Criminal Law and Criminal Procedure

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1. Introduction

The Allahabad High Court had the opportunity to examine, expand, and apply established principles of substantive and procedural criminal law in a plethora of cases that came before its consideration, mostly through criminal revision petitions. This survey examines how the Court has interpreted and applied statutory provisions and established jurisprudence to these cases.

2. Procedural Criminal Law

In *Rakesh Kumar Awasthi*,[1] the Court was faced with a petition by Rakesh Kumar Awasthi, addressing the Magistrate's power to order further investigation in a criminal case. specifically, the question was whether the power can be exercised after the police have submitted a final report. The question was whether a Magistrate can reject the final report and direct additional investigation, especially if a formal "protest petition" wasn't filed. The court clarified that a "miscellaneous application" labelled as 'narazgi yachika' seeking rejection of the final report and further investigation effectively functions as a protest petition under Section 173(8) of the Code of Criminal Procedure (Cr.P.C.). The judgment reiterated the settled position that the Magistrate possesses broad powers, including the authority under Section 156(3) read with Section 173(8) Cr.P.C., to order further investigation at all stages of criminal proceedings until the trial commences, ensuring a fair and just investigation. The Court stated:

> The question as to whether the Magistrate has the power to order further investigation, after a police report has been forwarded to him under Section 173 was considered in Vinubhai Haribhai Malaviya and others v. State of Gujarat and another[2] and it was held that the Magistrate's power under Section 156(3) Cr.P.C. is very wide, and in order to ensure that a 'proper investigation' takes place in the sense of a fair and just investigation by the police, Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, would include an order for further investigation after a report is received by him under Section 173(2), and which power would continue in the Magistrate at all stages of the criminal proceedings until the trial itself commences.[3]

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[1] *Rakesh Kumar Awasthi* v. *State of Uttar Pradesh*, 2024 AHC 23003.

[2] (2019) 17 SCC 1.

[3] *Supra* note 1 at para. 13.

In a maintenance petition[4] filed by Smt. Hema and another petitioner against the State of U.P. and Dhirendra Pratap Singh, the Allahabad High Court had to look into the ability of a court to recall or restore a maintenance case that was previously dismissed for non-prosecution. The principal question, which falls for consideration, is as to whether, in proceedings under Section 125 Cr.P.C., upon an order having been made, the court concerned can be held to be *functus officio* for the purposes of entertaining an application seeking recall, and that any application which has been moved for recall of an order rejecting the maintenance petition for non- prosecution, would amount to alteration of the judgment so as to be barred by Section 362 Cr.P.C. The case concerned specifically with Sections 125, 127, and 362, pertaining to maintenance orders, alteration of allowances, and the court's power to alter judgments. The Court emphasized the social justice objective of maintenance laws, and called for a liberal and purposive interpretation to ensure the welfare of vulnerable parties. The Court ordered that the embargo on altering judgments (Section 362 Cr.P.C.) is relaxed in maintenance proceedings, allowing for recall applications to be considered. To arrive at this, the Court stated:

> Para. 25 – The scope of the legislation relating to maintenance under Section 125 Cr.P.C. and its social objective was examined in Badshah v. Urmila Badshah Godse[5] and applying the principle of purposive interpretation, it was held that in the context of a 'social justice legislation', the Court must give effect to that construction, which would be responsible for smooth functioning of the system for which the statute had been enacted.

In *Gaurav Mehta* v. *Anamika Chopra,*[6] the Court was faced with a criminal revision against a family court order granting maintenance to wife u/s 125 Cr.P.C. The case was peculiar to the effect that the parties had been granted mutual divorce by a family court in 2007. One of the conditions agreed to by the wife was that she would not claim any maintenance from the husband. However, the wife filed a claim u/s 125 against the former husband in 2020 for maintenance to the tune of 50000/- per month, citing the expenditures he incurred for educating their son in an international University in Canada, and since her own financial situation had changed for the worse over the past years. Citing the changed circumstances, the family court allowed a maintenance of 25000/- per month. The HC set aside the decision of the family court considering that the couple were living separately by mutual consent since the divorce, bringing the matter u/s 125 (4) and also since the wife had earlier waived any maintenance in the family court's decree granting divorce.

