2026:AHC:192431

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 7399 of 2026

Bhuvnesh Kumari and 12 others

.....Appellant(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Appellant(s)	:	Mohd Raghib Ali, Sr. Advocate
Counsel for Respondent(s)	:	G.A., Sanjay Kumar Srivastava

Court No. - 93

AFR
Reserved On 10.9.2026
Delivered On 15.9.2026

HON'BLE SANTOSH RAI, J.

1. Heard Sri Saghir Ahmad, learned Senior Counsel assisted by Sri Mohd. Raghib Ali, learned counsel for the appellants; Sri Sanjay Kumar Srivastava, learned counsel for opposite party no.2; Sri Shyam Narayan Rai, learned AGA for the State and perused the material on record.

2. The present criminal appeal has been filed by the appellants with a prayer to set aside the impugned order dated 6.10.2018 passed by IInd Additional Session Judge/Special Judge, SC/ST Act, Meerut in Criminal Misc. No.203 of 2018 (Smt. Saroj vs. Station House Officer Sandeep Kumar Singh and 15 others), arising out of Case Crime No.530 of 2017, under Sections 323, 332, 351,

354B, 376B, 392, 406, 499, 504, 506, 509, 120B IPC and Sections 3(2)(1), 7, 3(XI) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S.- Kharkhoda, District- Meerut, whereby the trial court has rejected the final report and treated protest petition as complaint case.

3. The brief contents of the complaint/FIR involve allegations by the complainant, Smt. Saroj, that after she demanded the repayment of a loan of Rs.20,000/- from one Sonu, Sonu colluded with the Station House Officer (SHO) Pradeep Kumar Singh and other police personnel of Police Station Kharkhoda, Meerut. The complainant states that on June 18, 2017, she was summoned to the police station where she faced severe caste-based slurs, physical assault, brutal custodial torture, and humiliation by the named police officers and other individuals. Furthermore, she alleges that valuables and cash were missing following the incident, that she was coerced under threats during her production before the magistrate, and that local authorities failed to take timely action on her initial complaints, leading her to seek legal remedy under relevant sections of the IPC and the SC/ST (Prevention of Atrocities) Act.

4. The Investigating Officer has submitted final report concluding that the case (Crime No.530/2017) was registered against the SHO and 15 others pursuant to a court order under Section 156(3) CrPC lacked supporting evidence during the course of the investigation, which included reviewing statements, site inspections, and affidavits. The officer noted that the allegations made by the complainant were not substantiated by eyewitnesses and appeared to be a counterblast to Case Crime

No.299/2017. Consequently, due to this complete lack of evidence, the final report recommended closing the investigation and requested the court's approval to accept the closure.

5. After submission of final report by the I.O, the compainant has filed protest petition supported by affidavits of Shivani @ Anamika, Ranbir Singh, Subhash Saini, Rajendra Saini, Tejpal, Rawat and Jay Prakash alongwith newspaper cutting, photographs etc in order to support the ‘contents of protest petition’.

6. The trial court vide order dated 6.10.2018 has treated the protest petition into complaint case and passed following order:-

"06.10.2018

पत्रावली पेश हुई। वादनी सरोज की ओर से मुकदमा अपराध सं. 530/2017 के अन्तर्गत विवेचक पुलिस थाना खरखौदा, मेरठ द्वारा प्रस्तुत अन्तिम आख्या के विरुद्ध वादनी की ओर से प्रोटैस्ट प्रार्थनापत्र 22ख प्रस्तुत किया गया है जिसके साथ शपथपत्र के अलावा गवाहान शिवानी उर्फ अनामिका, रणवीर सिह, सुभाष सैनी, राजेन्द्र सैनी, तेजपाल, रावत, जयप्रकाश आदि के शपथपत्र एवं सूची के साथ फोटोग्राफ पीड़िता व अखबार कटिंग अपने प्रोटेस्ट प्रार्थनापत्र के समर्थन मे प्रस्तुत किये गये है। मेरे द्वारा सम्बन्धित केस डायरी एवं वादनी द्वारा प्रस्तुत प्रोटैस्ट प्रार्थनापत्र के साथ सलंग्न गवाहान के शपथपत्रो का परिशीलन किया गया जिसके आधार पर वर्तमान मामले में विवेचनोपरांत प्रस्तुत अन्तिम आख्या को निरस्त किया जाता है।

आदेश

प्रोटैस्ट प्रार्थनापत्र परिवाद के रूप में पजीकृत हो। पत्रावली परिवादनी के बयान अन्तर्गत धारा 200 द.प्र.सं हेतु दिनांक 29.10.2018 को पेश हो।

हस्ताक्षर(पीठासीन अधिकारी)

द्वितीय अपर सत्र न्यायाधीश / विशेष न्यायाधीश, एस.सी.एस.टी एक्ट, मेरठ।

06.10.2018"

7. Thereafter the accused appellants were summoned by the trial court under Sections 323, 504, 506, 354B, 509, 120B and Sections 3(2)(7), 3(1)(r), 3(2)(va) SC/ST Act on the basis of evidence available on record during the course of inquiry proceeding.

8. In brief the grounds of appeal are that the application under Section 156(3) CrPC was entertained despite the complainant having allegedly failed to comply with the mandatory requirement of Section 154(3) CrPC, thereby vitiating the initiation of the proceedings. After a full-fledged investigation culminating in the Final Report dated 24.01.2018, the learned court rejected the Final Report and treated the protest petition as a complaint without exercising jurisdiction in accordance with Section 190(1)(a) Cr.P.C., rendering the impugned order dated 6.10.2018 legally unsustainable. The appellants, being police officials posted at Police Station Kharkhauda at the relevant time, were alleged to have acted in the discharge of their official duties, and therefore cognizance and prosecution could not have proceeded in the absence of prior sanction under Section 197 CrPC, thereby vitiating the entire criminal proceedings. The summons dated 30.11.2019 was issued without ensuring compliance with the mandatory requirement of Section 204(2) CrPC regarding submission of the list of prosecution witnesses. The learned trial court failed to appreciate the statutory safeguards available to public servants while rejecting the appellants' discharge application on 02.09.2022. The cumulative non-compliance with Sections 154(3), 190(1)(a), 197 and 204(2) CrPC constitutes a fundamental procedural illegality, rendering the complaint proceedings an abuse of the process of law. The impugned order dated 06.10.2018, by which the Final Report was rejected and the protest petition was treated as a complaint, is the foundation of all subsequent proceedings; consequently, the summoning order dated 30.11.2019 and all consequential proceedings in Complaint Case No. 39 of 2018 are liable to be set aside.

9. Further, in rejoinder affidavit filed by learned counsel for the appellants, it has been stated that the consequential

pending proceeding is the consequence of the impugned order, dated 06.10.2018. It is further submitted, the learned trial court in order to passed impugned order has not exercised its discretion judicious in manner as prescribed under the mandate of section 190(1)(a) of CrPC. The learned trial court in order to passed impugned order has not recorded any finding in order to reject conclusion of the investigation. The learned trial court in order to pass such order has taken into consideration affidavits of the witnesses filed in support to the protest petition. While as such, affidavits filed along with the protest petition may not be taken into consideration in order to adjudicate protest petition and to reject the conclusion arrived by the investigating officer submitted in the form of final report. Because, the affidavit of witness is not part of the police diary according to section 172 of CrPC.

