

1. T.T. Antony Vs St. of T.N., (2001) 6 SCC 181 referring para-27
2. Babubhai Vs St. of Guj. , (2010) 12 SCC 254
3. Anju Chaudhary Vs St. of U.P. , (2013) 6 SCC 384
4. C. Muniappan Vs St. of T.N., (2010) 9 SCC 567
5. Fakhruddin Ahmad Vs St. of Uttaranchal , (2008) 17 SCC 157
6. M/S. Leo Meridian Infrastructure Vs C.B.I., (WP No.21487 of 2018)
7. St. of Jharkhand Vs Lalu Prasad Yadav , (2017) 8 SCC 1
8. Satender Kumar Antil Vs C.B.I.& Anr, Petition(s) for Special Leave to Appeal (Crl.) No(s).5191/2021

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri Vikas Vikram Singh, learned counsel for the petitioner and Sri Anurag Varma, learned Additional Government Advocate-I for the State.

2. In all the aforesaid petitions, the same prayer has been made by the same petitioner, therefore, these petitions are being decided together with the consent of learned counsel for the parties. Further, all the petitions are being decided together by a common judgment and **Case :-** U/S 482/378/407 No.-4542 of 2021 is being treated as a leading case/petition and the facts of the case have been taken from that petition.

3. For the convenience, the prayers of the aforesaid petitions are being reproduced here-in-below:-

"(i) By means of this petition i.e. Case :- U/S 482/378/407 No. - 4542 of 2021, the petitioner has prayed for quashing the Charge-sheet No.100-A of 2020 dated 26.04.2020, under Sections 147, 148, 149, 332, 336, 307, 353, 341, 427, 188 & 120-B I.P.C read with Section 3/4 of Public Property (prevention of Damage) Act, 1985 and Section 7 of Criminal Law (Amendment) Act, 1932 and order dated 05.08.2020 whereby cognizance of the said offences has been taken and for quashing the entire proceedings of Case No.8070 of 2020 (State of U.P. vs. Shadab and others) arising out of Case Crime No.490 of 2019, Police Station-Dargah Sharif, District-Bahraich, pending before the learned Additional Chief Judicial Magistrate, Bahraich.

(ii) By means of this petition i.e. Case :- U/S 482/378/407 No. - 4525 of 2021, the petitioner has prayed for quashing the Charge-sheet No.99-A of 2020 dated 25.04.2020, under Sections 147, 148, 149, 332, 353, 336, 395, 397, 341, 427, 307, 188 & 120-B I.P.C, read with 3/4 of Public Property (Prevention of Damage) Act, 1985 and Section 7 of Criminal Law (Amendment) Act, 1932 and order dated 26.11.2020 whereby the cognizance of the said offences has been taken and for quashing the entire proceedings of Case No.8556 of 2020 (State of U.P. vs. Siraj Ahmad and others) arising out of Case Crime No.490 of 2019, Police Station-Dargah Sharif, District-Bahraich, pending before the learned Additional Chief Judicial Magistrate, Bahraich.

(iii) By means of this petition i.e. Case :- U/S 482/378/407 No. - 4539 of 2021, the petitioner has prayed for quashing the Charge-sheet No.33-A of

2020 dated 25.04.2020, under Sections 120-B, 147, 148, 149, 332, 336, 353, 427, 34, 188 I.P.C. read with Section 3/4 of Public Property (Prevention of Damage) Act, 1985 and order dated 26.08.2020 whereby the cognizance of the said offences has been taken and for quashing the entire proceedings of Case No.8557 of 2020 (State of U.P. vs. Sonu and others), arising out of Case Crime No.492 of 2019, Police Station-Dargah Sharif, District-Bahraich, pending before the learned Additional Chief Judicial Magistrate, Bahraich."