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[4] *Hema* v. *State of Uttar Pradesh and Others*, 2024 AHC 89029.

[5] (2014) 1 SCC 188.

[6] 2024 AHC 40372.

In *Anil Kumar Agarwal* v. *State of UP and Anr*,[7] the Court considered the right of a victim to appeal an acquittal in criminal cases, specifically focusing on whether such an appeal lies with the Sessions Judge or the High Court. The dispute in Court was on harmonizing Section 372 (victims right to appeal against acquittal, lesser conviction, or inadequate compensation without requiring leave) and Section 378(4) & (5) of the Criminal Procedure Code (Cr.P.C.) (procedure for complainants to appeal acquittals in complaint cases with special leave to the High Court). When victims and complainants, particularly in complaint-initiated cases, might pursue appeals in different forums, leading to multiplicity of cases. At the same time, the legislative intent of 372 (amended to empower victims) was to aid victims, particularly in "police cases" where they previously lacked a voice. The Court ruled that in complaint-initiated cases, whether the victim is also the complainant or not, the appeal against acquittal must be filed with the High Court under Section 372 read with Section 378(4) & (5) Cr.P.C., without needing special leave. The petitioner had contended that the victim or the complainant has been given unfettered right of appeal in terms of proviso to Section 372 Cr.P.C to challenge the acquittal of an accused by preferring an appeal before the Court of Session if the order of acquittal is passed by the Court of Magistrate or before the High Court if order of acquittal is passed by the Court of Session and for preferring such appeal there is no need to obtain leave/special leave from such Courts after insertion of the proviso to Section 372 Cr.P.C. by Act 5 of 2009 w.e.f. 31.12.2009.[8] The State had argued that the complainant in a complaint case, who is a victim also is entitled to prefer appeal before the High Court against the order of acquittal whether it is passed by a Magistrate or Sessions Judge and appeal would lie again before the High Court even when the victim and complainant both are different persons in a case arising from the same judgment and order of acquittal in a complaint case.[9] The Court in its Order, quoted from several Supreme Court decisions and enumerated the law as follows:

> (b) Supreme Court in Mallikarjun Kodagali (Dead) Represented through Legal Representative v. State of Karnataka and Others (2019) 2 SCC 752, has held that: '…the proviso to Section 372 of the Cr.P.C. must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence'. The Court further held that it is not mandatory for victim to obtain special leave to appeal from High Court to file appeal under the said proviso.

[7] 2020 AHC 119834-DB.
[8] *Id.* at para. 5.
[9] *Id.* at para. 6.

> (c) Section 378 (4) and (5) Cr.P.C. provides that an order of acquittal passed in a case instituted upon complaint can be challenged before High Court on grant of an application for special leave to appeal and no such application shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.[10]

The Court concluded that "the forum that is prescribed under section 378(4) Cr.P.C. is High Court to file appeal by the complainant, therefore considering the principles of statutory interpretation even victim has to file appeal against acquittal in a case constituted upon complaint, before High Court only. This will not only avoid uncertainty but will also serve the purpose of the enactment."[11] It also directed for the Order to be circulated amongst all the judicial officers in the State for their guidance on the matter.

In *Kailash Nath Dwivedi* v. *State of UP and Ors,*[12] the appellant sought to overturn lower court decisions that converted his police investigation request into a complaint case, by an application u/s 482. The High Court had to decide on the Magistrate's discretionary power under Section 156(3) of the Code of Criminal Procedure, specifically addressing whether a Magistrate "must" or "may" order a police investigation for cognizable offenses. The High Court ruled that a Magistrate has the discretion to either direct a police investigation or treat the matter as a complaint case, requiring the complainant to present evidence. It hence upheld the lower courts' decisions, noting the existence of ongoing litigation between the parties and the applicant's possession of material evidence, which justified proceeding with a complaint case rather than a police investigation. The Court referred to the an earlier ruling of its in *Gulab Chand Upadhyaya* v. *State of U.P. and others*[13] Considering the question whether the Magistrate was justified in directing that an application under Section 156(3) of the Code seeking for registration of an F.I.R. and investigation, be registered as complaint, guidelines were formulated for exercise of discretion by the Magistrate in regard to such cases.[14]

