

accordance with Sections 207 and 208 CrPC.

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.”

9. The aforesaid draft Rule 4 merely provides for supplying statements of witness recorded under Sections 161 and 164 CrPC and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

10. An order refusing sanction for prosecution of a co-accused person does not fall in any of the categories of the documents mentioned by the Hon’ble Supreme Court while expressing the aforesaid opinion in **Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re** (Supra). It does not fall in any of the categories of documents mentioned in the Draft Rule 4 relied upon by the learned Counsel for the revisionist. Therefore, the revisionist has no right to seek a direction for production of the order passed by the Secretary, National Informatics Centre refusing sanction for prosecution of a co-accused person under Section 91 Cr.P.C.

11. In view of the foregoing discussion, I am of the considered view that the order dated 01.06.2024 passed by the Special Judge (Prevention of Corruption Act) C.B.I. Court No.3, Lucknow does not suffer from any illegality, warranting interference by this court in exercise of its revisional

jurisdiction. The revision lacks merit and the same is accordingly dismissed.

(2025) 4 ILRA 895

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 10.04.2025

BEFORE

**THE HON’BLE MAHESH CHANDRA
TRIPATHI, J.**

THE HON’BLE PRASHANT KUMAR, J.

Crl. Misc. W.P. No. 2611 of 2020

Usman Ali

...Petitioner

Versus

State of U.P. & Ors.

...Opp. Parties

Counsel for the Petitioner:

Md. Aman Khan

Counsel for the Opp. Parties:

A.S.G.I., G.A., Manish Singh, Prahlad Kumar Khare, Sanjay Kumar Yadav, Sikandar Khan, Sushma Singh, Vineet Sankalp

Criminal Law – Constitution of India, 1950 – Section 226 & 243-R(b) - Indian Penal Code, 1860 - Sections 34, 120-B, 147, 148, 149, 302 & 506 - Criminal Procedure Code, 1973 – Sections – 82, 173, 173(2), 173(8), 311, 319 & 482 - National Investigation Agency Act, 2008 - Sections 6, 6(2) & 6(5) - Criminal Law Amendment Act, 1932- Section 7 - Unlawful Activities (Prevention) Act, 1967 - SectionS 10(a)(i) & 15(1) - writ petition - seeks multiple reliefs - primarily challenging the impugned U.P. Government’s order transferring the investigation of Case from local police to the CBCID without considering the petitioner’s demand for invoking the UAPA and further prayed to for transferring the case to a central agency like the NIA or CBI - FIR - offense of murder and rioting – allegations are that petitioner’s brother was murdered – the competent authority passed an order whereby investigation of the case was transferred from

the Local police to CBCID – challenged in writ petition – disposed of – with direction to the St. Govt. UP to taken fresh decision in accordance with law – matter reached finality – in compliance, UP Government passed impugned order - now challenged by the petitioner again in the current proceedings – court while discussing the various issue of like scope of Article 226, transfer of Investigation, further Investigation Permissibility, Applicability of UAPA, Criminal Procedure Powers, finds that, - such transfers should only occur in rare, exceptional cases where the St. investigation lacks credibility or public confidence - The Court emphasized the adequacy of existing legal remedies under the Cr.P.C., including powers under Sections 311 and 319, allowing trial courts to summon or recall witnesses and proceed against uncharged individuals if strong evidence emerges - Finding no compelling grounds justifying interference or transfer at this stage, and to avoid prejudicing the ongoing trial, the Court declined to exercise its jurisdiction under Article 226 and dismissed the writ petition – held that, (i) the power of transferring an investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind – and (ii) available procedural safeguards under Cr.P.C. (Sections 311 & 319) were adequate - and therefore declined to intervene in the matter – hence, the writ petition is dismissed to avoid prejudicing the ongoing trial – the trial court is at liberty to proceed in accordance with law. (Para - 35, 38, 39, 40, 41)

Writ Petition Dismissed. (E-11)

List of referred Cases: -

1. Mohanlal Shamji Soni Vs U.O.I.- 1991 (1) Crimes 818 (SC),
2. Heera Lal Vs St. of M.P. - 1997 (2) Crimes 634 (MP),
3. Sukhpal Singh Khaira Vs St. of Pun. - (2023) 1 SCC 289,

4. Ramesh Chandra Srivastava Vs St. of U.P.- (2021) 12 SCC 608,

5. St. of West Bengal & ors.Vs Committee for Protection of Democratic Rights, West Bengal & ors.– 2010 (3) SCC 571,

6. Vinay Tyagi Vs Irshad Ali - (2013) 5 SCC 762,

7. Bhagwant Singh Vs Commr. of Police - (1985) 2 SCC 537,

8. Rubabbuddin Sheikh Vs St. of Guj. & ors.- (2010) 2 SCC 200,

9. Kabir Shankar Bose Vs St. of W.B. & ors.– 2024 SCC Online SC 3592,

10. K. VS Rajendran Vs Superintendent of Police CBCID South John Chennai & ors.- 2013 AIR SC (Criminal) 2103,

11. K. Vadivel Vs K. Shanti & ors.- 2014 AIR SC 5064,

12. Arup Bhuyan Vs St. of Assam & anr.- 2023 (8) SCC 745,

13. Dharam Pal Vs St. of Har. & ors.- 2016 (4) SCC 160),

14. Rampal Gautam Vs the St. & another – 2025 LiveLaw (SC) 164,

15. Hasanbhai Valibhai Qureshi Vs St. of Guj. & ors.- 10. (2004) 5 SCC 347,

16. Smt. Vandana Srivastava Vs St. of U.P. & ors.- Criminal Misc. Writ Petition No.6973 of 2014 – decided on Dt. 23.04.2019.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J. & Hon'ble Prashant Kumar, J.)

