervene in the matter has filed Interlocutory Application No. 214 of 2010 in which he has prayed for the following:

*“(a) Cancel/ignore Vakalatnama filed on behalf of applicant By Sri Dinu Kumar, learned Advocate or his junior counsel.*

*(b) Ignore counter affidavit and interim application purportedly filed on behalf Opposite party no. 2 sworn by the applicant or Radhey Krishna Singh.*

*(c) Order for an enquiry under Section 340 of the Cr.P.C.” [sic]*

53. In the said application, he has stated the following at paragraphs no. 3 to 16:

*“3. That the applicant, Radhey Krishna Singh has no grievance against the petitioner. Petitioner has no complicity in the alleged*



*offence. Ashok Singh, complainant being cousin could not reasonably have any grievance against the petitioner when own family of deceased are not the aggrieved person.*

*4. That in the month of January, 2009, one Manoj Kumar with 3-4 others approached this applicant, his mother Shail Devi to file a complaint naming the petitioner as an assailant of the deceased. As the applicant or his family has no grievance against the petitioner the ydid not agree to fall pray to sinister design of those persons.*

*5. That having failed in their aim to persuade the applicant or his brother to file a complaint case, they appear to have approached Ashok Singh, opposite party no. 2 whom they managed to get a complaint case being complaint case no. 41 (c) 2009 filed in the Court of ACJM, Barh. In that case Ashok Singh has made his statement on solemn affirmation, wherein he appears to have named the petitioner and one Dularchan Yadav as accused of the case.*

*6. That it is pertinent to mention that Ashok Singh is not the eye witness of the occurrence. In his statement before police, he has categorically stated that he has not seen the occurrence. It is further significant to point out that he has realised the mistake of*



*having made untrue statement in support of the complaint and he has subsequently explained circumstances in which he made the statement in support of the complaint case. His statement is recorded under Section 164 of the Cr.P.C., wherein he has categorically stated that one Sanjeet Pahalwan pressurised him to make the statement and thus he named the petitioner as an accused. In his statement under Section 164 Cr.P.C., he has denied having seen the occurrence or named the petitioner as one of the assailants. Not only that the complainant, opposite party no. 2, Ashok Singh has clarified his position in his subsequent statement under Section 164, even two witnesses namely Rama Nand Singh and Kailu Mahto have also made similar statement under Section 164 Cr.P.C. Rama Nand Singh has stated that he has made the statement in support of complaint filed by opposite party no. 2 under extraneous consideration and he is repentant about having made the statement. Similarly, Kailu Mahato has also stated that he was threatened with dire consequence if he did not make his statement and thus he made the statement.*

*7. That the applicant was later on approached by Manoj Kumar and three-four persons and they assured them that if he sign on blank Vakalatnama and blank paper they*



*would obtain certified copy of case record and pursue their case for getting suitable compensation for the death of his brother Sita Ram Singh. The applicant believing bonafide has signed on Vakalatnama and some blank papers.*

*8. That the applicant has not instructed Sri Dinu Kumar, learned advocate or for that matter any counsel to contest the case or file any case in this regard. The applicant learnt from various Media report that on his behalf and on behalf of other family members the present case as also Cr. Misc. No. 14435/09 is being contested. The applicant further learnt that in the name of his mother Shail Devi, another Cr. W.J.C. has been filed before this Hon'ble court. Thereafter, the applicant came to Patna to engage his own counsel and instructed him to enquire and find out exact position of above cases. The Learned counsel engaged by the applicant ascertained the current position of the case and then it revealed that in above referred Cr. Misc. No. 33116/09 a Vakalatnama has been filed on his behalf. Further two counter affidavits are filed and two interim applications are also filed. In one counter affidavit deponent is shown to be Rama Nand Singh. In other affidavit either the applicant is shown as deponent or Radhey Krishna Singh is shown as deponent.*



9. That the applicant states that he has never instructed learned counsel to file any affidavit sworn by him. To the knowledge of the applicant, neither Radhey Krishna Singh nor Shail Devi has instructed learned counsel to file any affidavit on their behalf. The petitioner asserts this because at no point of time Radhey Krishna Singh or Shail Devi has narrated to him about having filed any affidavit before the High Court. Further to the knowledge of the applicant neither Radhey Krishna nor Shail Devi have sworn any affidavit before the Oath Commissioner. Any affidavit in the name of the applicant or in the name of Radhey Krishna or Shail Devi is a manipulated document. The petitioner, therefore, prays that the affidavit so filed may be ignored.