In *Ramadas Tureha* v. *State of UP,*[15] the challenge was u/s 482, against dismissal of an application filed by Ramdas Tureha, who had sought to introduce additional witnesses u/s 391 and evidence during an ongoing appeal in the Sessions Court. Tureha was previously

[10] *Id.* at para. 48.
[11] *Id.* at para. 51.
[12] 2021 AHC 67561.
[13] 2002 Cri LJ 2907 (All.).
[14] *Id.* at para. 26.
[15] 2021 AHC 94320.

convicted by the Additional Civil Judge and Judicial Magistrate for misrepresenting his caste in election documents under sections 419 and 420 I.P.C., but since the applicant did not utilize the caste certificate the charges under sections 467, 468 and 471 I.P.C. were not proved and he was acquitted of the said charges. The appellant was not able to point out any material error or illegality in the order passed by the court below refusing to entertain the application for summoning of witnesses at the stage of appeal.[16] The State, in response, submitted that the powers under section 391 of the Code for taking further evidence are to be exercised sparingly and it is not open to the applicant to seek invocation of the same as a matter of right.[17] The High Court referred to *Rambhau and Another* v. *State of Maharashtra*[18] where the Supreme Court held that the powers under the section being in the nature of an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. The High Court upheld the lower appellate court's decision, emphasizing that the power to admit new evidence at the appeal stage, under Section 391 of the Code of Criminal Procedure, is discretionary and used sparingly. The Court also noted that "since the trial court had acquitted the applicant of the charges under sections 467, 468 and 471 I.P.C. after recording a finding that though the applicant had misrepresented his caste while contesting the panchayat elections but he had not utilized the caste certificate since the same had not been appended along with the nomination form, the application filed under section 391 seeking to summon the persons who are stated to have issued the caste certificate, as witnesses, may not have any material bearing on the outcome of the pending appeal."[19]

In *Rajitram Shukla* v. *State of UP,*[20] the applicant sought to quash charges and summoning order issued by the trial court in a case under Sections 323, 504, 506 I.P.C. and 3 (1) 10 S.C./S.T. Act, on the ground that the proceedings would be barred by limitation in view of the provisions contained under Section 468 Cr.P.C. The core contention revolves around Section 468 Cr.P.C., which establishes a limitation period for taking cognizance of certain offenses. The applicant argues that the extended time between the incident (May 2015), the police report (December 2015), and the summoning order (November 2020) made the prosecution time-barred.[21] The State argued that the question as to what would be the relevant date for the purposes of computing the period of limitation under Section 468 Cr.P.C. was decided by a Constitution Bench in the case of *Sarah Mathew* v. *The Institute of*

[16] *Id.* at para. 6.
[17] *Id.* at para. 7.
[18] (2001) 4 SCC 759.
[19] *Supra* note 23 at para. 14.
[20] Application u/s 482 No. 8723 of 2021.
[21] *Id*. at para. 4.

Cardio Vascular Diseases and Ors.[22] The Court referred to the recommendations made by 42nd Law Commission Report, and the report of the Joint Parliamentary Committee accepting the recommendations of the Law Commission.[23] The Court also considered the term 'cognizance' in the context of the provisions of the Code, and held that 'taking cognizance' is entirely an act of the Magistrate and that the same may be delayed because of several reasons including systematic reasons.[24] The Court held that the relevant date for calculating limitation is the date of filing the complaint or initiating the prosecution, not the date when the Magistrate takes formal cognizance of the offense. This distinction is crucial because the complainant or prosecuting agency has no control over when a magistrate decides to take cognizance. Therefore, the application to dismiss the case based on this specific limitation argument is rejected, allowing other aspects of the challenge to be heard later.