1. Heard Shri Rakesh Pande, learned Senior Advocate assisted by Mohd. Aman Khan, learned counsel for the petitioner and Shri Paritosh Malviya, learned AGA-I

alongwith Shri Sanjay Kumar Singh, learned AGA for the State-respondents.

2. The instant writ petition is preferred under Article 226 of Constitution of India seeking following reliefs:-

“a. To call for the records from the respondents.

b. To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.06.2019 (Vide Annexure No.1 of this Writ Petition) (Letter No.12 C.I.D./6-Pu-11-19-387M/2018) passed by the Government of U.P. through its Principal Secretary Home, Police Anubhag-11, Home Department U.P. whereby it has transferred the investigation of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. from the local police of Police Station Chopan, District Sonbhadra to C.B.C.I.D. and has not passed any order relating to the prayer of the petitioner for adding the offences under the Unlawful Activity Prevention Act, 1967 and for taking necessary actions under Section 6 of the National Investigation Agency Act, 2008 i.e. submission of report to the Central Govt. as contemplated under Section 6 (2) of the National Investigation Agency Act, 2008 so that Central Govt. may take a decision as contemplated under Section 6 (3) of the National Investigation Agency Act, 2008.

c. To issue a writ in the nature of mandamus directing/commanding the investigation of C.B. Case No.93 of 2019, Sector Varanasi, which arises out of aforesaid Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan,

District Sonbhadra, U.P. to be transferred from C.B.C.I.D. to agency of Central Govt. i.e. the National Investigation Agency or the Central Bureau of Investigation.

d. To issue a writ in the nature of mandamus commanding the Union of India, Ministry of Home Affairs to take a decision on the representation dated 12.07.2019 (vide Annexure No.33) on behalf of the petitioner for taking action under Section 6 (5) of the National Investigation Agency Act, 2008.

e. To ensure fair, impartial, prompt and timely investigation of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. which is presently being investigated by the C.B.C.I.D. Sector Varanasi as C.B. Case No.93 of 2019 Sector Varanasi by monitoring the investigation of the aforesaid Case Crime No.238 of 2018 which is presently being investigated by the C.B.C.I.D. Sector Varanasi as C.B. Case No.93 of 2019 Sector Varanasi and to direct penal and disciplinary action against the investigating officers for lapses and shortcomings in investigation of aforesaid Case Crime No.238 of 2018 presently C.B. Case No.93 of 2019 Sector Varanasi.

f. To ensure that petitioner is not pressurized in pursuing the Sessions Trial No.18/19 of 2019 arising out of Case Crime No.238 of 2018 under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, as well as pursuing and participating in the further investigation of the aforesaid Case Crime No.238 of 2018 on account of threat and danger of life and person of the counsel of the petitioner who is representing the petitioner in the Sessions trial as well as in the proceedings before the Chief Judicial

Court Sonbhadra and making representations on behalf of the petitioner to the investigating agencies and other authorities for fair and impartial investigation regarding which the petitioner has complained to the police by lodging first information report i.e. Case Crime No.479 of 2019 under Section 506 IPC which has been registered at Police Station Robertsganj, District Sonbhadra (vide Annexure No.32).

g. To direct the respondents to arrest the accused who were named in the first information report of Case Crime No.238 of 2018, under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra and other accused namely Sarvendra Mishra @ Shivendra Mishra whose complicity surfaced in the course of investigation and is figuring as an wanted accused in the investigating of Case Crime No.238 of 2018, under Sections 147, 148, 149, 302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P. (C.B. Case No.93 of 2019 C.B.C.I.D. Sector Varanasi) and further direct the respondents for compliance of the non-bailable warrants for arrest which had been issued by the Court on 12.12.2018 and orders against Rakesh Jaiswal and Ravi Jalan under Section 82 Cr.P.C. which had been issued by the learned CJM Sonbhadra on 22.12.2018 (vide Annexure No.15) and for the conclusion of the investigation of Case Crime No.19 of 2019 under Section 174-A, Police Station Chopan, District Sonbhadra for non-appearance of the accused in pursuance of proclamation u/s 82 Cr.P.C. which had been issued in respect of aforesaid Case Crime No.238 of 2018 under Sections 147, 148, 149,

302, 120B, 34 IPC and Section 7 of Criminal Law Amendment Act, Police Station Chopan, District Sonbhadra, U.P.

h. To issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

I. To award the cost of petition to the petitioner."

FACTUAL MATRIX OF THE CASE

3. The real brother of the petitioner namely Imtiyaz Ahmad, who was sitting Chairman of the Town Area Chopan, District Sonbhadra, was murdered in the morning of 25.10.2018. The incident was immediately reported to the concerned police station, whereupon First Information Report¹ dated 25.10.2018 was registered as Case Crime No.238 of 2018 under Sections 147, 148, 302, 120-B of Indian Penal Code² and Section 7 of Criminal Law Amendment Act, 1932, Police Station Chopan, District Sonbhadra against Rakesh Jaiswal, Ravi Jalan and four unknown shooters. One assailant/accused Kashmir Paswan @ Rauket was arrested by the police from the spot with prohibited 9mm Carbine and its cartridges. The matter was investigated by the police and during investigation Sections 149 and 34 IPC were added. Six accused persons including Kashmir Paswan were arrested by the police.