10. That it is further to state that opposite party no. 2 has never authorised him to swear any affidavit on his behalf. To the knowledge of applicant opposite party no. 2 has not even authorised Radhey Krishna Singh or Shail Devi to swear any affidavit on his behalf.

11. That when the applicant learnt about all these development he along with Ashok Singh personally went to contact Sri Dinu Kumar, learned counsel at their residence. Son of Mr. Dinu Kumar informed



*that he was not available. Thereafter, the applicant and Ashok Singh opposite party no. 2 tried to contact Sri Dinu Kumar in his chamber when it was informed that he has gone out of Patna. Thereafter the applicant personally talked to Sri Dinu Kumar on his Cell Phone and requested for no objection. Sri Dinu Kumar said that he is going out of Patna and would talk later, after his return. However on one pretext or other Sri Dinu Kumar did not give no objection.*

*12. That in above back ground, the applicant was constrained to file I.A. No. 145 of 2010 in Cr. Misc. No. 14435 /09 arising out of Pandarak P.S. Case No. 131 of 1991. The said cri. Misc. has been filed by Yogendra Yadav praying for quashing the order dated . 5.8.2008 whereby and whereunder learned ACJM, Barh has directed for issuance for process against Yogendra Yadav and two others. In the said Cr. Misc. No. 14435/09 this Hon'ble court vide order dated 24.04.09 has been pleased to stay entire proceeding of Pandarak P.S. Case No. 131 of 1991.*

*13. That as stated earlier, the applicant was constrained to file I.A. No. 145/10 in Cr. Misc. No. 14435 of 2009. In the said interim applicant the applicant has categorically mentioned that he has not instructed Sri Dinu Kumar to file any affidavit on his behalf. The*



*applicant engaged another counsel and himself appeared before the court on 27.01.2010 on being questioned by Hon'ble Court, the applicant stated that he has never come to the High Court to swear affidavit and if affidavit is filed in his name it is a manipulated document. The Hon'ble court by order dated 27.01.2010 has directed for seizer of records in possession of concerned Oath Commissioner.*

*14. That the applicant, and his family are very simple village persons. Applicant has very humble background. He and his family any how manage their home affairs. It is unthinkable for them to bear the expenses of learned senior counsel from Supreme Court. The applicant further asserts that he has not paid any professional fee or any money to meet the expenses to Sri Dinu Kumar, learned advocate. The applicant cannot think even in dream to engage any counsel from Supreme Court who, it is well known, may charge an exorbitant amount. The applicant asserts that he has never instructed Sri Dinu Kumar to engage any senior counsel from Supreme Court. Sri Dinu Kumar alone can explain from where professional fee and other expenses of learned senior counsel from Supreme Court were paid.*

*15. That the applicant further states*



*that he has not come to the High Court to file any affidavit. It appears that the blank Vakalatnama and signature of applicant on blank paper obtained by Manoj Kumar and others are being misutilised for extraneous purpose.*

*16. That applicant categorically states that neither he nor his family members have stated anything against the petitioner much less accusing him of being assailant of deceased Sita Ram Singh. In above background the applicant does not oppose the prayer made by the petitioner in above referred Cr. Misc. application.” [sic]*