In *Saleem Ahmad* v. *State of U.P. and Ors.,*[25] the Court had to decide on the nature of proceedings under the Protection of Women from Domestic Violence Act, 2005 (D.V. Act), particularly addressing whether the proceedings are civil or criminal. The specific issue was whether amendments are permissible in applications filed under D.V. Act. The petitioner argued that they are criminal and thus not amendable, while the respondent claimed they are civil. An application was moved by the wife seeking an amendment in the relief clause of an earlier application filed under Section 12 of the D.V. Act. The application seeking amendment sought deletion of a part of the relief clause, stating that due to an inadvertent typographical error, maintenance had been sought for 'the minor son', whereas the applicant did not have any minor son.[26] The Lower Courts permitted the amendments to be made, and hence the matter was brought before the HC. The court affirmed that D.V. Act proceedings, stating that "the contention sought to be raised on behalf of the petitioner that the Magistrate before whom the application under Section 12 of the D.V. Act, was pending, did not have the jurisdiction or the power to allow the application seeking amendment in the relief clause of the original application, cannot be legally sustained."[27] Amendments to correct minor errors or avoid multiple lawsuits, aligning with the Act's purpose to provide effective civil remedies for domestic violence can be permitted. To this end, the Court stated: "The scheme of the Act envisages that the order to be passed by the Magistrate, and a complaint by the aggrieved

[22] *Id.* at para. 5.
[23] *Id.* at para. 8.
[24] *Id.* at para. 10.
[25] 2024 AHC 89128.
[26] *Id.* at para. *3.*
[27] *Id.* at para. 41.

person, would be of a civil nature, and if the said order is violated, it would assume the character of criminality."[28]

In *Kailash and Anr* v. *State of UP,*[29] the petitioner challenged a summons issued by the Magistrate in a criminal complaint case (Anar Singh v. Kailash and others). Kailash and the co-accused sought to overturn an order that summoned them based on a complaint alleging serious offenses, including attempted murder. The Court ruled that "the object of section 202 is to enable the Magistrate to form an opinion as to whether the process is to be issued or not. The purpose of the investigation to be directed under this section is to help the Magistrate in arriving at a decision as to the issuance of process."[30] The Court referred to the Supreme Court's decision in *S.W. Palanitkar and Others* v. *State of Bihar and Another*[31] and it was held that test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction".[32] The Court reasoned that "the broad-based inquiry by the Magistrate, as contemplated under this section, is with a view to enable him to arrive at a decision as to whether he should dismiss the complaint or whether he should proceed to issue process upon the complaint."[33] Referring to several Supreme Court decisions, the Court ruled that the Summoning Order could not be interfered with. The Order of the HC stated:

> The allegations in the complaint have been found to be supported in the statement made on oath by the complainant during the course of examination under section 200 and also by the statements of the witnesses recorded during the course of inquiry made by the Magistrate under section 202. The order summoning the accused petitioners passed by the trial court indicates that the same has been passed taking due consideration of the material available on record.

This is in line with the Court's earlier decision in *Sanjay Singh* v. *State of UP,*[34] where the appellants had filed an application u/s 482 to quash a summoning order issued by the Magistrate in a criminal complaint case. The matter pertained to sections 323, 504 and 506 Indian Penal Code and sections 3(1) (r) and 3(1) (s) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The appellant's counsel argued that the complainant's

[28] *Id.* at para. 16.
[29] 2024 AHC 80897.
[30] *Id.* at para. 8.
[31] (2002) 1 SCC 241.
[32] *Supra* note 17 at para. 9.
[33] *Supra* note 17 at para. 8.
[34] 2021 AHC 88404.

initial sworn statement did not conform to the allegations in the complaint. However, on a specific query as to what are the contradictions between the statement under section 200 of the Code and the complaint, apart from referring to certain factual details, counsel for the applicants has not been able to point out anything specific.[35] The court found that the complainant's statements under Section 200 and the witness inquiries under Section 202 of the Code of Criminal Procedure corroborated the complaint, establishing a prima facie case for proceeding.

The principle reiterated is in line with the jurisprudence laid down by the Court in earlier cases as well. In *Kamlendra Bahadur Mishra* v. *State of UP and Anr,*[36] an application under Section 482 Cr.P.C. was filed seeking to quash the proceedings of a Special Session Trial under Ss. Sections 323, 342, 504, 506 I.P.C. read with 3 (2) (va) of S.C./S.T. Act. The ground for the challenge was that the learned Special Judge before proceeding to frame charges against the applicants did not provide opportunity to move a discharge application under Section 227 of the Code of Criminal Procedure.[37] The State argued that the applicants were granted sufficient time by the court below before framing of charges and in the event the applicants desired, they could have moved an appropriate discharge application in the interregnum. It was also pointed out that subsequent to framing of charges, several dates have been fixed and the trial was at the stage of evidence and as such the claim sought to be raised by the accused applicants with regard to discharge cannot be entertained at this stage.[38] The appeal was dismissed by the Court, stating that it was after hearing the counsel for the accused-applicants that charge was framed in their presence and the same was read and explained to the accused applicants.[39] The Court referred to several precedents including *M.E. Shivalingamurthy* v. *Central Bureau of Investigation, Bengaluru*[40] and held, reiterating the role of the Courts at the charging stage:

> Para. 21- The ambit and scope of exercise of power under Sections 227 and 228 of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. *The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.* The Court has clearly to sift the

[35] *Id.* at para 4.
[36] 2021 AHC 172308.
[37] *Id.* at para. 3.
[38] *Id.* at para. 6.
[39] *Id*. at para. 29.
[40] (2020) 2 SCC 768.

> elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of the Code, if not, he will discharge the accused. *At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.*
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> [Emphasis by author, not Court]

In *Sudesh Kumar* v. *State of UP and another,*[41] the petitioner, via a criminal revision petition, sought to set aside an Order passed in a Complaint Case under Section 138 of the Negotiable Instruments Act, 1881, regarding dishonour of a cheque issued by the petitioner-accused. The challenge was based on the computation of limitation period. The petitioner argued that since the complaint was filed later than one month after the notice was served to him regarding dishonour of his cheque, the case was barred by limitation. The respondent argued that the time for computation is from the date after the expiry of 15-days window given to the drawer to make the payment after receiving the notice, and the complaint was in fact filed within this period. The Court, looking at the limitation period prescribed for taking cognizance as under the N.I. Act as opposed to the Cr.P.C., held that "only upon a cumulative satisfaction of the three conditions as enumerated under the proviso to Section 138, as clauses (a), (b) and (c), thereof that an offence under Section 138, can be said to have been committed by the person issuing the cheque."[42] Hence, it follows that the cause of action arose only after the drawer failed to make the payment within 15 days of receiving the Notice, and hence the complaint was not barred by limitation.

Krishna v. *State of UP*[43] was a criminal miscellaneous anticipatory bail application where the accused sought anticipatory bail in a criminal complaint case u/s 363, 376(3) I.P.C. and Section 3/4 of P.O.C.S.O. Act, 2012. At the outset, the State raised preliminary objection on the maintainability of the petition on the ground that Section 438(4) of Cr.P.C explicitly excludes the application of the provision relating to pre-arrest bail in relation to any case involving the arrest of any person on accusation of having committed an offence under Section 376(3) I.P.C.[44] In response, the applicant submitted that the new section (438 Cr.P.C.) inserted in the State of Uttar Pradesh vide Uttar Pradesh Act No. 4 of 2019 does not exclude the person seeking pre- arrest bail for an offence committed under Section 376 (3) I.P.C.[45] The

[41] 2024 AHC 38337.
[42] *Id.* at para. 11.
[43] 2024 AHC 85825.
[44] *Id.* at para. 3.
[45] *Id.* at para 4.

HC then had to decide on the question of a legal conflict between central and state laws, specifically whether the State amendment to Section 438 of the Criminal Procedure Code (Cr.P.C.), which received Presidential assent, overrides the Central amendment that explicitly excludes bail for these specific offenses. The facts alleged were that the minor daughter (16 years old) of the complainant was lured by the accused (also a minor, 17 years old) from her school and was sexually abused and molested in a private room he rented. The initial complaint to police ended in a closure report, with the police stating that no offence had been revealed from the victim-witness's statements under Ss. 161 and 164. Later, in consequence to a protest petition by the complainant, the incident was Ordered to be registered as a private complaint. At this stage, after nine months of the incident, the victim-witness gave her statement under Section 202 Cr.P.C. stating that she was raped by the applicant. The High Court ordered for the applicant to be released on bail, considering the nature of accusations and antecedents of the applicant, and in view of the judgment of Supreme Court in the case of *Sushila Aggarwal* v. *State (NCT of Delhi)*.[46] In *Aggarwal,* the Apex Court had reiterated the importance of anticipatory bail – "the provision for pe-arrest bail was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognised as a widespread malaise on the part of the police and inasmuch as the denial of bail would amount to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438 Cr.P.C."[47] The bail was granted on conditions of sureties, an undertaking to not seek adjournments on the dates posted for evidence, not to leave the country, and not intimidate witnesses. On the important legal question of repugnancy between State and Union laws on a matter of the Concurrent list, the Court cited *Hoechst Pharmaceuticals Ltd* v. *State of Bihar*[48] and held:

> Article 254 of the Constitution makes provision first, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254(1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Cl. (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To

[46] (2020) 5 SCC 1.
[47] *Id*. at para. 13.
[48] 1983 4 SCC 45.

> the general rule laid down in cl. (1), cl. (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of the State law may however be taken away if Parliament legislates under the proviso to cl. (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the 'same matter'. Even though the subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made.

In another case seeking anticipatory bail, *Anil Kumar* v. *State of UP,*[49] the Court refused anticipatory bail to the applicant-accused who had been avoiding summons and warrants since 2020. The applicant is the Director of a company implicated under the Drugs and Cosmetics Act, and the records revealed that the applicant had been avoiding summons since 2020. In 2021, bailable warrant was issued, and thereafter non bailable warrant, despite of which he did not appear. Subsequently, proceedings under Section 82 and 83 Cr.P.C. had been initiated. The Court refused to grant bail, citing the Supreme Court decision in *State of Haryana* v. *Dharamraj*[50] where it was held that no anticipatory bail application should be granted when proceedings under Section 82 and 83 have been initiated.

Amit Kumar v. *State of UP*[51] was a revision criminal revision challenging an order passed by Addl Sessions Judge in a trial under Section 307 I.P.C., whereby an application under Section 319 Cr.P.C. filed by the prosecution was rejected. Applicant Amit Kumar was the informant in the crime concerned, for which he had registered an FIR u/s 307 and 506 of the I.P.C. against two persons, namely Gaurav and Saurabh on the allegation that they fired at Harendra Singh (brother of the first informant), on account of which he sustained fire arm

[49] 2024 AHC 199667.
[50] 2023 SCC OnLine SC 1085.
[51] 2024 AHC 72944.

injury. After investigation, chargesheet was filed only against Gaurav and trial commenced for the case titled *State* v. *Gaurav* in the Sessions Court. Pursuant to the chief and cross examination of some witnesses, the prosecution filed an application u/s 319 Cr.P.C. for the addition of the other accused named in the FIR but not in the Chargesheet, to the trial. The Court after perusing the 319 application and referring to the Five Judges Bench judgement of Supreme Court in *Hardeep Singh* v. *State of Punjab*[52] came to the conclusion that no good ground for summoning of the prospective accused i.e. Saurabh (named but not charge sheeted accused) is made out to summon the prospective accused. The same was challenged in appeal in the current case in the HC. The Court examined the settled law on addition of accused under 319 powers, and observed that "summoning of a non-charge-sheeted accused in exercise of power under Section 319 Cr.P.C. cannot be done in a 'casual and cavalier manner'. Power under Section 319 Cr.P.C. is 'an extraordinary discretionary power which should be exercised sparingly'."[53]

The Court upheld the Sessions Court's Order and dismissed the revision application. The Court here, in refusing to entertain the application under 319, was not speaking of the interpretation of 319 powers, but was rather unconvinced by the statements of PWs in relation to the role of the Saurabh in the offence. It stated that:

> PW-1 who is the first informant, in his deposition before Court below has departed from the basic prosecution story as unfolded in the FIR. It is well settled that though FIR is not the encyclopaedia of the prosecution case, but it must disclose the basic prosecution case. Once it is the basic prosecution case that both the named accused had fired shots at the injured which fact is found to be untruthful in the course of investigation, therefore, the somersault taken by PW-1 in his deposition before Court below to the effect that the injured was caught hold by named accused Saurabh whereas another named accused Gaurav fired the gun shot amounts to going beyond the prosecution story itself. No explanation has come forward from PW-1 regarding the aforesaid departure. Furthermore, PW-2 Harendra Singh, who is the injured has only implicated Gaurav in the crime in question. The Apex Court in the case of Manjeet Singh (Supra) has already held that the evidence of an injured witness is far more credible than an ordinary witness. When the depositions of PW-1 and PW-2 are examined in the light of above, the balance tilts in favour of the deposition given by PW-2. Since neither

[52] (2014) 3 SCC 92.