10. Learned counsel for opposite party no.2 has opposed the grounds of the appellants through counter affidavit briefly on following grounds:-

(i) Legal Validity of Treating a Protest Petition as a Complaint Case; It is a well-settled principle of criminal jurisprudence that when the police submit a final/closure report, the learned Magistrate /Special Judge is not bound to accept it. The learned Court has three distinct choices: i. accepts the report, ii. order further investigation, or ii. treat the informant's Protest Petition as a private complaint. The trial court is fully empowered to treat the protest petition as a private complaint under Section 190(1)(a) of the CrPC (now corresponding provisions under the BNSS), provided it follows the procedure under Sections 200 and 202 Cr.P.C. Reliance is placed upon the judgment of Supreme Court in the cases of Vishnu Kumar

Tiwari v. State of Uttar Pradesh (2019) 8 SCC 27, Mukhtar Zaidi v. State of Uttar Pradesh 2024 SCC OnLine SC 553 & B. Chandrika v. Santhosh (2014) 13 SCC 699, Jitendra Nath Singh Yadav v. State of U.P. (2026: AHC-LKO:374) Relying on Vishnu Kumar Tiwari,

(ii) Maintainability of Appeals- The provisions says-Under Section 14A of the SC/ST (Prevention of Atrocities) Act, 1989, an appeal to the High Court lies only against judgments, sentences, or orders that are not interlocutory. An order passed by a Special Court treating a protest petition as a complaint is considered an 'interlocutory order'

(iii). In the matter where the Protest Petition has been treated as complaint under Section 223 of the BNSS (formerly Section 200 CrPC) the Magistrate/Special Court will examine the complainant any witnesses present on oath. The initial absence of a written list of witnesses does not stop the process. If the protest petition (challenging a police final report) has been treated as complaint, the non-inclusion of a witness list does not make the complaint legally void. The issue has well been considered in reported decision reported as [2024] 4 S.C.R. 655: 2024 INSC 316 Mukhtar Zaidi Vs. The State of Uttar Pradesh & Anr. (Criminal Appeal No. 2134 of 2024) 18 April 2024. Therefore, the averments made in paragraphs under reply are denied being wholly misconceived.

11. Learned counsel for the appellants submits that the impugned order is wholly non-speaking and has been passed without proper application of judicial mind. The Final Report submitted after investigation has been

rejected and the protest petition has been treated as a complaint mainly on the basis of affidavits, photographs and newspaper cuttings, without properly considering the case diary/material collected during investigation. It is further submitted that all the thirteen appellants are police personnel/public servants and the applicability of Section 197 Cr.P.C. has not been considered. There is no specific allegation disclosing the essential ingredients of the offences under the SC/ST Act. One criminal case was also registered against the victim Saroj on the very same day. Hence, the order of cognizance and all consequential proceedings deserve to be quashed.

12. Learned counsel for opposite party no.2, on the other hand, submits that the learned Special court was competent to disagree with the Final Report and to take cognizance on the basis of the protest petition and material placed before it. The affidavits and other documents disclosed a prima facie case, and the correctness of such material cannot be examined at the stage of cognizance. The question of sanction under Section 197 Cr.P.C., contradictions in the statements and the existence of the criminal case against informant/victim herself on the very same day are to be considered during trial. Further the statement under Section 244 Cr.P.C. has already been recorded and discharge application has also been rejected under Section 245 Cr.P.C. It is, therefore, submitted that no interference is warranted and the appeal is liable to be dismissed.

13. The preliminary objection raised by learned counsel appearing for opposite party no.2/informant that the impugned order taking cognizance upon the protest

petition is merely *an interlocutory order* and, therefore, no appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "the Act") would be maintainable.

14. Section 14-A(1) of the Act provides for an appeal to the High Court against "any judgment, sentence or order, not being an interlocutory order" passed by the Special Court or Exclusive Special Court, both on facts and on law. The expression "order" occurring in Section 14-A cannot be confined only to final orders bringing the entire proceedings to an end. The statutory exclusion is confined to a purely interlocutory order. The distinction between a final, intermediate and interlocutory order has been authoritatively explained by the Supreme Court.

15. In **Amar Nath & Ors. Vs. State of Haryana & Anr. (1977) 4 SCC 137**, the Supreme Court held in para 6 as under:-

> *"6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus:*
>
> *"The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."*
>
> *The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those*

which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revison to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code."

16. In **Madhu Limaye Vs. The State of Maharashtra (1977) 4 SCC 551**, the Supreme Court held in para 12, 13 as under:-

"12. Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". In volume 22 of the third edition of Halsbury's Laws of England at p. 742, however, it has been stated in para 1606:

.... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required.

In para 1607 it is said:

In general a judgment or order which determines the principal matter in question is termed 'final'.

In para 1608 at pp. 744 and 745 we find the words:

An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.

13. In S. Kuppuswami Rao v. King [AIR 1949 FC 1 : 1947 FCR 180] Kania, C.J. delivering the judgment of the Court has referred to some English decisions at pp. 185 and 186. Lord Esher, M.R. said in Salaman v. Warner [(1891) 1 QB 734] :

If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.

To the same effect are the observations quoted from the judgments of Fry, L.J. and Lopes, L.J.: Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court [at that time there was no bar like Section 397(2)] was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words 'interlocutory order' occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, vide for example, River Wear Commissioners v. William Adamson [(1876-77) 2 AC 743] and R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628 : (1957) SCR 930] that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute *and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case, but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are wellknown and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course."*

17. In **K.K. Patel & Anr. Vs. State of Gujarat & Anr. (2000) 6 SCC 195**, the Supreme Court held in para 6, 11 as under:-

"6. The Metropolitan Magistrate after taking the sworn statement of the respondent police officer took cognizance of the aforesaid offences and issued process to the appellants. On appearance before the Metropolitan Magistrate the appellants filed a petition for discharging them on the premise that no sanction was obtained to prosecute them. The Metropolitan Magistrate dismissed the said petition on 17-5-1997 with a rider that "appropriate decision regarding prior sanction shall be taken on merits after considering the evidence that may be produced by the parties". (The Metropolitan Magistrate of Ahmedabad has written one of the lengthiest and tautologous orders running into 114 closely typed pages just for reaching the above conclusion. We are unable to appreciate how the heavily-boarded courts like the Metropolitan Magistrate's Court or a

city court could afford writing such fritteringly lengthy orders just for concluding that the questions raised can be considered at a later stage.)

11. That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana [(1977) 4 SCC 137 : 1977 SCC (Cri) 585] , Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10] , V.C. Shukla v. State through CBI [1980 Supp SCC 92 : 1980 SCC (Cri) 695 : (1980) 2 SCR 380] and Rajendra Kumar Sitaram Pande v. Uttam [(1999) 3 SCC 134 : 1999 SCC (Cri) 393]). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.”

18. In **Girish Kumar Suneja Vs. Central Bureau of Investigation (2017) 14 SCC 809**, the Supreme Court held in para 21 as under:-

“21. The concept of an intermediate order was further elucidated in Madhu Limaye v. State of Maharashtra [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind—an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate

> *order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue."*

19. Thus, briefly, in *Amar Nath & Ors. (supra)* the Supreme Court held that the expression "interlocutory order" has to be understood in a restricted sense and an order which substantially affects the rights of the accused cannot be treated as a purely interlocutory order. The principle was further explained in *Madhu Limaye (supra)*, wherein the Supreme Court recognised the category of intermediate orders, which, though passed at an intermediate stage of the proceedings, have the effect of finally determining an important aspect of the proceedings. The same principle was reiterated in *K.K. Patel and Another (supra)*, wherein it was held that, for determining whether an order is interlocutory, the mere fact that it has been passed during the pendency of the proceedings is not decisive. What is material is the nature and effect of the order. The position was authoritatively summarised by the three-Judge Bench in *Girish Kumar Suneja (supra*), that an order taking cognizance of an offence and summoning an accused is an intermediate order. Though such an order is passed at an intermediate stage, if it is reversed, the criminal proceedings against the concerned accused come to an end and, therefore, it cannot be regarded as a purely interlocutory order.