4. It is also reflected from the record that the named accused Rakesh Jaiswal approached to this Court by filing Criminal Misc. Writ Petition No.31379 of 2018 for quashing the FIR dated 25.10.2018, which was dismissed by the

Division Bench vide order dated 01.11.2018 with following observations:-

“Heard Shri Dilip Kumar, learned counsel assisted by Shri Kartikeya Saran, learned counsel for the petitioner, Shri Mohd. Aman Khan, Shri Rakesh Prasad and Shri Tushar Kant, learned counsel for the respondent No. 4 and the learned A.G.A. for the State-respondents.

This petition has been filed by the petitioner with a prayer to quash the F.I.R. in Case Crime No. 238 of 2018, under sections 147, 148, 302, 120-B IPC and 7 Criminal Law Amendment Act, 1932, PS Chopan, District Sonbhadra.

It has been submitted by the learned counsel for the petitioner that the petitioner along with co-accused Ravi Jalan has been nominated as accused on the basis of suspicion expressed by the deceased before his death. The deceased suspected that the petitioner may have conspired to cause his death. The plea of alibi has also been argued by the learned counsel for the petitioner. It is further submitted by the learned counsel for the petitioner that the petitioner was not found at the place of incident. On the date of occurrence, he went to Delhi to attend NGT meet, hence, since at this stage there is no credible evidence on record against the petitioner, the arrest of the petitioner may be stayed till credible evidence is collected and hence, the impugned FIR is liable to be quashed.

Per contra Shri Mohd Aman Khan, learned counsel for the respondent No. 4 has submitted that the petitioner as well as co-accused named in the FIR have actively participated in the commission of crime. The post-mortem report indicates that two fire arm injuries were found on the body of the deceased and the petitioner is not entitled to protection

with regard to which prayer has been made in the instant writ petition and hence, the impugned FIR is not liable to be quashed.

From the perusal of the F.I.R., prima facie it cannot be said that no cognizable offence is made out. Hence, no ground exists for quashing of the F.I.R. or staying the arrest of the petitioners.

The writ petition is, accordingly, dismissed.

However, It is provided that in case, the petitioner appears before the court concerned within three weeks from today and applies for bail, the same shall be dealt with in accordance with law expeditiously by the courts below.”

5. Similarly, another named accused Ravi Jalan preferred Criminal Misc. Writ Petition No.962 of 2019 and the same was disposed of by an order dated 17.01.2019. The order is reproduced as under:-

“Heard Sri I.K. Chaturvedi, learned counsel for the petitioner, Sri Purshottam Maurya, learned A.G.A. for the respondent nos. 1 to 3 and Sri Anil Tiwari and Sri Rakesh Pande, learned counsels appearing for the respondent no.4.

This writ petition has been filed by the petitioner seeking quashment of F.I.R. dated 25.10.2018 in respect of Crime No. 0238 of 2018 for the offence under Sections 120-B, 302, 147, 148, 149, 34 of I.P.C. and 7 Criminal Law Amendment, P.S. Chopan, District Sonbhadra.

Learned counsel for the petitioner after arguing for some time wants to withdraw this writ petition with liberty to file regular bail application

before the trial court. He further submits that the trial court be directed to decide his regular bail application on the same day or at least by the next date.

Counsels appearing for the complainant and State counsel have no objection insofar as withdrawal of the petition is concerned. They however, submit that discretion be given to the trial court to decide the bail application in accordance with law considering all the aspects of the matter.

In view of above, petitioner is permitted to withdraw this writ petition with the aforesaid liberty.

Needless to state that in the eventuality of filing any regular bail application by the petitioner before the competent court, the competent court shall decide the same objectively in accordance with law as expeditiously as possible considering all the aspects of the case.

The petition is, accordingly, disposed of.

It is made clear that this Court has not expressed any opinion on the merits of the case and the competent court shall be at liberty to decide the bail application strictly in accordance with law.”

6. On 12.12.2018 the Chief Judicial Magistrate³, Sonbhadra issued Non-Bailable Warrants⁴ against accused Ravi Jalan, Rakesh Jaiswal, Rinku Bhardwaj, Suraj Paswan, Akhilesh Thakur, Santosh Paswan and Shashi Kumar Chandrawanshi. As there was non-compliance of the NBWs, the FIR under Section 174-A IPC was also lodged on 30.01.2019, registered as Case Crime No.0019 of 2019 at Police Station Chopan, District Sonbhadra. Thereafter the CJM initiated proceedings under Section 82 of Cr.P.C. against the named accused Rakesh Jaiswal, Ravi Jalan and other accused and declared them as

absconders vide order dated 22.12.2018. The co-accused namely Suraj Paswan and Rinku Bhardwaj were arrested by the Special Task Force⁵, Varanasi Unit, U.P. from Kolkata, West Bengal on 27.12.2018.