[53] *Manjeet Singh* v. *Haryana* AIR 2021 SC 4274.

any strong and cogent evidence has emerged against the prospective accused Saurabh.[54]

The Allahabad HC has, earlier, used the power under 319 to add accused to the trail, if the evidence revealed in trial permitted so. In *Adesh Tyagi* v. *State of UP,*[55] an application was filed under Section 482 of the Code of Criminal Procedure, seeking to quash an order that summoned Adesh Tyagi, the applicant, for trial. Tyagi was accused of involvement in a counterfeit currency (S. 489B I.P.C.) case based on an FIR and the testimony of bank witnesses, even though the initial police investigation did not charge him. The case was that A-1 had presented some notes to the Bank, and when these turned out to be counterfeit, he was questioned by the Bank authorities upon which he names A-2 Adesh Tyagi, the appellant herein. Despite his name figuring in the FIR, it was not included in the Final report by the Police. Both PWs who were Bank employees testified mentioning the role of A-2 as stated by A-1 to them. Based on this, upon an application by the Prosecution, the trial Court added A-2 to the case. The Court had used its power under Section 319 of the Code, which allows a court to summon individuals for trial if evidence emerges during an inquiry or trial indicating their complicity, even if they were not initially charged. This was challenged in the appeal. The Court referred to the Constitution Bench decision in *Hardeep Singh and Ors* v. *State of Punjab.*[56] *Hardeep* examined the degree of satisfaction required for invoking the powers under Section 319 of the Code, and held that the test to be applied is to see "a level of satisfaction which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction."[57] The law according to *Hardeep* is that "a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the chargesheet, can still be summoned by the court provided the conditions under the Section are fulfilled."[58] The HC hence upheld the lower Court's Order, and stated that the evidence recorded by the court during trial is to be accorded primacy, and for the purpose of exercise of power under Section 319 of the Code, it would have to be given weight over the material which was collected during the course of investigation.[59]

Considering that the facts and evidence that emerged from *Amit Kumar* are different from that in earlier decisions of the HC such as in *Adesh,* the HC's legal position on 319 powers remains the same as laid down in *Hardeep.*

[54] *Supra* note 48 at para. 39.
[55] 2021 AHC 88320.
[56] (2014) 3 SCC 92.
[57] *Id.* at para. 11.
[58] *Adesh Tyagi* v. *State of Uttar Pradesh*, 2021 AHC 88320, para. 12, referring to *Hardeep*.
[59] *Id.* at para. 25.

This view is also supported by the HC decision in *Arunendra Alias Daddu Yadav* v. *State of U.P.*[60], which was a criminal revision against the trial Court's exercise of powers u/s 319 Cr.P.C. The case was initiated as a complaint case by the Magistrate, on the accusation that the several people belonging to a rival faction had accosted the complainant woman's family at their house, and had set fire to the belongings, the house, and opened fire at family members. This was stated to be in retaliation of the earlier murder of one the members of the accused faction (Daddu's side), who was also the father of the revisionist Daddu herein, in which the complainant woman's husband was the main accused. Daddu was not implicated in the original trial, and his name was sought to be added by the complainant's petition, just prior to the delivery of judgment in the trial. The complainant's contention was that name of the revisionist Arunendra @ Daddu Yadav and allegation against him with regard to the incident were mentioned in paragraph no. 4 of the complaint itself, but due to omission, his name was not mentioned at first page of the complaint in the list of accused. The witness's and complainants' statements also referred to the role of Daddu in the incident constituting the offence. The question before the HC was whether application under Section 319 Cr.P.C. of the complainant which was filed before delivery of judgement was maintainable or not and what would be degree of satisfaction for invoking the provisions of Section 319Cr.P.C. The HC referred to *Sukhpal Singh Khaira* v. *State of Punjab*[61] where the stages of invoking 319 was discussed so:

> Para. 23 -A close perusal of Section 319 of Cr.P.C. indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court.