20. The aforesaid principle assumes greater significance in the present case because the learned Special Court, upon rejecting the final report, registered the protest petition as a complaint and directed the informant to proceed under Section 200 Cr.P.C. Thus, the impugned order is not a mere procedural or ancillary order passed in the course of an

already pending complaint. It has the substantive effect of rejecting the conclusion reached by the Investigating Officer in the final report, setting the criminal law in motion on the basis of the protest petition and initiating a complaint proceeding against the appellants. If the impugned order is set aside, the proceedings initiated pursuant thereto would come to an end; conversely, if it is sustained, the criminal proceedings would continue. It, therefore, squarely falls within the category of an intermediate order and not a purely interlocutory order.

21. In **Gulam Rasool Khan & Ors. Vs. State of U.P. & Ors. 2022 SCC OnLine All 975** & **In Re: Provision of Section 14-A of the SC/ST Act 2018 SCC OnLine All 2087**, the Full Bench of this Court, while considering the scope of Section 14-A of the Act, has also held that the expression "order" occurring in Section 14-A(1) includes an intermediate order passed by the Special Court or Exclusive Special Court. Consequently, an intermediate order passed by the Special Court in a proceeding relating to an offence under the Act is amenable to the statutory appellate jurisdiction of this Court under Section 14-A. Furthermore as per verdict of Full Bench, there is no period of limitation to file appeal under SC/ST Act. In fact, this Court has specifically applied the ratio of Girish Kumar Suneja (supra) to an order taking cognizance under the SC/ST Act and has held that an order of cognizance is an intermediate order and, therefore, an appeal under Section 14-A(1) is maintainable. Accordingly, the preliminary objection regarding maintainability is rejected. The impugned order taking cognizance/rejecting the final report and treating the protest petition as a complaint is not a purely interlocutory order. The present

appeal under Section 14-A(1) of the Act is, therefore, maintainable.

22. Having considered the material available on record in its entirety, this Court finds that the order of cognizance, insofar as it proceeds against the appellants under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be sustained. Crime No.530 of 2017 was registered at Police Station Kharkhoda, District Meerut, against fifteen named accused persons and one unknown person. Out of the named accused, thirteen accused persons, namely, Bhuvanesh Kumari, Monica, Sarita, Suman, Anil Kumar Sharma, Dinesh Kumar, Sandeep Kumar Singh, Tarun Kumar, Raees Pal, Kartar Singh, Madan Tyagi, Risal Singh and Ram Bhool Singh, are police personnel and were posted at the police station in question at the time of occurrence. The remaining accused included Sonu and Babu Ram the village Pradhan. Thus, the allegation is substantially directed against police personnel in respect of an occurrence alleged to have taken place within the police station premises itself.

23. A significant circumstance emerging from the record is that the informant Saroj herself had reached the police station on the date of occurrence. It is further borne out from the material placed on record that in connection with the same occurrence, Crime No.299 of 2017 was registered on 18.06.2017 against Saroj under Sections 323, 332, 353, 504 and 506 IPC, on the basis of the report lodged by Lady Constable No.2879 Bhuvanesh Kumari, who herself has subsequently been arrayed as an accused in present case bearing Crime No.530 of 2017. The prosecution material

further indicates that some of the lady police personnel sustained injuries in the incident and Saroj was arrested in connection with the said case and was sent to jail. Thus, the above two cases cannot be examined in isolation; the existence, nature and chronology of both the cases are relevant circumstances for determining whether the allegations subsequently levelled against the police personnel disclose the ingredients of the offences alleged or whether the subsequent prosecution has arisen out of the same incident in the backdrop of the earlier criminal case against the informant.

24. The further circumstance which assumes importance is that the alleged occurrence is of 18.06.2017, whereas Crime No.530 of 2017 came to be registered only on 18.10.2017, i.e. after about four months. The delay by itself may not necessarily be fatal to a criminal prosecution, but when considered along with the contemporaneous registration of Crime No. 299 of 2017 against the informant, the fact that the informant was herself present at the police station, the allegation that she had obstructed/misbehaved with police personnel performing their official duties, the injuries allegedly suffered by police personnel and the fact that one of the police officials who had lodged the earlier case was subsequently arrayed as an accused in the later case, these circumstances assume considerable significance. The informant/victim Saroj was arrested, taken into custody and thereafter sent to jail. These facts are briefly stated in paragraph 4 of the protest petition itself. They constitute relevant material for examining the bona fides of the subsequent prosecution

and could not have been brushed aside while exercising the power of taking cognizance.

25. More importantly, even if the allegations contained in the FIR and the protest petition are taken at their face value, there is no specific allegation against the appellants that any particular appellant intentionally insulted or intimidated the informant or committed any offence under SC/ST Act on account of her belonging to a Scheduled Caste or Scheduled Tribe. There is no specific casteist utterance attributed to any particular appellant. There is also no specific allegation explaining as to which accused knew the caste identity of the informant, in what manner such knowledge was acquired, and how the alleged act was motivated by the caste identity of the informant. Mere reference to the fact that the informant belongs to a Scheduled Caste cannot substitute the statutory requirement that the alleged act must have been committed because of her caste status. The law on this aspect is no longer res integra. In *Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710*, the Hon'ble Supreme Court held that every insult or intimidation of a person belonging to a Scheduled Caste or Scheduled Tribe does not constitute an offence under the SC/ST Act; the insult or intimidation must be on account of the victim belonging to such caste or tribe. The Court specifically held that the offence is not established merely because the informant is a member of a Scheduled Caste, unless there is an intention to humiliate the person for the reason that he or she belongs to such caste. The aforesaid principle has subsequently been reiterated and explained by the

Supreme Court in *Shajan Skaria v. State of Kerala, 2024 SCC OnLine 2249*.

26. In the present case, the allegations do not disclose any such specific caste-based intention. The mere fact that the appellants were posted at the police station where the occurrence is alleged to have taken place cannot, by itself, establish that each of them had knowledge of the caste identity of the informant or that any act was committed against her because of such caste identity. More particularly, when the occurrence arose in the course of an incident in which the informant herself is alleged to have caused injuries to police personnel and a contemporaneous criminal case had already been registered against her for obstructing and assaulting public servants, the possibility that the subsequent allegations were made as a reaction to the earlier criminal prosecution cannot be ignored. It is also material that the residential districts of the police personnel are different, namely Moradabad, Saharanpur, Aligarh, Bulandshahr, Mirzapur, Mathura, Hapur and Gautam Budh Nagar, whereas they were posted at Police Station Kharkhoda, District Meerut. This circumstance, standing alone, is not sufficient to exonerate them; nevertheless, in the absence of any specific allegation of caste-based knowledge, casteist utterance or caste-motivated conduct, it assumes relevance while examining whether a prima facie offence under the SC/ST Act was actually disclosed against each individual appellant. The criminal law cannot proceed against a group of persons merely on the basis of their presence at the place of occurrence without specific attribution of the statutory ingredients of the offence.