4. Learned counsel for the petitioner has assailed 03 Charge-sheets bearing Charge-sheet No.100-A of 2020 dated 26.04.2020, Charge-sheet No.99-A of 2020 dated 25.04.2020 and Charge-sheet No.33-A of 2020 dated 25.04.2020 submitted against the same petitioner on 25/26.04.2020 under more or less the same sections for the incidence which took place on the same day in the short interval. More importantly, the present petitioner was not named in any of the First Information Reports (in short F.I.Rs.), but he has been implicated during investigation and charge-sheet has been filed invoking section 120-B I.P.C.

5. Learned counsel for the petitioner has submitted that since there is no evidence of prior meeting of mind of the present petitioner with other accused persons, therefore, the provisions of Section 120-B I.P.C. may not be invoked against him. So in the absence of Section 120-B I.P.C. no charge-sheet against the petitioner in other sections can be filed.

6. He has, however, also submitted that if the prosecution wants to prosecute the present petitioner in the aforesaid cases, all the aforesaid three charge-sheets could have been clubbed together and the second

charge-sheet and third charge-sheet in the same incidence may be treated as a part of the first charge-sheet. In other words, he has submitted that instead of trying the petitioner in three separate charge-sheets, which are impugned herein, the present petitioner may be tried in the first charge-sheet treating second and third charge-sheet as a part of first charge-sheet inasmuch as the alleged second and third occurrence were nothing but a fall out of the first occurrence. He has also submitted that since the incidence in question is of the same day and the accused persons are almost the same then a single charge-sheet could have been filed in all three crime cases, so that the petitioner who has been implicated subsequently invoking the provisions of Section 120-B I.P.C. has to face one trial in all the three crime cases and in that situation the prosecution would not suffer any inconvenience or prejudice and it would be also convenient for the petitioner to face a single trial. However, the learned counsel for the petitioner has reiterated that the petitioner has been falsely implicated in this case as he has not committed any offence as alleged.

7. The brief facts of the case are that on 20.12.2019, at about 22:23 hours an F.I.R. No.490 of 2019 (First F.I.R.) regarding the alleged incidence, which took place around 14:15 hours, has been lodged under Sections 147, 148, 149, 332, 336, 307, 353, 341, 427, 188 & 120-B I.P.C read with Section 3/4 of Public Property (prevention of Damage) Act, 1985 and Section 7 of Criminal Law (Amendment) Act, 1932, Police Station-Dargah Sharif, District-Bahraich, has been lodged.

8. It has been alleged in the F.I.R. that on 20.12.2019, around 14:15 hours, a Constable Sri Sumit Kumar Pal had

informed the complainant i.e. SSI- Sri Vijay Kumar Singh, Police Station-Dargah Sharif, District-Bahraich about the protest in front of Badi Takiya by the people after attending the Friday prayer (Jumme-ki-Namaj). It has been further alleged that the protesters were raising slogans against the Government for implementing CAA and NRC and about 100-150 unknown people were allegedly throwing the bricks and stones upon the police officials. Out of those persons, 14 individuals had been identified by the complainant.

9. The second F.I.R. bearing Case Crime No.491 of 2019 was lodged on 21.12.2019 at about 22:23 hours for the incidence which took place on 20.12.2019, at around 15:00 hours, under Sections 147, 148, 149, 332, 353, 336, 395, 397, 341, 427, 307, 188 & 120-B I.P.C, read with 3/4 of Public Property (Prevention of Damage) Act, 1985 and Section 7 of Criminal Law (Amendment) Act, 1932, Police Station-Dargah Sharif, District-Bahraich. In this FIR, the allegations are almost same only this much has been indicated that about 600-700 people have been gathered throwing bricks and stones upon the police officials and 11 individuals had been identified by the complainant i.e. SHO Sri Vinay Kumar Saroj, Police Station-Dargah Sharif, District-Bahraich.

10. The third F.I.R. was lodged on 21.12.2019 at about 00:16 hours bearing F.I.R. No.492 of 2019, under Sections 120-B, 147, 148, 149, 332, 336, 353, 427, 34, 188 I.P.C. read with Section 3/4 of Public Property (Prevention of Damage) Act, 1985, Police Station-Dargah Sharif, District-Bahraich.