7. It is alleged that when the named accused failed in their endeavour to get protection order from this Court, they manipulated with the administration for transfer of investigation, at the stage when coercive steps were taken to secure their arrest and the Competent Authority had passed an order dated 22.02.2019, whereby investigation of the Case Crime No.238 of 2018 was transferred from the local police to CBCID. The said order was challenged by the petitioner in Criminal Misc. Writ Petition No.6926 of 2019 by claiming that the order of transfer was passed in violation of the guidelines provided for consideration of transfer requests and the same was also with malafide intention. The said relief was pressed in the light of the guidelines provided by the Division Bench in **Smt. Vandana Srivastava vs. State of U.P. and others**⁶. The decision was also challenged on the ground that the guidelines, inter alia, provide that ordinarily no order of transfer of investigation should be on application made by the accused (in the instant matter, the wife of one of the accused had made an application); that every attempt should be there to first ensure that the investigation is done by the concerned police station/authority in a fair and diligent manner; that before passing an order of transfer of investigation, a report from the Investigating Officer qua the status of the investigation and order, if any, of the High Court, in respect of the case must be obtained; that if it is found that transfer of investigation is necessary, then the order must be supported by cogent reasons with reference to the material available with the

authority transferring the investigation; and that, if necessary and permissible, an opportunity should be afforded to the informant before passing an order of transfer of investigation. In the said writ petition, the petitioner had also prayed for a direction to incorporate penal Sections and to entrust the investigation to the National Investigating Agency⁷.

8. In the said writ petition, the Division Bench had opined that the order of transfer of investigation was a non-speaking order and it did not disclose reasons for the transfer, though it contained that the same had been made keeping in mind the facts stated in the undated letter of Smt. Arti Jaiswal, wife of one of the accused persons, who had submitted request for transfer. After hearing learned counsel for the parties, the Division Bench had partly allowed the writ petition on 23.04.2019. For ready reference, the operative portion of the order is reproduced herein below:-

“Having considered the rival submissions, upon perusal of the record, and the reasons recorded above, we are of the firm view that the order of transfer of investigation, which has been passed by the State Government, cannot be sustained and, therefore, it must go, though the State Government must be given opportunity to pass a fresh order.

Under the circumstances, we deem it appropriate to partly allow the petition. The order dated 22.02.2019 (Annexure No.1 to the writ petition) is quashed. A direction is issued to the Principal Secretary (Home), Government of U.P., Lucknow to have a fresh look at the request of the respondent no.10, as also of the petitioner, if any, for transfer of investigation of the matter and to take fresh

decision in accordance with law after calling for comments from the concerned police authorities of the district concerned on the grounds on which the State proposes to pass an order. The aforesaid exercise shall be completed, preferably, within a period of six weeks from the date a certified copy of this order is placed before it.

The petition stands partly allowed. There is no order as to costs.”

9. The record further reflects that none of the parties have assailed the order dated 23.04.2019 and the same has attained finality. The wives of the named accused Mrs. Arti Jaiswal, wife of Rakesh Jaiswal and Mrs. Meera Jalan, wife of Ravi Jalan moved Misc. Application Nos.48 of 2019 and 49 of 2019 in the Court of CJM on 25.05.2019 and learned CJM vide order dated 25.05.2019 had stayed the investigation of Case Crime No.238 of 2018. Pursuant to the said order dated 23.04.2019, the Special Secretary, Department of Home (Police), Anubhag-11, Govt. of U.P. Lucknow sent a letter dated 30.05.2019 to the Superintendent of Police, Sonbhadra and sought a report in respect of transfer of investigation of the present case. In response thereof, the Superintendent of Police, Sonbhadra submitted his report on 07.06.2019. Finally, the Principal Secretary, Department of Home, Government of U.P. passed an order on 26.06.2019 transferring the investigation of the instant case from Police Station Chopan, District Sonbhadra to CBCID, which is impugned in the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER

10. Sri Rakesh Pande, learned Senior Advocate appearing on behalf of the

petitioner vehemently submitted that the petitioner is real brother of the deceased, who was murdered in the broad day light on 25.10.2018 and the persons belonging to the banned extremists organization i.e. Jharkhand Jan Mukti Parishad⁸ were involved in the murder. The said murder was also done at the instance and conspiracy hatched by the named accused namely Rakesh Jaiswal and Ravi Jalan. The said claim is also fortified on the ground that one assailant/accused Kashmir Paswan @ Rauket was arrested from the spot with prohibited 9mm Carbine and he was an Area Commander of banned extremist organization JJMP. The matter was investigated by the police and six accused persons including Kashmir Paswan @ Rauket were arrested by the police.

11. Learned Senior Advocate submitted that the investigation, which was transferred to CBCID, was infact on the dictate of the two accused persons namely Rakesh Jaiswal and Ravi Jalan. They were having 'say' in the Government and in most arbitrary manner, the investigation of the said case was transferred to CBCID. He submitted that the instant matter is a fit case, wherein the investigation is to be conducted by an independent central agency i.e. CBI/NIA. The investigating officer of CBCID in a hasty manner filed a police report under Section 173 (2) Cr.P.C. before the Court of CJM on 29.02.2020, wherein he submitted chargesheet against eight persons and exonerated the named accused persons Rakesh Jaiswal and Ravi Jalan. The CJM had also taken cognizance of the police report on the same day. Aggrieved, therefore the petitioner filed a protest petition and the same was rejected by the CJM on 31.08.2020. Against the said order, the petitioner had preferred Criminal Revision No.08 of 2020, which was

allowed by the District and Sessions Judge, Sonbhadra vide order dated 20.02.2021.