54. The averments in Interlocutory Application No. 214 of 2010 are similar to the averments made in Interlocutory Application No. 227 of 2010. After filing of the said Interlocutory Application, which has never been opposed or challenged by anyone in the present proceeding, not even by Mr. Dinu Kumar, learned counsel, and no subsequent application filed for withdrawal of the said Interlocutory Application further establishes that even Radhey Shyam Singh does not have any grievance against the petitioner, as categorically stated in the afore-referred Interlocutory Application. In fact, in Interlocutory Application No. 214 of 2010 filed by Radhey Shyam Singh, a



copy of his deposition in Pandarak PS Case No. 106 of 2009 dated 10.09.2009 before the Court below under Section 164 of the Code has been brought on record in which he has, in clear terms, stated that in the case of the Chief Minister Nitish Kumar, about three months back, he had deposed under greed of money at the behest of Gopal and Amrish and for which he was felt deep guilt. Even opposite party no. 2 in his deposition in Pandarak PS Case No. 106 of 2009 on 17.12.2009 under Section 164 of the Code, had stated the fact that he and Ramanand Singh were forced to give evidence in the murder case of Sita Ram Singh (the present case), and that both opposite party no. 2 and he were made to give false statements since Ramanand Singh was kidnapped and the Pandarak police had later recovered him from Patna. Even the witness Kailu Mahto in his statement to the Court below under Section 164 of the Code in Pandarak PS Case No. 106 of 2009 on 21.12.2009 had stated that Ganesh Mahto and Karu Mahto had called and taken him to the Barh Court to depose against Nitish Kumar to the effect that he had seen the petitioner with rifle in his hand at the time of killing of Sita Ram Singh and the same statement was made by Ramanand (Singh) and Ashok (Singh). It was stated that the said Ganesh Mahto and Karu Mahto had threatened him that if he



would not depose, he would be shot and further that Chandan had told him that Ramanand Singh had been kidnapped. He further expressed his fear to the Court that his life was under threat from Ganesh Mahto and Karu Mahto. From the aforesaid narration also, it is apparent that all the so-called witnesses, including the opposite party no. 2, by their own statements, either in the pleadings filed by them before this Court or even before the Court below under Section 164 of the Code in Pandarak PS Case No. 106 of 2009, from which they have not resiled, leave no doubt in the mind of the Court that the petitioner is a victim of false allegations which primarily appears to stem from him having reached a very high position in public life by virtue of holding Constitutional office and, thus, for damaging him, a concerted and sustained campaign has been orchestrated by elements, who by their own conduct have made themselves totally unreliable for any Court to attach any shred of credence to their evidence.

55. At this stage, the Court would advert to a very important factual matrix that happen to be the statements of the then District Magistrate and Superintendent of Police, Nalanda to the police during the course of investigation in Pandarak PS Case No. 131 of 1991, which has been recorded at paragraphs



no. 111 and 120 of the case diary under Section 161 of the Code. In his statement, Mr. Rajiv Gauba, IAS, the then District Magistrate, Nalanda has stated that on the day of polling i.e. 16.11.1991, when he was in the Control Room at Harnaut between 12.00 and 12.30 PM, the petitioner had come and met him and complained with regard to some disturbances at a booth upon which he had sent the Magistrate. He had also stated that in the Control Room, Mr. Shiv Raj Singh, the Central Observer was also present. He had further stated that between 12.30 and 1.00 PM, the petitioner along with his security personnel had gone towards Biharsharif. Further, it was stated by him that as per his knowledge, the petitioner was moving in Nalanda District during the election and after going to Biharsharif, the petitioner met the then Superintendent of Police, Mr. A. K. Mallik, IPS in Biharsharif between 2.30 and 3.00 PM and had complained with regard to malpractice at the booth upon which the Superintendent of Police, Nalanda directed the Harnaut Police Station to take appropriate action. He further stated that according to his knowledge, the petitioner had gone to Biharsharif from Harnaut and met administrative officers during the period when the alleged incident of the present case is said to have taken place and that the petitioner was moving in