11. The aforesaid third F.I.R. was lodged by the Constable Driver Sri Dileep Kumar Gautam, Police Station-Dargah Sharif, District-Bahraich, driver of Additional Superintendent of Police (City) (in short A.S.P.). As per allegation of this FIR, around 15:30 hours the complainant was present on West side of Chhawani Chauraha and in front of Kanha Restaurant the crowd of about 600-700 people came from Chandpura and some people came from Digiya-ki-Dargah road by throwing stones on the vehicle, due to which the A.S.P. moved forward along with his associate Constables. Due to that incidence, the vehicle of the A.S.P. got damaged and two Constables sustained injuries.

12. Learned counsel for the petitioner has submitted that the present petitioner is a Manager of the Committee looking after the day-to-day affairs of one Mosque situated at Dargah Sharif, Barabanki. Further, the present petitioner being a Manager of the said Mosque was extending full co-operation with the investigation and his statement has been recorded by the Investigating Officer, as copy of his statement has been annexed with this petition as Annexure No.8. Not only the above, the petitioner was co-operating with the District Administration and the State Government for ensuring peaceful marches and protest as he was regularly called for meeting at the office of the District Magistrate, Bahraich along with other Police Officers of the district.

13. As per Sri Vikas Vikram Singh, the petitioner was absolutely unaware as to what information has been collected by the Investigating Officer suggesting against the present petitioner regarding his

involvement in the incidence in question. However, the present petitioner has been implicated in the issue in question by the Investigating Officer invoking the provisions of Section 120-B I.P.C.

14. Learned counsel for the petitioner reiterates that no one can be implicated invoking the provisions of Section 120-B I.P.C. unless the Investigating Officer has got concrete proof of prior meeting of mind of the person with the other co-accused against whom the FIR has been lodged. Therefore, the implication of the petitioner in the incidence in question is apparently illegal and unwarranted and the learned Magistrate before taking cognizance of the aforesaid charge-sheet must have satisfied on the aforesaid legal necessity, but without being satisfied on such point, the Magistrate has taken cognizance against the present petitioner also.

15. Sri Singh has submitted that though the Magistrate has not taken cognizance of the charge-sheet against the petitioner properly, without careful perusal of the material available on record, on 05.08.2020 when the cognizance of the Charge-sheet No.100-A of 2020 dated 26.04.2020 has been taken, he should have not taken cognizance of the Charge-sheet No.33-A of 2020 dated 25.04.2020 on 26.08.2020 and the Charge-sheet No.99-A of 2020 dated 25.04.2020 on 26.11.2020, instead he must have treated the Charge-sheet No.33-A of 2020 and Charge Sheet No.99-A of 2020 as a part of the Charge-Sheet No.100-A of 2020 clubbing of the aforesaid charge-sheets together, holding trial pursuant to the aforesaid single charge-sheet.

16. Sri Singh has also submitted that the petitioner despite the fact that he has

been falsely implicated but would not avoid the trial and he shall be appearing before the learned court concerned to face the trial as he is fully confident that being a fully innocent he will get justice. However, in the same occurrence relating to the same cognizable offence neither 03 FIRs should have not been lodged nor 03 charge-sheets should have been filed. So as to strengthen the aforesaid contention Sri Singh has placed reliance upon the judgment of Hon'ble Apex Court rendered in re: **T.T. Antony vs. State of Tamil Nadu** reported in (2001) 6 SCC 181 referring para-27, which reads as under:-

"27..... However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173 (2) Cr.P.C. It would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173 (2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr.P.C. or under Article 226/227 of the Constitution."

17. Sri Singh has further submitted that in an identical circumstances, the Hon'ble Apex Court has interpreted the

'Test of Sameness'. He cited the decision of Hon'ble Apex Court in re: **Babubhai vs. State of Gujarat** reported in (2010) 12 SCC 254 referring para-21, which reads as under:-

"21....whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction.

The Supreme Court further held that if the answer to above question is in the affirmative, then the second FIR is liable to be quashed."