12. He vehemently submitted that when the matter was taken up on 20.03.2025, a specific query was raised by Hon'ble Court that after filing of the charge sheet & after taking cognizance by the concerned Court and after the commencement of the trial into the matter, whether an order for further investigation can be passed. In response to the said query, he submitted that Hon'ble Apex Court in catena of judgments has held that further investigation can be directed even after filing of the charge sheet and commencement of the trial. In support of his submission, he had placed reliance on the judgment in **Rampal Gautam vs. the State & another**⁹ in which Hon'ble Apex Court, taking support of **Hasanbhai Valibhai Qureshi vs. State of Gujrat and others**¹⁰, had reiterated that further investigation can be directed even after filing of chargesheet and commencement of trial and highlighted that the prime consideration for further investigation is to arrive at the truth and to do substantial justice. For ready reference, paragraph-12 of the judgment is reproduced hereinafter:-

"12. At the outset, we may record that a direction to conduct further investigation even after filing of the chargesheet and commencement of the trial is permissible in law as has been held by a catena of judgments of this Court. Reference in this regard may be made to *Hasanbhai Valibhai Qureshi v. State of Gujarat and Others* (2004) 5 SCC 347 wherein, this Court observed that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice. The Court further observed that further investigation

and re- investigation stand altogether on a different footing. Even de hors any direction from the Court, it is open to the police to conduct a proper investigation notwithstanding the fact that the Court has already taken cognizance on the strength of a police report submitted earlier. However, a caveat was added that before directing such investigation, the Court or the concerned police officer has to apply mind to the material available on record and arrive at a satisfaction that investigation of such allegations is necessary for the just decision of the case.”

13. It was further submitted that the other question, which has also cropped up during the course of hearing is, whether at this stage (commencement of trial and deposition of several witnesses) the investigation can be transferred to the CBI/NIA?. In response to the said query, he submitted that the power to order fresh, de-dovo or re-investigation being vested with the constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power, which is meant to ensure a fair and just investigation.

14. In this regard, he had placed reliance on the judgement in **Dharam Pal vs. State of Haryana and others**¹¹ in which it was held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is only to ensure a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. Relevant part of the judgement is reproduced herein below:-

“20. Be it noted here that the constitutional courts can direct for further

investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. **We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power.** We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

21. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one.** It is not acceptable. It has to be kept uppermost in

mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law". 22. In view of the aforesaid analysis, the appeal is allowed, the order of the High Court is set aside, and it is directed that the CBI shall conduct the investigation and file the report before the learned trial judge. The said investigation report shall be considered by the trial judge as per law. Till the report by the CBI is filed, the learned trial judge shall not proceed with the trial. A copy of the order be handed over to Mr. P.K. Dey, learned Counsel for the CBI to do the needful."

(emphasis supplied)

15. It was next contended that as regards the further query of the Court that whether the facts are of such a nature, wherein penal provisions of the Act, 1967

be invoked in the matter? In response thereof, he submitted that the petitioner's brother was assassinated by the assailants, who belonged to the a banned extremist organization JJMP and the accused Kashmir Paswan, who was a member of the said banned organization, and was arrested from the spot alongwith prohibited 9mm Carbine. The post of Chairman of Town Area is a constitutional functionary as contemplated under Explanation (a) of Section 15 (1) of the Unlawful Activities (Prevention) Act, 1967¹² read with Article 243-R (b) of the Constitution of India. There was sufficient material before the Investigating Agency and even though deliberately they flouted the mandate of the provisions of the Act, 1967 and the NIA Act, 2008. He had placed reliance on the judgment in the case of **Arup Bhuyan vs. State of Assam and another**¹³ in which Hon'ble Supreme Court has categorically held that mere membership of an unlawful association is sufficient to constitute an offence under Section 10 (a) (i) of the Act, 1967.

16. He next contended that the concerned police had also registered FIR under Section 3 (1) of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986¹⁴ against accused Rinku Bhardwaj, Kashmir Kumar Rauket, Suraj Paswan, Pawan Chauhan, Krishna Singh, Ravi Gupta, Dharmendra Kumar and Arvind Kesari. The aforesaid accused persons have been chargesheeted and the trial has also commenced in the said proceeding. Even though he admitted to the extent that the subsequent proceeding in the instant matter has been assailed by the petitioner in Criminal Misc. Application No.1708 of 2025 under Section 482 Cr.P.C. which was de-tagged by this

Court at the time of hearing of the instant matter on 20.03.2025.

ARGUMENTS ON BEHALF OF STATE-RESPONDENTS

17. Per contra, Sri Paritosh Malviya, learned A.G.A.-I strongly defended the impugned order. He contended that the interest of justice is paramount and it will even trump the need to avoid any delay being caused in the proceedings. The petitioner has already preferred Criminal Misc. Application No.1708 of 2025 under Section 482 Cr.P.C./Section 528 of Bhartiya Nyaya Sanhita, 2023¹⁵ challenging the order dated 19.09.2024 passed by the CJM in Case No.108 of 2024 arising out of Case Crime No.238 of 2018. In the said application, which is stated to be pending before learned Single Judge, further prayer has been made to stay the effect and operation of the order dated 19.09.2024. He submitted that even though, learned Single Judge vide order dated 31.1.2025 had connected the aforesaid application alongwith the instant writ petition and directed that both the matters are to be heard together. Accordingly, the matter was nominated to this Bench by Hon'ble the Chief Justice vide order dated 04.03.2025 but as the trial has already commenced and the subsequent order dated 19.09.2024 is challenged in Application No.1708 of 2025, the Court had de-tagged the said application on 20.03.2025. It is an independent proceeding and learned Single Judge is also competent to adjudicate the said aspect of the matter.