27. The Special Court was, therefore, required to examine the allegations against each accused with reference to the essential ingredients of the particular offences invoked. Instead, the impugned order proceeds upon general and omnibus allegations and does not disclose any specific finding as to how the ingredients of the relevant provisions of the SC/ST Act are satisfied against each of the appellants. The order of cognizance is consequently vitiated by non-application of judicial mind. Cognizance is not a mechanical exercise; the Court is required to examine whether the material placed before it discloses the commission of an offence and whether the statutory ingredients are prima facie satisfied. The Supreme Court has repeatedly recognised that where the allegations, even if accepted in their entirety, do not constitute the offence alleged, or where the prosecution is manifestly attended with mala fide or has been instituted for an ulterior purpose, the High Court is justified in exercising its inherent jurisdiction to prevent abuse of the process of law. The principles enumerated in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, continue to govern such cases. At the same time, the Court must distinguish a genuine prosecution from a prosecution which, on the face of the record and in the light of admitted contemporaneous circumstances, appears to have been set in motion for a collateral purpose. In the facts of the present case, the admitted chronology—namely, the occurrence dated 18.06.2017, registration on the same date of Crime No. 299 of 2017 against the informant for offences relating to assault/obstruction of police personnel, the arrest and incarceration of the informant in that case, the subsequent registration on 18.10.2017 of Crime No.530 of 2017

against the police personnel who were connected with the earlier incident, and the absence of any specific allegation of caste-based insult, intimidation or casteist utterance etc creates a circumstance in which the prosecution under the SC/ST Act cannot be permitted to continue merely on the basis of omnibus allegations. Thus, even if the allegations contained in the FIR and the protest petition are accepted in their entirety, the basic ingredients necessary to constitute the offences alleged under the SC/ST Act are not disclosed against the appellants. The subsequent proceedings, therefore, cannot be sustained merely because cognizance has already been taken. The continuation of such proceedings, in the absence of the foundational ingredients of the offences, would amount to permitting the criminal process to continue despite the absence of a prima facie case.

28. In **Rama Kant & Ors. Vs. State of U.P. & Anr. 2010 (5) ALJ (NOC) 611 (ALL)**, this Court held as under:-

> *"…..The Magistrate could not take cognizance under Section 190(1)(b) Cr.P.C. on the basis of protest petition and affidavits filed in support thereof. The Magistrate could not consider extraneous material i.e. protest petition and affidavits while taking cognizance under Section 190(1)(b) of Cr.P.C……"*

29. In **Dinesh Kumar Soni & Ors. Vs. State of U.P. & Anr. 2010 (8) ADJ 268**, this Court held in para 4,7,8 as under:-

> *"4. It is submitted by learned counsel for the revisionists that there was no material on the case diary against the revisionists and therefore, the Magistrate was not justified in summoning the revisionists. It is further submitted that the protest petition filed by opposite party No. 2 was not treated as a complaint, nor statements of complainant and his witnesses were recorded under Sections 200 and 202, Cr.P.C. It is further contended that the cognizance was taken on the basis of affidavits, which was illegal.*

> *7. The Magistrate has not adopted any of the four courses detailed above but proceeded to take cognizance on the basis of affidavits. The cognizance of the offence cannot be taken on the basis of affidavits.*
>
> *8. Either the Magistrate should have passed the order on the basis of material present in the case diary or should have treated protest petition as a complaint. The course adopted by learned Magistrate is absolutely illegal. Therefore, the impugned order cannot be sustained and is liable to be set aside."*

30. In **Mukhtar Zaidi Vs. State of U.P. & Anr. 2024 SCC OnLine SC 553**, the Supreme Court held in para 11 as under:-

> *"11. In the present case as the Magistrate had already recorded his satisfaction that it was a case worth taking cognizance and fit for summoning the accused, we are of the view that the Magistrate ought to have followed the provisions and the procedure prescribed under Chapter XV of the Cr. P.C. Accordingly, we allow this appeal, set aside the impugned orders passed by the High Court as also the CJM, Aligarh."*

31. The next question which arises for consideration is whether the learned Special Court was justified in rejecting the final report and directing that the protest application be registered as a complaint on the basis of the material accompanying the protest petition. It is well settled that upon submission of a final report, the Court has jurisdiction to consider the police report and the material collected during investigation and, in an appropriate case, may reject the final report. The informant may also file a protest petition. However, where the Court proposes to proceed on the basis of the allegations contained in the protest petition as a complaint, the protest petition must satisfy the essential requirements of a complaint and the procedure prescribed under Sections 200 and 202 Cr.P.C., as the case may be, has to be followed. The Supreme Court in Mukhtar Zaidi (supra), has reiterated the distinction between

consideration of a protest petition in the context of a police report and treating such protest petition as an independent complaint. It has also been noticed that where the protest petition is treated as a complaint, the complainant and his witnesses are necessarily required to be examined in accordance with the procedure prescribed by law.

32. In the present case, the learned Special Court, while rejecting the final report, has observed that it had examined the case diary as well as the affidavits annexed with the protest petition. The order further shows that reliance was placed upon the averments made *in the protest petition, the affidavit of the informant Saroj, the affidavits of Shivani alias Anamika Singh, Ranvir Singh, Subhash Saini, Rajendra Saini, Tejpal, Rawat and Jai Prakash, besides the photographs and newspaper cuttings.* In our considered opinion, the approach adopted by the learned Special Court suffers from a fundamental infirmity. The Court was required to examine the material collected during investigation and record reasons as to why the conclusion arrived at by the Investigating Officer in the final report was not acceptable. Instead, extraneous materials have been taken into consideration without properly examining its evidentiary nature, relevance and the contradictions appearing therein.

33. The 'photographs and newspaper cuttings' placed along with the protest petition could not, by themselves, constitute substantive material for arriving at a judicial conclusion that the allegations made in the FIR stood prima facie established. No finding has been recorded as to what the photographs depict, how they relate to the alleged occurrence, or in what manner the newspaper reports

constitute legally relevant material against the appellants. Likewise, a newspaper report is not substantive evidence of the facts stated therein. The learned Special Court, therefore, could not have relied upon such material, without anything more, for displacing the conclusion arrived at by the Investigating Officer.

34. Even the affidavits relied upon by the learned Special Court have not been subjected to any meaningful scrutiny. The protest petition itself contains material inconsistencies regarding the presence of the alleged witnesses at the place of occurrence. In paragraph 2 of the protest petition, the presence at the police station premises, which is stated to be the place of occurrence, appears to be confined to the informant, her daughter Shivani and Ranvir Singh, whereas in paragraph 7, Rajendra Saini, Subhash Saini, Rawat and Tejpal are also stated to have been present at the spot. This contradiction goes to the root of the question as to who were actually present at the alleged occurrence. Further, no specific time of occurrence is mentioned in the protest petition, although the affidavits subsequently furnish different versions regarding the time of occurrence. The protest petition also does not contain any clear and specific allegation regarding the particular casteist words or expressions allegedly used by any particular accused. The affidavit of Shivani alias Anamika Singh and that of Ranvir Singh also do not furnish any definite time of occurrence and contain substantially general allegations against the police personnel. No particular casteist slur or specific overt act attributable to any particular appellant has been clearly stated therein. The affidavit of Subhash Saini is also of a different nature. Subhash Saini, whose residential address

is shown as Rajiv Nagar, Delhi Road, Hapur, has stated in paragraph 3 that he came to know from someone else about the incident allegedly occurring at about 2:30 p.m. on 18.06.2017. Thus, his affidavit does not disclose direct personal witnessing of the occurrence. A similar feature is noticeable in the affidavit of Rajendra Saini, who is also a resident of District Hapur, wherein the version is based upon information regarding the occurrence rather than a clear assertion of personal presence at the spot. The affidavit of Tejpal also requires careful scrutiny. He is shown to be a resident of Village Allipur, Police Station Kharkhoda, District Meerut. He has stated that his statement was not recorded by the Investigating Officer, whereas the record of investigation is required to be examined to determine the correctness of such assertion. More importantly, he has mentioned the time of occurrence as 1:30 p.m. on 18.06.2017. The affidavit of Rawat, also shown to be a resident of Allipur, contains a similar version. Jai Prakash, resident of Village Setkua, Police Station Kharkhoda, District Meerut, has also stated that his statement was not recorded by the Investigating Officer. Thus, the material placed before the learned Special Court itself discloses different versions as to the time of occurrence, with some witnesses referring to 1:30 p.m. and others to 2:30 p.m.; some claiming personal presence at the police station premises, while others admittedly narrating information received from someone else.