18. He has also cited the dictum of Hon'ble Apex Court rendered in re: **Anju Chaudhary vs. State of U.P.** reported in (2013) 6 SCC 384 referring para-22, which reads as under:-

"22.....The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed."

19. Sri Singh has submitted that it is admitted from bare perusal of the FIR that the date of incident is the same, all the FIRs have reference to the mob, however, only in third FIR the complainant/ Constable Driver does not make reference to the cause of agitation while in other two FIRs it has been clearly stated that the protesters were agitating against the implementation of CAA & NRC after attending Friday prayer (Jumme-ki-Namaj). The place of incidence in all the F.I.Rs. is in the vicinity of 'Badi Takiya' where the Mosque is situated. Thus, for one incident which took place on the same day in the proximity of time, three different FIRs should have not been lodged. The FIR No.491 of 2019 and FIR No.492 of 2019 are mere statements of S.H.O. and Constable Driver of the same Police Station regarding the protests taking place in the vicinity of 'Badi Takiya', hence, the subsequent two charge-sheets should have been clubbed in the first charge-sheet.

20. Learned counsel for the petitioner has cited the dictum of Hon'ble Apex Court rendered in re: **C. Muniappan vs. State of Tamil Nadu** reported in (2010) 9 SCC 567 referring para-37, which reads as under:-

"37.....There was no wrong in clubbing together of the two crimes. Keeping in view the totality of circumstances and evidence, the second occurrence was nothing but a fall out of the first occurrence. Merely because two separate complaints had been lodged, did not mean that they could not be clubbed together and one charge-sheet could not be filed."

21. Sri Vikas Vikram Singh has also referred the Circular No.DG-21/2016 dated

26.04.2016 issued by the Director General of Police, U.P. prohibiting the **depricable** practice of lodging of multiple FIRs with regard to one incident. The aforesaid circular also states at serial No.4 that the investigation of other subsequent FIRs shall be recorded in one case diary. Therefore, Sri Singh has submitted that in the present case the aforesaid circular have been flouted by the Investigating Officer for no cogent reasons.

22. Sri Vikas Vikram Singh, learned counsel for the petitioner, has reiterated that the summoning order reflects absolutely non-application of mind The Apex Court in re: *Fakhruddin Ahmad vs. State of Uttaranchal* reported in (2008) 17 SCC 157 has held that it is incumbent upon the Magistrate that before taking cognizance of an offence it is imperative that he must have taken notice of accusation and applied his mind to the allegations made in the complaint or in the police report or in the information received from the sources other than the police report, as the case may be, and the material filed therewith. It is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender. In the present case, it is prima-facie clear that the Magistrate has not applied his mind judicially and has taken cognizance mechanically without going through the material available on record carefully.

23. Therefore, Sri Singh has submitted that this Court may interfere with the impugned charge-sheets or the subsequent cognizance orders dated

26.08.2018 for Charge-sheet No.33-A of 2020 and 26.11.2020 for Charge-sheet No.99-A of 2020, (both Charge-sheets are dated 25.04.2020), may be quashed and appropriate direction may be issued for clubbing the second and third charge-sheet with the first charge-sheet i.e. Charge-sheet No.100-A of 2020 dated 26.04.2020 and the trial in question be conducted pursuant to the Charge-sheet No.100-A of 2020 in the interest of justice as the petitioner is ready to appear before the learned court below pursuant to the summoning order dated 05.08.2020.

24. Per contra, Sri Anurag Varma, learned Additional Government Advocate for the State has opposed the aforesaid prayer of learned counsel for the petitioner referring Section 220 Cr.P.C. by submitting that the situation in question has been dealt with by the aforesaid statutory provision which provides that the present petitioner will have to face one trial for all the three charge-sheets. It would be apt to reproduce Section 220 (1) Cr.P.C. as under:-

"Section 220 in The Code Of Criminal Procedure, 1973.