Nalanda district and complaining to the authorities with regard to wrongdoings. Similarly, Mr. A. K. Mallik, the then Superintendent of Police, Nalanda, in his statement recorded under Section 161 of the Code at paragraph 120 of the case diary had stated that the then District Magistrate, Nalanda and he were in the Harnaut Control Room and between 11.30 AM and 12.00 noon, he met another candidate, namely Sidheshwar Babu and his son in Harnaut Market on the National Highway Road and between 12.00 and 1.00 PM, he had left Harnaut and en route was conducting checks and reached his residential office between 1.30 and 2.00 PM where he met his confidential reader and asked about Sidheshwar. He further stated that between 2.30 and 2.45 PM, when he was again going towards Harnaut, near Hospital Turning at Biharsharif, he met the petitioner who was in a white-coloured Gypsy vehicle along with force in a *Trekker* vehicle and the petitioner complained that in Villages Porary and Hamama under the Harnaut PS, Congress workers had allegedly captured the polling booth and Janta Dal voters were not being allowed to go there upon which the then Superintendent of Police, Nalanda had informed Harnaut PS directing them to take immediate steps and that he had come to the Harnaut Control Room at about 3.30 PM. He



further stated that the petitioner on the day of the polling for the entire period was in the Nalanda area.

56. The statement of the then District Magistrate, Nalanda was recorded at 5.00 PM on 15.01.1992 whereas that of the then Superintendent of Police, Nalanda was recorded at 1.00 PM on 11.02.1992. From the aforementioned also, it is clear that both officers have categorically stated that the petitioner was with them at the relevant time and in the District of Nalanda for the entire period of polling on the eventful day and the place of occurrence in the present case, being Barh in the District of Patna, also is a strong indicator that the petitioner is innocent and has been framed for oblique reasons.

57. In **Sathish Mehra v. State of N.C.T. of Delhi** reported as **AIR 2013 SC 506**, the Hon'ble Supreme Court at paragraphs no. 15 and 16 has held:

*“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A*



*prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.*



*16. The above nature and extent of the power finds an exhaustive enumeration in a judgment of this Court in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : AIR 1977 SC 1489] which may be usefully extracted below: (SCC pp. 702-03, para 7)*

*“7. The second limb of Mr Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:*

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*This section is contained in Chapter XVIII called 'Trial Before a Court of Session'. It is clear from the provision that the Sessions Court has the power to discharge*



*an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898, provides that:*

\* \* \*

*In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the*



*High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”*

*It would also be worthwhile to recapitulate an earlier decision of this Court in Century Spg. & Mfg. Co. Ltd. v. State of Maharashtra noticed in L. Muniswamy case (supra) holding that the order framing a charge affects a*



*person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be asked to face a trial.”*

58. Similarly, in **Ram Lakhan Singh v. the State of Uttar Pradesh** reported as **AIR 1977 SC 1936**, at paragraph no. 37, the Hon’ble Supreme Court has held as under:

*“37. It is true that no enmity or grudge is suggested against this witness, but we find that this witness was not even examined by the police nor was he cited in the charge-sheet. In a grave change like the present, it will not be proper to place reliance on a witness who never figured during the investigation and was not named in the charge-sheet. The accused who are entitled to know his earlier version to the police are naturally deprived of an opportunity of effective cross-examination and it will be difficult to give any credence to a statement which was given for the first time in Court after about year of the occurrence. We cannot, therefore, agree that the High Court was right in accepting the evidence of this witness as lending assurance to the testimony of other witnesses on the basis of which alone*



*perhaps the High Court felt unsafe to convict the accused.”*

59. Though, *stricto sensu*, passage of time may not be a fatal fetter to a criminal proceeding of the nature of the present case, but where such inordinate and unexplained delay in the accompanying facts and circumstances strongly indicates some oblique reason, such delay also would weigh with the Court in deciding the issue.