18. Learned A.G.A.-I further submitted that in the previous Writ Petition No.6926 of 2019, the petitioner had also asked for issuing a direction to the respondents to incorporate certain penal

Sections and to entrust the investigation of the instant case to the NIA. In the said writ petition, it was also argued that the brother of the petitioner was murdered in the morning of 25.10.2018 and one of the arrested accused Kashmir Paswan was an Area Commander of a Banned Extremist Organisation i.e. JJMP. The JJMP is a formation of Maoist Communist Centre¹⁶, which finds place at serial no.27 of the first Schedule of Act, 1967. It was also prayed for issuing direction to the concerned authority to incorporate the appropriate penal Sections of the Act, 1967. In the said case, the request was made to comply with Section 6 of the National Investigation Agency Act, 2008¹⁷. The said request was not acceded by the Division Bench on 23.4.2019 and the order dated 22.02.2019, by which the investigation was transferred to CBCID, was set aside. Accordingly, the direction was issued to the Principal Secretary (Home), Government of U.P., Lucknow to have a fresh look at the request of the respondent no.10 i.e. Arti Jaiswal, as also of the petitioner and fresh decision was to be taken in accordance with law. Said order was passed only in the backdrop that the relief, as has been prayed for incorporation of the appropriate Sections of the Act, 1967, cannot be re-agitated in the instant proceeding as no such relief was accorded in the previous round of litigation.

19. He further contended that the impugned order had been passed after giving due opportunity to the petitioner and the same had been passed on cogent ground, hence no case is made out for any interference at this stage. Admittedly, the investigating officer submitted the charge sheet against the eight accused persons on 20.01.2019 and the cognizance was also taken by the CJM. He submitted that the trial is also at very advance stage, wherein

eight prosecution witnesses were already examined. The prayer for transfer of the investigation to NIA is also misconceived and untenable. During the investigation it was found that the victim was shot dead due to personal animosity. By no stretch of imagination, at this stage it can be presumed that the said incident had occurred on account of nexus/terrorists activities.

20. Learned A.G.A. submitted that even though at this stage it is not subject matter of scrutiny but at the same time, the Court may consider whether the allegations against the accused persons in the subject matter make out any offence under Chapters II and/or VI of the Act, 1967 and if so, which offence or offences are disclosed. Section 15 of the Act, 1967 engrafts the offence of 'Terrorist Act' and Section 17 lays down the punishment for raising funds for committing a terrorist act. Section 18 engrafts the offence of punishment for conspiracy etc. to commit a terrorist act or any act preparatory to commit a terrorist act. The phrase 'terrorist act' has been defined under Section 15 of the Act, 1967. The main intent of the activity, in which the accused were allegedly involved, was to murder the deceased for their personal animosity. By no stretch of imagination, the same were related to any naxal or terrorist activities or fall under the definition of 'terrorist act'. He further reiterated that initially, the Anti Terrorist Squad¹⁸ had also enquired the matter and submitted its reports on 14.11.2019 and 29.01.2020 before the CJM, wherein it was claimed that the murder was caused on account of personal animosity and the same was not related to any naxal/terrorist activities.

21. He submitted that it is well settled law that constitutional courts can order de-novo investigation or fresh investigation by any investigating agency at any stage of trial even after some witnesses are also examined. The power of police officer under Section 173 (8) of Cr.P.C. to conduct a further investigation, is unrestricted. (Ref. **Dharampal vs. State of Haryana and others (supra)**). He had further placed reliance on the judgement of Apex Court in the case of **K. Vadivel vs. K. Shanti and others**¹⁹ in which it was held that further investigation under Section 173 (8) Cr.P.C. may be ordered where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or it comes to notice of investigating agency that person already accused of an offence has a good alibi, it may be the duty of investigating agency to investigate genuineness of same and submit a report to the Court. He submitted that further investigation cannot be permitted to do fishing and roving enquiry when police has already filed charge sheet. A parallel investigation proceeding different from the trial could not be permitted which would hamper the fair trial. Moreover, the trial court has ample powers to summon the accused persons on the basis of material collected by the investigating officer, during the course of investigation. He also vehemently argued that in the previous round of litigation the petitioner had complained to the Court that at the behest of the wife of the accused, the investigation could not be permitted but at the same time considering the veracity of the allegations, which were levelled, the Court has given an opportunity to both the parties and the matter was referred to the Secretary (Home), State of U.P.

22. He submitted that no party either the accused or the complainant is entitled to choose the investigating agency or may insist for investigation of a crime by a particular agency. (Ref. **Kabir Shankar Bose vs. State of West Bengal and ors**²⁰). He had also placed reliance on the judgement passed by the Apex Court in **K. V. Rajendran vs. Superintendent of Police CBCID South John Chennai and others**²¹, wherein, Hon'ble Apex Court ruled out that where investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not re-open the investigation and it should be left open to the court where the charge sheet has been filed to proceed with the matter in accordance with the law.