35. There is yet another circumstance which required consideration. In the protest petition itself, the informant has referred to the fact that a criminal case had been registered against her and that she had been taken into

custody and sent to jail. This circumstance, by itself, may not determine the truth or otherwise of the allegations, but it was certainly a relevant circumstance requiring objective consideration while examining the protest petition and the conclusion of the Investigating Officer. The learned Special Court has not undertaken such an exercise.

36. It is thus apparent that the learned Special Court did not undertake a comparative or critical examination of the material contained in the case diary, the conclusion recorded by the Investigating Officer in the final report and the assertions subsequently made in the protest petition and the affidavits. The contradictions relating to the presence of witnesses, the time of occurrence, the source of knowledge of certain witnesses, the alleged non-recording of their statements under Section 161 Cr.P.C., and the absence of specific allegations against individual police personnel were material circumstances. They could not have been brushed aside merely by observing that the case diary and the affidavits had been perused.

37. The reliance placed on Mukhtar Zaidi (supra), by opposite party no.2 also does not advance the case of the complainant in the manner suggested. The said judgment recognises that, depending upon the nature of the protest petition and the material placed along with it, such material may be capable of consideration in an appropriate case; however, it does not dispense with the requirement of judicial scrutiny nor does it authorise a Court to mechanically treat every affidavit, photograph or newspaper cutting accompanying a protest petition as substantive material sufficient to reject a final report. Indeed, where the Court chooses to proceed treating the

protest petition as a complaint, the statutory procedure applicable to a complaint has to be followed. The view taken by this Court in *Vimlesh v. State of U.P. and another 2010 SCC OnLine All 482*, also supports the principle that, after rejection of the final report, cognizance cannot mechanically be taken on the basis of affidavits and other material filed in support of the protest petition.

38. Consequently, the order of the learned Special Court does not disclose the requisite application of judicial mind to the material which formed the basis of the final report. The learned Court has substituted the allegations and inconsistent material contained in the protest petition and its annexures for a proper judicial examination of the investigation material. The impugned order, therefore, cannot be sustained merely on the ground that the protest petition was accompanied by affidavits of certain witnesses. The learned Special Court was required either to arrive at a 'reasoned' conclusion, on the basis of the legally relevant material in the case diary, as to why the final report deserved rejection, or, if it intended to proceed on the basis of the protest petition as a complaint, to follow the procedure prescribed under Sections 200 and 202 Cr.P.C. The course adopted in the present case reflects non-application of judicial mind and has resulted in an order which is legally unsustainable. Thus, affidavits accompanying a protest petition do not automatically become substantive evidence; their nature and relevance must be examined, and if the Court proceeds on them by treating the protest petition as a complaint, it is also required to be verified whether the facts of the complaint constitute such offence in light of Section 190 Cr.P.C.,

thereafter, the statutory complaint procedure must be followed.

39. **In Kranti Associates Private Limited & Anr. Vs. Masood Ahmed Khan & Ors. (2010) 9 SCC 496**, the Supreme Court held in para 47 as under:-

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
>
> *(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
>
> *(g) Reasons facilitate the process of judicial review by superior courts.*
>
> *(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
>
> *(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
>
> *(j) Insistence on reason is a requirement for both judicial accountability and transparency.*
>
> *(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is*

impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(i) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37].)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)], wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

40. In **Birla Corporation Limited Vs. Adventz Investments And Holdings Limited & Ors. (2019) 16 SCC 61**0, the Supreme Court held in para 29, 84 as under:-

"29. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872], it was held as under: (SCC p. 428-29, para 11)

"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as 'it merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view

to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

84. It is well settled that the inherent jurisdiction under Section 482 CrPC is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507], the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under: (SCC p. 741, para 5)

"5. … Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus, it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

> *(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> *(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.*
>
> *The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."*

41. Thus, in brief, the approach adopted by the learned Special Court is also contrary to the settled principles laid down by the Hon'ble Supreme Court in *Kranti Associates (P) Ltd. (supra)*, wherein it has been held, in substance, that a judicial or quasi-judicial authority must record reasons in support of its conclusions; the reasons must demonstrate that relevant factors have been objectively considered and extraneous considerations have been disregarded; and recording of reasons operates as a restraint against arbitrary exercise of judicial power and facilitates judicial review. The said principle has been reiterated in *Birla Corporation Ltd. (supra)*. In the present case, the impugned order merely records that the case diary and the affidavits alongiwith newspaper cuttings, photographs filed with the protest petition have been perused and, without analysing their contents, reliability, relevance or the material contradictions emerging therefrom, the final report has been rejected and the protest petition has been directed to be registered as a complaint. The order does not disclose what particular material in the case diary was found insufficient, what

material was found reliable, or why the conclusion of the Investigating Officer was unacceptable. More importantly, the learned Special Court has relied upon 'photographs and newspaper cuttings' without recording their relevance or evidentiary value and has failed to notice the material contradictions regarding the presence of witnesses and the time and manner of the alleged occurrence. Thus, the mandatory requirement of objective consideration of relevant material and recording of reasons has not been complied with. The impugned order, being bereft of reasons and disclosing no meaningful application of judicial mind to the material placed before the Court, cannot be sustained in law. The order is, therefore, not a reasoned judicial determination but merely a conclusion unsupported by reasons, and consequently suffers from manifest non-application of judicial mind.

42. Section 197 Cr.P.C. provides as under:-

> *"**197. Prosecution of Judges and public servants**-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction."*

43. In **Matajog Dobey Vs. H.C. Bhari (1955) 2 SCC 388**, the Supreme Court held in para 15, 18 as under:-

> *"15. Slightly differing tests have been laid down in the decided cases to ascertain the scope and the meaning of the relevant words occurring in Section 197 of the Code; "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty". But the difference is only in language and not in substance. The offence alleged to have been committed must have something to do, or must be related in some manner with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an*

offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation.

18. The result of the foregoing discussion is this: There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

44. In **Abdul Wahab Ansari Vs. State of Bihar & Anr. (2000) 8 SCC 500**, the Supreme Court held in para 8,9 as under:-

"8. In the case of Ashok Sahu v. Gokul Saikia [1990 Supp SCC 41 : 1990 SCC (Cri) 611] this court had said that want of sanction under Section 197 of the Code is a prohibition against institution of the proceedings, and the applicability of the section must be judged at the earliest stage of the proceedings and in that case, the Court directed the Magistrate to consider the question of sanction before framing a charge. In yet another case, in the case of B. Saha v. M.S. Kochar [(1979) 4 SCC 177 : 1979 SCC (Cri) 939] a three-Judge Bench of this Court had held that the question of sanction under Section 197 CrPC can be raised and considered at any stage of the proceedings and further in considering the question whether or not sanction for prosecution was required, it is not necessary for the court to confine itself to the allegations in the complaint, and it can take into account all the material on the record at the time when the question is raised and falls for consideration. This being the position, we are of the considered opinion that the decision of this Court in Birendra K. Singh case [(2000) 8 SCC 498 : JT (2000) 8 SC 248] does not lay down the correct law by directing that the objection on the question of sanction can be raised at the stage of framing of charge and not at any prior point of time.