220. Trial for more than one offence. (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

25. Sri Anurag Varma has cited one decision of Telangana High Court rendered in re: *M/S. Leo Meridian Infrastructure.... vs. Central Bureau of Investigation (WP No.21487 of 2018)*, wherein the same prayer was made by the petitioner of that petition to the effect that the registration of multiple FIRs on the basis of allegations

which are essentially the same in all the complaints is nothing but abuse of process of law. Therefore, all the complaints be clubbed in each one. The Telangana High Court has held that since the petitioner of that petition and its Promoters of company availed loan facilities from consortium of banks and the translations are different, therefore, all the complaints may not be clubbed together.

26. He has also cited the decision of Hon'ble Apex Court rendered in re: ***State of Jharkhand vs. Lalu Prasad Yadav*** reported in (2017) 8 SCC 1, whereby the Hon'ble Apex Court has explained the term of 'same offence' which is different from 'same kind of offence' and has held that if 'same kind of offence' was committed multiple times then each time it constitutes a separate offence and therefore accused can be tried in different trials.

27. On the basis of the statutory prescription under Section 220 Cr.P.C. and the aforesaid judgments, Sri Anurag Varma has submitted that since the present petitioner has not committed the same offence but of same kind of offence, therefore, in view of the dictum of Hon'ble Apex Court in re: ***Lalu Prasad Yadav*** (*supra*), he will have to be tried for all the charge-sheets.

28. In rejoinder arguments Sri Vikas Vikram Singh has submitted that so far as the judgment of Telangana High Court rendered in re: ***M/S. Leo Meridian Infrastructure*** (*supra*) is concerned, such decision would not be binding of this Court. Further, the facts and circumstances of the present case are different to the case of ***M/S. Leo Meridian Infrastructure*** (*supra*) inasmuch as in the

case before Telangana High Court admittedly the transactions from consortium banks were different and loan agreement and amount lent by the banks were different, though they constituted as a consortium, therefore, the multiple complaints were lodged but in the present case the cause of incidence, date of incidence, place of incidence and sections under which the charge-sheet has been filed are similar.

29. So far as the dictum of Hon'ble Apex Court in re: ***Lalu Prasad Yadav*** (*supra*) is concerned, the facts and circumstances of ***Lalu Prasad Yadav*** (*supra*) are absolutely different from the present case inasmuch as in the case of ***Lalu Prasad Yadav*** (*supra*) the same kind of offence had allegedly been committed on different place and different time, therefore, the Hon'ble Apex Court has held that for separate offence the accused will have to face different trials. The case of ***Lalu Prasad Yadav*** (*supra*) has not be dealt with under Section 220 (1) Cr.P.C. whereas in the present case there is no quarrel by the prosecution that petitioner can be tried in one trial but for different charge-sheets. Therefore, the cases so cited by the learned Additional Government Advocate, as submitted by Sri Singh, would not be applicable in the present case.

30. Having heard learned counsel for the parties and having perused the material available on record as well as the decisions so cited, I am also of the considered opinion that the principle regarding '*Test of Sameness*' should be followed by the Investigating Agency.

31. The Police Department is also conscious about the aforesaid proposition, therefore, the Director General of Police

issued a detailed Circular NO.DG-21/2016 dated 26.04.2016 prohibiting the deprecable practice of lodging of multiple F.I.Rs with regard to one incident. It would be apt to reproduce para-4 of the aforesaid Circular, which is as under:-

"4. यदि प्रकरण में Multiple FIR दर्ज है परन्तु cross FIR दर्ज नहीं है, तो बाद में दर्ज समस्त FIRs को 162 सी0आर0पी0सी0 के अन्तर्गत कार्यवाही मानते हुए प्रथम थर् की विवेचना में सम्मिलित किया जाए। ऐसी सभी FIRs के सम्बन्ध में एक ही केस डायरी किता की जाए जिसमें सभी FIRs के तथ्यों का समावेश करके विवेचना की जाए।

इस सन्दर्भ में माननीय उच्चतम् न्यायालय द्वारा T.T. Antony Vs. State of Kerala & Ors. (2001) 6 SCC 181 में दिये गये निर्णय का उद्धरण आपके मार्गदर्शन हेतु निम्नांकित है—

"This court dealt with a case wherein in respect of the same cognizable offence and same occurrence two FIRs had been lodged and the court held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. The investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer Incharge under Section 158 of the Code of Criminal Procedure, 1973 (here-in-after called the Cr.P.C.) and all other subsequent information would be covered by Section 162 Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence report in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the Investigating Officer has to file one or more reports under Section 173 Cr.P.C.