23. He submitted that in the present case, the charge sheet has been submitted. The trial is at very advance stage and the prosecution witnesses had already been examined. Therefore, in the interest of justice, the investigation may not be transferred at this belated stage. He also argued that after the investigation, only the trial court has powers to summon the accused, on the basis of material collected by the investigating officer during the investigation. The magistrate is not bound by the opinion given by the police and he may summon anybody else as accused, who is not even charge sheeted by the police. The informant has no power to ask the trial court to summon someone as an accused. The appropriate relief is to press an application under Section 319 Cr.P.C. at an appropriate stage of trial after recording the depositions of witnesses in the trial court. (Ref. **Gopal Pradhan vs. State of Chhattisgarh**²²). He submitted that Cr.P.C./BNSS, 2023 is a complete code. Even the Magistrate may take cognizance of any offence at the stage of cognizance,

on the basis of material collected by the investigating officer, during the course of investigation and he may also change the criminal Sections at the stage of framing of charges or after that at the stage of trial before the pronouncement of the judgement.

24. We have heard and considered the submissions advanced by learned counsel for the parties at bar and have gone through the material placed on record.

ANALYSIS BY COURT

25. In the instant case, the petitioner herein lodged the first information report in respect of murder of his brother on 25.10.2018, bearing Case Crime No.238 of 2018 for the offences punishable under Sections 147, 148, 302, 120B IPC and Section 7 of Criminal Law Amendment Act. The matter was investigated by the police and thereafter a charge sheet was filed against eight accused persons on 20.01.2019. Meanwhile, the State Government vide order dated 22.02.2019 transferred the investigation of Case Crime No.238 of 2018 from the local police to CB-CID. The said order was challenged by the petitioner in Criminal Misc. Writ Petition No.6926 of 2019, which was partly allowed on 23.4.2019. Subsequently, the CBCID submitted charge-sheet against Santosh Paswan, Shashi Chandravansi and Akhilesh Thakur on 28.02.2020. Pursuant to the filing of the chargesheet, the Magistrate proceeded to take cognizance of the offences on 29.02.2020. The protest petition filed by the petitioner was rejected by learned Magistrate vide order dated 31.08.2020. Aggrieved, the petitioner filed a Criminal Revision No.8 of 2020, which came to be allowed by the learned Sessions Court vide order dated 29.02.2020.

26. In compliance thereof, the Magistrate vide order dated 19.05.2022 allowed the protest petition and directed the CBCID to conduct further investigation. The CBCID, Sector Varanasi commenced further investigation but after some time, the Director General of Police, CBCID transferred the investigation of the instant case to CBCID Sector Prayagraj. The investigating officer submitted charge sheet against named accused persons. Meanwhile, the petitioner moved an application on 29.06.2024 during the pendency of the writ petition, which was rejected by the Magistrate vide order dated 19.09.2024. Aggrieved by the order dated 19.09.2024, an application was preferred by the petitioner under Section 482 of the Cr.P.C., which is pending before learned Single Judge. The trial has commenced in Sessions trial No.19 of 2019 in the Court of District & Sessions Judge, Sonbhadra and eight prosecution witnesses were already examined.

ISSUE BEFORE THE COURT

27. The issue that arises for consideration is whether the given situation warrants for issuance of a direction for transfer of the investigation to the CBI/NIA?

28. To appreciate the issue before the Court, reference to the case laws on the subject is imperative which are being discussed henceforth.

29. In **Rubabbuddin Sheikh v. State of Gujarat & Ors.**²³, the Apex Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the

conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Apex Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Apex Court held that even if a chargesheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

30. In **State of West Bengal & others v. Committee for Protection of Democratic Rights, West Bengal and others**²⁴ a Constitution Bench of Apex Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. The Constitution Bench further observed that it was not sufficient to instill confidence in the minds of the victims as well as the public at large that State should be allowed to continue the investigation when the alleged offences were against its officials. Under these circumstances, the Court

directed the CBI to take up the investigation and submit a report.

31. In **Vinay Tyagi v. Irshad Ali**²⁵, the Apex Court, after referring to the decision in **Bhagwant Singh v. Commr. of Police**²⁶, has held thus:

“However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report Under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh has, in no uncertain terms, stated that principle, as aforenoticed.”

32. In the said case, the question had arisen whether a Magistrate can direct for reinvestigation. While dealing with the said issue, the Apex Court has observed:

“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

And again:

“Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

33. In **Dharam Pal vs. State of Haryana & ors (supra)** the Apex Court observed that the power to order fresh, de-novo or re-investigation being invested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. The relevant paragraph of the judgement is reproduced herein below:-

“21. We may further elucidate. **The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination.** We may hasten to add that the democratic setup has the potentiality of

ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. **It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative.** If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an "orphan under law".

34. A three-Judge Bench of Apex Court in **K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai and Ors. (supra)** observed

that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instill confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. The Court, after referring to earlier decisions, has laid down as follows:

"In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instill confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

(emphasis supplied)

CONCLUSION

35. We find that in catena of judgements Hon'ble Apex Court has been consistently held that a direction to conduct further investigation even after filing of the charge-sheet and commencement of the trial is permissible in law. In **Hasanbhai Valibhai Qureshi v. State of Gujarat and others (supra)** it was observed by the Apex Court that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice.