9. Coming to the second question, it is now well settled by the Constitution Bench decision of this Court in Matajog

Dobey v. H.C. Bhari [AIR 1956 SC 44 : (1955) 2 SCR 925] that in the matter of grant of sanction under Section 197 of the Code of Criminal Procedure the offence alleged to have been committed by the accused must have something to do, or must be related in some manner, with the discharge of official duty. In other words, there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In the said case it had been further held that where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. This decision was followed by this Court in Suresh Kumar Bhikamchand Jain case [(1998) 1 SCC 205 : 1998 SCC (Cri) 1] and in a recent judgment of this Court in the case of Gauri Shankar Prasad v. State of Bihar [(2000) 5 SCC 15 : 2000 SCC (Cri) 872] . The aforesaid case has full force even to the facts of the present case inasmuch as in the said case, the Court had observed: (SCC p. 21, para 14)

"[I]t is manifest that the appellant was present at the place of occurrence in his official capacity as Sub-Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 CrPC."

It is not necessary for us to multiply authorities on this point and bearing in mind the ratio of the aforesaid cases and applying the same to the facts of the present case as indicated in the complaint itself, we have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in *course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. Accordingly, we allow this appeal and quash the criminal proceeding, so far as the appellant is concerned."*

45. In **State of Orissa through Kumar Raghvendra Singh & Ors. Vs. Ganesh Chandra Jew (2004) 8 SCC 40**, the Supreme Court held in para 11, 12 as under:-

"11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force, which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to

be official was explained by this Court in Matajog Dobey v. H.C. Bhari [AIR 1956 SC 44 : 1956 Cri LJ 140] thus : (AIR p. 49, paras 17 & 19)

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner, with the discharge of official duty. …

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

12. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

46. In **D. Devaraja Vs. Owais Sabeer Hussain (2020) 7 SCC 695**, the Supreme Court held in para 74 as under:-

"74. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court."

47. In **Amod Kumar Kanth Vs. Association of Victim of Uphaar Tragedy & Anr. (2023) 16 SCC 239**, the Supreme Court held in para 22 as under:-

"22. Shri K.M. Nataraj further drew our attention to the decision in Devinder Singh v. State of Punjab [Devinder Singh v. State of Punjab, (2016) 12 SCC 87 : (2016) 4 SCC (Cri) 15 : (2017) 1 SCC (L&S) 346] : (SCC pp. 116-17, para 39)

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197CrPC would apply.

39.5. In case sanction is necessary, it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.

39.6. Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of court at a later stage, finding to that effect is permissible and such a plea can be taken first time before the appellate court. It may arise at inception itself. There is no requirement that the accused must wait till charges are framed.

39.7. Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of trial or at other appropriate stage.

39.8. Question of sanction may arise at any stage of proceedings. On a police or judicial inquiry or in course of evidence during trial. Whether sanction is necessary or not may have to be determined from stage to stage and material brought on record depending upon facts of each case. Question of sanction can be considered at any stage of the proceedings. Necessity for sanction may reveal itself in the course of the progress of the case and it would be

> *open to the accused to place material during the course of trial for showing what his duty was. The accused has the right to lead evidence in support of his case on merits.*
>
> *39.9. In some cases it may not be possible to decide the question effectively and finally without giving opportunity to the defence to adduce evidence. Question of good faith or bad faith may be decided on conclusion of trial."*
>
> *(emphasis supplied)*

48. There is yet another fundamental infirmity in the impugned order. Admittedly, all the appellants/accused persons were police personnel and were posted at Police Station Kharkhoda, District Meerut, at the relevant time. The alleged occurrence dated 18.06.2017 is itself stated to have taken place within the premises of the same police station. It is further not disputed that, in connection with the incident of the same date, Case Crime No. 299 of 2017 was registered against Saroj, the informant of the present Case Crime No. 530 of 2017, under Sections 323, 332, 353, 504 and 506 IPC, and she was taken into custody and sent to jail. The said criminal case was registered by Lady Constable No.2879, Bhuvanesh Kumari. Thus, the allegations in the present case, the presence of the appellants at the police station, their official status and the circumstances in which the alleged occurrence took place have *an apparent and direct nexus with the discharge of their official functions*. In such circumstances, the learned Special Court was required, at the stage of considering the final report and before proceeding to take cognizance or directing the protest petition to be treated as a complaint, to examine whether the alleged acts were committed while acting or purporting to act in the discharge of official duty and, consequently, whether previous sanction under Section 197 Cr.P.C. was a condition precedent for taking cognizance.

49. The law in this regard is well settled. In brief, in *Matajog Dobey (supra)*, the Constitution Bench explained that the object of Section 197 Cr.P.C. is to afford protection to public servants against vexatious criminal proceedings in respect of acts having a reasonable connection with the discharge of official duty. In *Abdul Wahab Ansari (supra)*, the Supreme Court emphasised that where the statutory protection applies, the Court is prohibited from taking cognizance without previous sanction and that the question of sanction is required to be considered at the earliest stage. In *State of Orissa through Kumar Raghvendra Singh* (supra), it was reiterated that the protection extends to an act which has a reasonable nexus with the discharge of official duty, even where the public servant is alleged to have exceeded the limits of such duty; the relevant test is not whether the act was lawful, but whether there is a reasonable connection between the act complained of and the official duty. The principle has been reiterated in *D. Devaraja(supra)*, and *in Amod Kumar Kanth (supra).* Tested on the aforesaid principles, the omission on the part of the learned Special Court assumes significance. The Court was not required to finally determine the guilt or innocence of the appellants at this stage; nevertheless, it was required to apply its judicial mind to the statutory bar contained in Section 197 Cr.P.C. and to determine whether the alleged acts had a reasonable nexus with the official functions being performed by the police personnel at Police Station Kharkhoda on 18.06.2017. The fact that another criminal case arising out of the same incident had already been registered against the informant herself and that the alleged occurrence and the registration and investigation of the said case all arose within the police station premises

were circumstances directly relevant to such determination. The impugned order, however, contains no consideration whatsoever of Section 197 Cr.P.C., no finding as to whether the alleged acts were connected with official duty, and no finding as to whether previous sanction had been obtained from the competent authority.

50. This omission is not a mere procedural irregularity. Where Section 197 Cr.P.C. applies, previous sanction is a condition precedent to the Court taking cognizance of the offence. Therefore, before converting the protest petition into a complaint and proceeding against the appellants, the learned Special Court was required to satisfy itself whether the statutory requirement of previous sanction had been complied with. The question could not have been completely ignored and left unexamined. the Special Court was first required to examine whether the alleged acts had a reasonable nexus with official duty and, if so, whether previous sanction existed. In the absence of any consideration of this mandatory statutory safeguard, the impugned order suffers from non-application of judicial mind and cannot be sustained in its present form.

51. Section 14(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides as under:-

> *"[**14. Special Court and Exclusive Special Court.**--(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:*
>
> *Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts,*

the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act."

52. In **Gangula Ashok & Anr. Vs. State of A.P. (2000) 2 SCC 504**, the Supreme Court held in para 8,9 as under:-

"8. Section 14 of the Act says that

"for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act".

So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. The word "inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" [vide Section 2(1)(d)].

9. Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session"."