32. In the present case, there are three FIRs, first bearing Case Crime No.490 of 2019, second bearing Case Crime No.491 of 2019 and third is bearing Case Crime No.492 of 2019. In all the aforesaid FIRs the date of incidence is 20.12.2019. Time of incidence in all the three FIRs is 4:15 P.M., 15:00 P.M. and 15:30 P.M. respectively. In all the three FIRs, the protesters were opposing the implementation of CAA and NRC. In all the three FIRs, the sections of I.P.C. are almost same except one or two charges and in first two FIRs Section 3/4 of Act, 1985 and Section 7 of Act, 1932 are involved. However, in third FIR Section 7 of Act, 1932 is not involved. In all the three FIRs, the complainants are Officers/ Officials of Police Station-Dargah Sharif, District-Bahraich.

33. Therefore, 'Test of Sameness' which says that where there is proximity of time, or place or unity of purposes and design or continuity of action in respect of series of acts, the safe inference may be drawn that they form part of the same transactions, therefore, the aforesaid test appears to have been applied in the present case.

34. In view of the above, I find it appropriate that the direction may be issued for clubbing all the three Charge-sheets together inasmuch as the occurrence indicated in the second and third FIR is prima-facie appearing as a fall out of the first occurrence indicated in the first FIR. Therefore, I am in agreement with the dictum of Hon'ble Apex Court in re: **C. Muniappan** (*supra*) to the effect that merely because three separate FIRs have been filed do not mean that they could not be clubbed together and one charge-sheet could not be filed.

35. In the present case, Investigating Officer should have clubbed all the FIRs and should have filed one charge-sheet. Such act of clubbing would have been in conformity with the Circular No.DG-21/2016 dated 26.04.2016, which has been issued by the Director General of Police, Uttar Pradesh in consonance with the direction of Hon'ble Apex Court issued in re: **T.T. Anthony** (*supra*).

36. So far as the manner in which the learned Magistrate has taken cognizance in all the three impugned charge-sheets is concerned, I must observe that while taking cognizance it appears that he has not applied his judicious mind and has not appreciated and perused the material available on record, particularly, not examined the complicity and involvement of the present petitioner who has been implicated in the present case invoking Section 120-B I.P.C. Even if the Magistrate has appreciated and perused the material available on record while taking cognizance of the FIR dated 05.08.2020, at least while taking cognizance of second and third charge-sheet, the Magistrate must have asked the Investigating Agency as to why after carrying out separate investigation in all the three, more or less similar, incidents, three separate charge-sheets have been filed therein. The Magistrate must have asked as to why all the three charge-sheets have not been clubbed together for the purposes of trial. The learned Magistrate must have seen that what prejudice would be caused to the prosecution if the single charge-sheet is filed clubbing all the charge-sheets together inasmuch as Section 220 Cr.P.C. itself authorizes that in a similar situation the accused person should be tried in one trial. Therefore, the guidelines of Hon'ble Apex Court in re:**Fakhruddin Ahmad** (*supra*) must have been followed by

the learned Magistrate while taking cognizance of the charge-sheet.

37. Therefore, without interfering with the impugned charge-sheets, I hereby quash the cognizance order dated 26.08.2020 whereby the cognizance has been taken of the Charge-sheet No.33-A of 2020 dated 25.04.2020 and the cognizance order dated 26.11.2020 whereby the cognizance has been taken of the Charge-sheet No.99-A of 2020 dated 25.04.2020.