The Apex Court further observed that further investigation and re-investigation stand altogether on a different footing. Even de hors any direction from the Court, it is open to the police to conduct a proper investigation notwithstanding the fact that the Court has already taken cognizance on the strength of a police report submitted earlier. However, a caveat was added that before directing such investigation, the Court or the concerned police officer has to apply its mind on the material available on record and arrive at a satisfaction that investigation of such allegations is necessary for the just decision of the case. Undeniably, the complainant had the liberty to set out his/her entire case/grievances in examination-in-chief and make a prayer to the trial Court that the other accused, who had been left out during the investigation, should also be proceeded against by summoning them under Section 319 Cr.P.C.

36. In **Ramesh Chandra Srivastava vs. State of Uttar Pradesh**²⁷ Hon'ble Apex Court has considered the power of the trial court under Section 319 Cr.P.C and held that the test as laid down by the Constitution Bench of the Apex Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised.

37. Expressing similar view a Five-Judge Bench of the Apex Court in **Sukhpal Singh Khaira v. State of Punjab**²⁸ elucidated:

“15. At the outset, having noted the provision, **it is amply clear that the power bestowed on the court is to the effect that in the course of an inquiry**

into, or trial of an offence, based on the evidence tendered before the court, if it appears to the court that such evidence points to any person other than the accused who are being tried before the court to have committed any offence and such accused has been excluded in the charge-sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

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23. A close perusal of Section 319CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the court to summon such a person so that he could be tried together with the accused and such power is exclusively of the court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation “conclusion of trial” in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86] since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the court.

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33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded

with. This is so since the power under Section 319CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. **However, what is important is that the decision to summon an additional accused either suo motu by the court or on an application under Section 319CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319 (1) CrPC, to be directory as held in Shashikant Singh**

[Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203] which in our opinion is the correct view.

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38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order? **The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.**

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the

accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

(emphasis supplied)

38. We also find that Hon'ble Apex Court, while dealing with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI, has consistently held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law.

39. Even otherwise, we find that the provisions contained in Cr.P.C. 1973/BNSS, 2023 are exhaustive. The Cr.P.C./BNSS is a complete self contained Code, wherein the trial court is competent and empowered to summon any person as witness at any stage of enquiry, trial or other proceeding in view of Section 311 of Cr.P.C. (Section 348 of BNSS). Ref. **Heera Lal vs. State of Madhya Pradesh**²⁹.

40. We also find that it is well settled law that if the conditions under these Sections are satisfied, the Court can call upon a witness not only on the motion of either the prosecution or the defence but also it can do so on its own motion. The trial court is competent to recall any

witness or witness already examined or to summon any witness even if the evidence on both sides is closed so long as the Court retains seisin of the criminal proceeding. Ref. **Mohanlal Shamji Soni vs. Union of India**³⁰.

41. In view of the aforementioned facts and circumstances, we are not inclined to make any such observation, which may impinge the right of the parties and may also vitiate the trial and accordingly, we are not inclined to exercise our discretionary jurisdiction under Article 226 of Constitution of India.

42. For the aforesaid reasons, the writ petition is **dismissed**.

43. It is made clear that this Court has not expressed any views on the merits of the matter and the trial court is at liberty to proceed in accordance with law.

(2025) 4 ILRA 915
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.04.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Crl. Misc. W.P. No. 15379 of 2019
 And
 Crl. Misc. W.P. No. 17172 of 2019

Abhimanyu Prasad Ojha & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Opp. Parties

Counsel for the Petitioners:

Anil Kumar Tripathi, Anil Kumar Tripathi

Counsel for the Opp. Parties:

G.A., Faiz Ahmad Khan, Indrajeet Shukla, Santosh Kumar Gupta

Criminal Law- The Constitution of India, 1950-Article 226 - The Code of Criminal Procedure, 1973-Section 133-

That a wall has been constructed on a public land by the predecessor-in-interest of the petitioners, which is being used as a way to come on the main way--- Petitioner admitted in his evidence/cross-examination that the wall was constructed by predecessor in-interest of the petitioners---The only plea has been taken that since the finding has been recorded that in case adjacent to the same if construction is made in future, the public way may be obstructed, whereas, the order could not have been passed merely on the basis of presumption of happening in the future, but it cannot be disputed that the wall has been constructed on a public land and as per Section 133 Cr.P.C., the unlawful obstruction or nuisance over any public place or over any way, river or channel which is or may be lawfully used by the public is required to be removed--- Any person cannot unlawfully obstruct or create nuisance on a public place or over any way and if it has been done or construction is raised, the same is liable to be removed under Section 133 Cr.P.C---Merely because it may not have completely created obstruction to the public, it cannot be said that the person, who has created such an obstruction or nuisance, can be allowed to continue with the same.

Writ petitions dismissed. (Para 17) (E-15)

List of Cases referred:-

1. Joginder Singh Vs St. of Har. & ors.; 2021 (2) R.C.R. (Civil) 109
2. Jagpal Singh & ors.Vs St. of Pun. & ors.; AIR 2011 SC 1123
3. Sri Krishna Vs St. of U.P. & ors.
4. Gurmukh Singh Vs St. of Pun. & ors.by the High Court of Punjab and Haryana at Chandigarh

(Delivered by Hon'ble Hon'ble Rajnish Kumar, J.)