53. There is another serious infirmity in the proceedings before the learned Special Court. From the statement made by learned counsel appearing for opposite party no. 2,

which is also supported by the statement annexed with the counter affidavit, it appears that after treating the protest petition as a complaint, the learned Special Court proceeded to record evidence under Section 244 Cr.P.C. and a witness has already been examined in this case. The accused-appellants also, moved application seeking discharge under Section 245 Cr.P.C., which was rejected by the learned Special Court on merit. The aforesaid course of proceedings clearly indicates that the learned Special Court adopted the procedure applicable to a '*Magistrate trying a warrant case instituted otherwise than upon a police report*'. Such procedure was legally impermissible in the facts of the present case. Thus, The legal position in this regard stands settled by the Hon'ble Supreme Court in Gangula Ashok and another (supra), The Supreme Court held that merely because a Court of Session is designated as a Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, it does not cease to be a Court of Session. The trial before such Special Court has to be conducted in accordance with the provisions contained in Chapter XVIII of the Code of Criminal Procedure. The Court specifically distinguished between an inquiry and a trial and held that the Special Court is constituted to conduct the trial as a Court of Session.

54. The aforesaid principle has direct application to the present case. Once the matter was before the Special Court constituted under the SC/ST Act and the Court was required to proceed as a Court of Session, the provisions contained in Sections 244 and 245 Cr.P.C., which form part of the procedure applicable to warrant cases instituted

otherwise than on a police report before a Magistrate, could not have been adopted as the procedure for trial by the Special Court. The appropriate provisions governing discharge/charge before a Court of Session are Sections 227 and 228 Cr.P.C. The distinction is substantive and not merely one of nomenclature. Under Section 227, the Sessions Court considers the record of the case and the documents submitted therewith and, after hearing the accused and the prosecution, may discharge the accused if it considers that there is not sufficient ground for proceeding against him. The subsequent course adopted by the learned Special Court therefore further demonstrates that the Court proceeded on an erroneous assumption regarding the procedure applicable to the case. Having recorded evidence under Section 244 Cr.P.C., the Court also entertained and rejected application under Section 245 Cr.P.C., instead of examining the question of discharge in accordance with Section 227 Cr.P.C. This was not a case where the learned Special Court merely referred to an incorrect provision while otherwise following the correct statutory procedure. The record indicates that the entire procedural course was adopted on the footing that the Court was functioning as a Magistrate in a warrant case, whereas, in law, it was required to proceed as a Court of Session under Chapter XVIII Cr.P.C.

55. The distinction assumes greater significance because the procedure under Section 227 Cr.P.C. requires the Sessions Court to examine the record of the case and the documents submitted therewith, along with the submissions of the accused and the prosecution, for determining whether sufficient ground exists for

proceeding against the accused. Thus, the statutory scheme of 'trial before court of Session' does not contemplate that the witnesses must first be subjected to the procedure of recording prosecution evidence under Section 244 Cr.P.C. or the question of discharge can be considered under Section 245 Cr.P.C. The learned Special Court, by proceeding under Sections 244 and 245 Cr.P.C., has consequently deprived the appellants of consideration of their case for discharge in the manner specifically prescribed for a Court of Session. Thus, the learned Special Court was required to proceed in accordance with Chapter XVIII Cr.P.C. and to consider the question of discharge, if raised, under Section 227 Cr.P.C. The impugned course of proceedings, therefore, suffers from a fundamental procedural error and reflects non-application of judicial mind to the character and jurisdiction of the Special Court under the SC/ST Act.

56. In **Pradeep S. Wodeyar Vs. State of Karnataka (2021) 19 SCC 62**, the Supreme Court held in para 47, 48 as under:-

> *"C.2.2. Section 465CrPC and failure of justice*
>
> *47. Rattiram [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] had distinguished Gangula Ashok [Gangula Ashok v. State of A.P., (2000) 2 SCC 504 : 2000 SCC (Cri) 488] , [It is to be noted that no discussion on the applicability of Section 465CrPC was made in Gangula Ashok v. State of A.P., (2000) 2 SCC 504 : 2000 SCC (Cri) 488.] on the basis of the stage of the proceedings since the trial had not begun in the latter but was completed in the former. Rattiram [Rattiram v. State of M.P., (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] does not hold that Section 465CrPC would not be applicable to pre-trial cases. The differentiation between trial and pre-trial cases was made only with reference to sub-section (2) of Section 465. Since the cognizance order was challenged after the trial was over, the accused could not prove failure of justice in*

view of Section 465(2). However, Section 465(2) only provides one of the factors that shall be considered while determining if there has been a failure of justice. Section 465(2) by corollary does not mean that if the alleged irregularity is challenged at an earlier stage, the failure of justice is deemed to be proved. Even in such cases though, where the challenge is made before the trial begins, the party has the burden of proving a "failure of justice". Further, even if the challenge is made before the trial begins, the Court still needs to determine if the challenge could have been made earlier.

48. The test established for determining if there has been a failure of justice for the purpose of Section 465 is whether the irregularity has caused prejudice to the accused. [Annareddy Sambasiva Reddy v. State of A.P., (2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] No straitjacket formula can be applied. However, while determining if there was a failure of justice, the courts could decide with reference to inter alia the stage of challenge, the seriousness of the offence charged, and apparent intention to prolong proceedings. It must be determined if the failure of justice would override the concern of delay in the conclusion of the proceedings and the objective of the provision to curb the menace of frivolous litigation."

57. It may also be noticed that the defects in the impugned order cannot be treated as a mere error, omission or irregularity curable under Section 465 Cr.P.C. and in the light of *Pradeep S. Wodeyar (supra)*. In the present case, the challenge raised by the appellants is at the very threshold of the criminal proceeding and before any trial has commenced. The impugned order has rejected the final report and has directed that the protest petition be registered as a complaint, thereby setting the criminal process in motion against the appellants. The appellants have specifically raised the question of the applicability of Section 197 Cr.P.C., the alleged acts having been attributed to police personnel who were admittedly posted at Police Station Kharkhoda and were performing official functions at the relevant time. Thus, the question whether the

alleged acts had a *reasonable nexus with official duty* and whether previous sanction was a condition precedent for taking cognizance was required to be judicially examined before proceeding against the appellants.

58. The learned Special Court, however, has not considered Section 197 Cr.P.C. at all. It has neither recorded a finding that the alleged acts were wholly unconnected with the discharge of official duty nor examined whether the requirement of previous sanction stood satisfied. This omission assumes greater significance because the Court has simultaneously relied upon the protest petition, affidavits, photographs and newspaper cuttings and, on that basis, rejected the final report and proceeded to convert the protest petition into a complaint without any reason or legal basis. The failure to examine a statutory safeguard which may constitute a condition precedent to the initiation of criminal proceedings cannot, in the facts of the present case, be characterised as a harmless or inconsequential irregularity. Therefore, there is no question of permitting a defective order to survive merely on the ground of delay or on the assumption that no prejudice has been caused. The prejudice is inherent in compelling the appellants to face a criminal proceeding due to considering extraneous materials in order to treat Final Report into complaint and non compliance of mandatory legal provisions.

59. Thus, the present case does not involve a mere misdescription, accidental omission or curable procedural irregularity. The impugned order reflects failure to consider a statutory provision having a direct bearing upon the jurisdiction to proceed against the appellants, coupled with

non-application of judicial mind to the material relied upon for rejecting the final report. Such an omission, particularly when challenged at the threshold and when it affects the valuable statutory protection available to public servants, has occasioned failure of justice and cannot be saved by invoking Section 465 Cr.P.C. The impugned order, therefore, calls for interference in exercise of the appellate jurisdiction of this Court.