60. In the present case, the incident alleged is of 16.11.1991, plus the opposite party no. 2 after having given statement before the police during investigation on 17.11.1992, did not take any single step with regard to the case before any authority or Court. Thereafter, suddenly jolting to awaken from deep slumber after a gap of almost 16 years after the police submitting Final Report and more than five months after the Court accepting such Final Report upon examining the case diary along with the records thereof and not finding any material(s) against the petitioner, holding the offence(s) to be made out only against the co-accused Dilip Singh, Yogendra Yadav and Baudhu Yadav and issuing process against them, the opposite party no. 2 by filing such Protest-cum-Complaint Petition clearly has to demonstrate and prove with some degree



of certainty that his petition is *bona fide* and that the delay is on account of reasons beyond his control and not wilful and deliberate. In the present case, not even an attempt has been made to explain such inordinate and huge delay. Moreover, he did not have any *locus standi* not being the informant. Thus, in law, right from the date of the incident i.e. 16.11.1991, the opposite party no. 2 was aware that if he had anything to disclose independently in the matter, he was required to file an appropriate application before the police which was investigating the matter or before the Court below if the police were not taking notice of what he had to disclose. Further, he was also aware that he had no *locus standi* in the matter once the police submits Final Report, and he was duty-bound to take steps in accordance with law if he had real, genuine and *bona fide* grounds to come forward and help the Court in unearthing the truth. This has also not been done by the opposite party no. 2. Moreover, in the present case, the opposite party no. 2, who is the complainant and upon whose Protest-cum-Complaint Petition, cognizance has been taken by the Court below against the petitioner and co-accused Dular Chand Yadav has filed pleadings on oath that he had not authorized Mr. Dinu Kumar, learned counsel or his juniors to file any pleadings on his behalf



opposing the prayer of the petitioner and also bringing on record his deposition as well as that of Ramanand Singh and Kailu Mahto where before the Court of the ACJM, in their deposition under Section 164 of the Code in Pandarak PS Case No. 106 of 2009, they had told the Court that their allegation and deposition against the petitioner in the present case was at the behest of other persons and further that they were neither witnesses to the incident nor had any grievance against the petitioner. Significantly, such pleadings have neither been controverted nor withdrawn. As such, the Court has no hesitation to record a finding that the Protest-cum-Complaint Petition itself was *mala fide*, frivolous, mischievous, without any basis and in fact, totally false and fabricated. In this backdrop, the Court would record the decision of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102, categories have been enumerated where the Court under its inherent powers under Section 482 of the Code ought to interfere. The same reads as under:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers*



*under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR*



*do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

61. The present case, in the opinion of the Court, is covered under Category (7) of the aforesaid judgment in **Bhajan Lal** (*supra*) at paragraph no. 102.



62. Similarly, the Hon'ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 SCC 699 at paragraph no. 7, has held as under:

*“7. ....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.....”*

63. The Hon'ble Supreme Court in **State of Karnataka v. M. Devendrappa** reported as 2002 (3) SCC 89 while examining the ambit of Section 482 of the Code, at paragraphs no. 6 and 8, held as under:

*“6. Exercise of power under Section 482 of the Code in a case of this nature is the*



*exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle “quande lex aliquid aliqui concedit, concedere videtur et id sine quo res*



*ipsa, esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant*



*has alleged and whether any offence is made out even if the allegations are accepted in toto.*

xx xx xx xx

*8. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and*



*bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.....”*

64. From the discussions made hereinabove, the Court inescapably finds that the prosecution is *mala fide*, untenable and solely intended to harass the petitioner.

65. For reasons aforesaid, the application succeeds. The entire criminal proceeding emanating from Complaint Case No. 41(C) of 2009 arising out of Pandarak PS Case No. 131 of 1991, including the order dated 31.08.2009, pending in the Court of the ACJM, Barh, as far as it relates to the petitioner, stands quashed.

66. Pending Interlocutory Applications stand disposed off.

67. Registry will maintain a complete copy of the records of the present case [inclusive of all orders and this



judgement] with Cr. Misc. No. 14435 of 2009. Likewise, a complete copy of the records of Cr. Misc. No. 14435 of 2009 [inclusive of all previous and future order(s)] shall be maintained with Cr. Misc. No. 33116 of 2009.

(Ahsanuddin Amanullah, J.)

P. Kumar

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