38. I am not interfering with the cognizance order dated 05.08.2020 whereby the cognizance of Charge-sheet No.100-A of 2020 dated 26.04.2020 has been taken. Pursuance to the cognizance order dated 05.08.2020, it shall be deemed that the learned court below has taken cognizance of the Charge-sheet No.33-A of 2020 dated 25.04.2020 and the Charge-sheet No.99-A of 2020 dated 25.04.2020, as both the charge-sheets have been filed one day prior to the Charge-sheet No.100-A of 2020 dated 26.04.2020.

39. The Charge-sheet No.33-A of 2020 dated 25.04.2020 and Charge-sheet No.99-A of 2020 dated 25.04.2020 shall be treated as part of Charge-sheet No.100-A of 2020 dated 26.04.2020.

40. The petitioner is directed to appear/ surrender before the learned court below pursuant to cognizance order dated 05.08.2020 within a period of three weeks from today and may file bail application and if such bail application is filed within the aforesaid stipulated time, the same may be decided expeditiously, preferably on the same day in the light of dictum of the Apex Court in re; **Satender Kumar Antil Vs.**

Central Bureau of Investigation & Anr, Petition(s) for Special Leave to Appeal (Crl.) No(s).5191/2021.

41. In view of the aforesaid terms, all the three petitions are *disposed of finally*.

(2022)01ILR A254

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 20.12.2021

BEFORE

THE HON'BLE RAJESH SINGH CHAUHAN, J.

Application U/S 482/378/407 No. 5475 of 2021

Praveen Kumar Singh @ Praveen Singh & Ors.

...Applicants

Versus

State of U.P. & Ors.

...Opposite Parties

Counsel for the Applicants:

Agendra Sinha, S.D. Singh

Counsel for the Opposite Parties:

G.A.

(A) Criminal Law - The Code of Criminal Procedure, 1973 - Section 482 - Inherent power - Indian Penal Code, 1860 - Sections 147, 148, 354, 452, 323, 504 & 506, The Protection of Children From Sexual Offences Act, 2012 - Section 7/8, The Scheduled Castes/Scheduled Tribes (Prevention from Atrocities) Act, 1989 - Sections 3 (i) (r), 3 (i) (s), 3 (ii) (v) - if any accused person has not been arrested during investigation and has cooperated with the investigation, there is no need to arrest him after filing charge sheet, particularly, if the nature of offences is not so serious - arrest is not mandatory in all cases and if the accused person is cooperating with investigation, there is no need to arrest. (Para - 10)

Quashing of Charge-sheet, summoning order, non-bailable warrant including the entire proceeding - applicants/ petitioners have not been arrested during investigation - status of accused described - police granted bail - fully co-operated with the investigation - criminal case being lodged against the petitioners as a counter blast being a cross case.(Para - 4)

HELD:-The courts have to be extremely careful before issuing non-bailable warrants. In the order where the bailable/ non-bailable warrant or proclamation under Section 82 Cr.P.C. is issued, the court must indicate that despite the service of summons or bailable warrant or non-bailable warrant the accused has not appeared. In the absence of such indication the coercive orders, would be treated as if they failed the test of statutory prescriptions prescribed under Sections 64 & 65 of the Cr.P.C. . (Para - 13)

Petition disposed of finally. (E-7)

List of Cases cited:-

1. Inder Mohan Goswami & anr. Vs St. of Uttaranchal & ors. , (2007) 12 SCC 1
2. Satender Kumar Antil Vs C.B.I. & Anr, Petition(s) for Special Leave to Appeal (Crl.) No(s).5191/2021
3. Aman Preet Singh Vs C.B.I. through Director, Criminal Appeal No.929 of 2021
4. Court on its own Motion Vs C.B.I., (2004) 72 DRJ 629
5. Siddharth Vs The St. of U.P.& anr., Criminal Appeal No.838 of 2021 (arising out of SLP (Crl.) No.5442/2021)
6. Joginder Kumar Vs St. of U.P. & ors, (1994) 4 SCC 260

(Delivered by Hon'ble Rajesh Singh Chauhan, J.)

1. Heard Sri S.D. Singh, learned counsel for the petitioners and Sri Ran