60. In view of the legal and procedural issues noticed hereinabove, the following **guidelines** are issued for due observance by all the criminal courts in the State of Uttar Pradesh, subject to the statutory provisions applicable to the case:

(i) Where a Final Report is submitted by the Investigating Officer, the Court shall independently examine the police report and the material collected during investigation before accepting or rejecting the Final Report. The order shall reflect application of judicial mind to the relevant material.

(ii) Mere filing of a protest petition along with affidavits shall not, by itself, result in its automatic conversion into a complaint. The Court shall clearly determine whether it proposes to accept the Final Report or reject the Final Report and treat the protest petition as a complaint in accordance with law.

(iii) If the Court rejects the Final Report and proceeds with the case as a State case, the order shall contain '*specific and brief reasons*' indicating the material which warrants disagreement with the conclusion of the Investigating Officer.

(iv) If the Court proposes to treat the protest petition as a complaint, the order shall record specific and brief reasons for adopting such course. The court while treating a protest petition as a complaint, has to examine whether the facts alleged in the protest petition, taken at their face value, disclose the commission of an offence in terms Section 190(1)(a) Cr.P.C./corresponding Section 210(1)(a) B.N.S.S. A mere recital that the protest petition and accompanying affidavits/documents etc have been perused, shall not constitute sufficient judicial reasoning.

(v) Affidavits of proposed witnesses, newspaper cuttings, photographs etc and other extraneous material filed along with a protest petition shall not be mechanically treated as substantive evidence at the stage of deciding whether to accept or reject the Final Report. Their 'legal relevance and evidentiary value' shall be considered in accordance with the stage and procedure prescribed by law.

(vi) In cases triable exclusively by the Court of Session or by a Special Court exercising the powers of a Court of Session, after completion of the preliminary/inquiry stage prescribed by law, the Court shall follow the procedure specifically prescribed for proceedings before the Court of Session/Special Court under the applicable provisions of the Cr.P.C. or the BNSS, as the case may be. The procedure applicable to proceedings before a Magistrate shall not be substituted for, or imported into, the Sessions trial merely because the proceedings originated from a protest petition or were initially treated as a complaint.

(vii) Where the accused persons are public servants and the allegations relate to acts allegedly committed in the discharge of official duties, the Court shall consider, at the appropriate stage, the applicability of Section 197 Cr.P.C./Section 218 BNSS, wherever applicable, before proceeding in accordance with law.

(viii) Every order of taking cognizance or rejecting a Final Report shall be a '*speaking and reasoned*' judicial order. The order shall briefly disclose the nature of the allegations, the material considered, the reasons for the course adopted by the Court and, wherever necessary, the essential ingredients of the offences which are 'prima facie' disclosed.

(ix) In a complaint case, the Presiding Officer of the court '*shall examine*' the complainant and witnesses, as mandated under Section 200, 202 Cr.P.C./corresponding to Section 223, 225 B.N.S.S. and, may, where necessary, exercise its power under Section 165 of the Evidence Act/corresponding to Section 168 B.N.S.S. to elicit necessary clarification for just and proper inquiry.

(x) Where '*several accused*' are sought to be proceeded against at the stage of summoning on the basis of material evidence during course of inquiry proceeding in complaint case, the Court shall, wherever the allegations so require, consider the prima facie material and specific role attributed to each accused related to different offences in that Case instead of proceeding mechanically on omnibus allegations against all of them.

(xi) A Final Report shall, as required by *Rule 122 of the U.P. Police Regulations*, be submitted through the Superintendent of Police/Commissioner of Police (Head of Police Administration of district), who is required to exercise appropriate supervisory scrutiny before its submission to the court. Further, the complainant/informant shall be duly informed of the submission of the Final Report by Investigating Officer, in accordance with law.

(xii) All the Criminal Courts shall ensure that the Final Reports submitted by the Police are considered and disposed of expeditiously and, in terms of C.L. No.96/VIII-B, dated 19.7.1971 and C.L. No.10/VII-C/25 Admin.(G), dated 24.1.1986, ordinarily *within one month of their submission*, by passing an appropriate judicial order, in accordance with law.

(xiii) The learned District and Sessions Judges of all the districts in the State shall monitor aforesaid compliance by the criminal courts under their administrative control in 'monthly meeting' to the judicial officers and monitoring cell meeting' to the officers of district administration. Wherever any recurring departure from these guidelines is noticed, appropriate administrative guidance shall be issued to ensure uniform and lawful exercise of judicial power.

61. For the reasons recorded hereinabove, this Court is of the considered opinion that the impugned order of cognizance cannot be sustained in law. The Investigating Officer, after investigation, had submitted a Final Report. The learned Special Court, instead of considering the material collected during investigation and recording a reasoned finding as to why the Final Report was not acceptable, proceeded to treat the protest petition as a complaint substantially on the basis of affidavits of witnesses, photographs and newspaper cuttings. Such material could not have been made the foundation for taking cognizance in the manner adopted by the learned

special Court, particularly when the affidavits themselves contain material contradictions and the order does not disclose any proper consideration of the case diary or the reasons for disagreeing with the investigation.

62. The learned Special Court has further adopted the procedure applicable to a complaint case before a Magistrate, including recording of statements under Section 244 Cr.P.C. and consideration of an application under Section 245 Cr.P.C. etc. The impugned order, therefore, suffers from a fundamental procedural error apart from non-application of judicial mind on the part of presiding officer of special court SC/ST Act.

63. There is also no consideration in the impugned order of the objection arising under Section 197 Cr.P.C. Without examining whether the alleged acts had a reasonable nexus with the discharge of official duty and whether the statutory protection under Section 197 Cr.P.C. was attracted, the learned Special Court proceeded to take cognizance. Such omission assumes significance in the facts of the present case and renders the order legally unsustainable.

64. The impugned order is also wholly '*non-speaking*' and does not disclose the reasons which persuaded the learned Special Court to reject the Final Report and to proceed against the appellants. A judicial order taking cognizance must reflect application of judicial mind to the material placed before the Court. The Court cannot substitute reasons by merely observing that it has perused the protest petition and accompanying material. The impugned order, therefore, fails to satisfy the basic requirement of a reasoned judicial order.

65. This Court has also taken into consideration the fact that the allegations in the protest petition do not contain reliable, specific and individual allegations disclosing the essential ingredients of the offences under the SC/ST Act against each of the appellants.

66. In view of the cumulative effect of the aforesaid circumstances, this Court is of the considered opinion that permitting the proceedings to continue against the appellants would amount to an abuse of the process of law. The impugned order of cognizance, therefore, cannot be permitted to stand.

67. Accordingly, the appeal is **allowed**. The impugned order dated 06.10.2018 passed by the learned Special Judge, SC/ST Act, Meerut, in connection with Crime No. 530 of 2017, Police Station Kharkhoda, District Meerut, whereby the Final Report was rejected and the protest petition was treated as a complaint and cognizance was taken against the appellants, is hereby **set aside**.

68. Consequently, all the further proceedings arising out of the aforesaid order of cognizance against the appellants are also quashed and **set aside**. The appellants shall stand discharged from all the proceedings arising from the impugned order.

69. Let a copy of this judgment be transmitted **within 48 hours** to the court concerned by Fax/e-mail through District & Session Judge concerned for information and necessary compliance.

70. The Registrar General of the High Court of Judicature at Allahabad shall circulate a copy of this judgment to all the Judicial Officers in the State of Uttar Pradesh for

information, guidance and strict compliance in accordance with law.

71. The Registrar General of this Court shall also forward a copy of this judgment to the Director, Judicial Training and Research Institute, Lucknow, U.P. for its consideration and for issuing, appropriate guidance, to the judicial officers regarding the procedure and legal principles as laid down herein.

(Santosh Rai,J.)

September 15, 2026
RA