[60] 2024 AHC 40191.
[61] (2023) 1 SCC 289.

> Para. 33 - …if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of Cr.P.C. can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion.

Considering this case, and the rules laid down in *Hardeep* referred above, the Court upheld the trial Court's exercise of power under 319 adding Daddu to the trial before the pronouncement of the judgment.

Similarly, in *Dr. Ashok Kumar Handa* v. *State of UP,*[62] the Court heard a case where the revisionist was added to a trial under s. 306 I.P.C. for the death of a woman in which her father (informant) had filed an FIR u/s 302 I.P.C. After investigation, the IO had submitted chargesheet against another named accused Suman u/s 306 I.P.C. instead, and thus trial in case titled *Suman* v. *State of UP* commenced. After examination in chief of some PWs, the prosecution filed an application under 319 Cr.P.C. for addition of several more accused to face trial. The trial Court, after perusing the evidence, allowed the application only in respect of the revisionist Dr. Handa. Hence, this revision came to be, before the HC. The revisionist argued that from evidence "up to this stage what has emerged against revisionist is his mere complicity in the crime in question and not such strong and cogent evidence so as to establish something more than the complicity of revisionist in the crime in question." The Court, examining *Hardeep* and *Manjeet,* upheld the order of the trial Court in adding the revisionist to the trial, since evidence from the witnesses so far attributed role to the revisionist in the crime as well. The Court also stated that:

> …Section 216 Cr.P.C. enables the Court to alter the charge at any stage of the proceedings in the light of the evidence that may emerge during the course of trial. Therefore, even if, the trial of the charge sheeted accused is under Section 306 I.P.C. i.e. suicidal death and the evidence of PW-5 and PW-6 shows that the deceased was murdered, that cannot be a ground to conclude that the evidence which has emerged on record is insufficient to summon the accused-revisionist to face trial in aforementioned case, which is under Section 306 I.P.C. and the accused- revisionist has not been summoned under Section 302 I.P.C.

That is, even though the original allegation of the informant-father was that of murder of his daughter, once the complicity of accused is instead established for the offence

[62] 2024 AHC 58600.

of abetment to suicide, the evidence could be used to summon him in the case, since the Court have the power to alter charges too.

In *Buddhan And Another* v. *State of U.P.,*[63] the Court was concerned with a criminal revision filed by applicants in a case under Sections 363, 366 I.P.C. and Sections 7/8 P.O.C.S.O. Act, where application under Section 319 Cr.P.C. filed by the prosecution was allowed and the revisionists were summoned by Court to face trial. The FIR registered by the prosecutrix's father named the main accused Ali Hussain, his mother, and the revisionist herein Budhan.

The IO, after investigation, filed chargesheet against Ali and another accused who was not named in the FIR. The trial commenced under *State* v. *Ali Husain and Others*, and after the statement-in-chief of PWs 1 and 2, the prosecution moved a 319 application. The trial court came to the conclusion that since complicity of the prospective accused (named but not chargesheeted) was also established in the crime in question, and therefore allowed the same. The HC, in revision, opined that "a prospective accused is not required to be heard before an order under Section 319 Cr.P.C. is passed against him vide Yashodhan Singh and Others."[64] However, referring to the law in *Hardeep,* the Court found that the facts revealed do not constitute grounds for adding the revisionist to the trial. The facts and evidence revealed that the father (PW-1) was not an eye-witness to the incident, and the prosecutrix (all three daughters) had stated that they had "willingly accompanied the chargesheeted accused inasmuch as, neither any force was exerted upon them nor any stupefying substance was administered to abduct or kidnap the prosecutrix." The HC thus set aside the trial court's order and allowed the revision.

In *Budh Priya Maurya @ Virendra Kumar* v. *State of U.P.,*[65] the applicant had filed a second anticipatory bail application in relation to an F.I.R. registered against him under Sections 420, 467, 468, 471 of I.P.C. for a fraudulent land sale transaction for which the victims had paid money to the accused, and the transaction was not made. In the previous anticipatory bail application filed in 2022, the applicants' counsel had requested for it to be dismissed as withdrawn with liberty to file a regular bail application. The applicant argued that he was neither the beneficiary nor the signatory to the sale-deed. He is stated to be only present at the time when the said cheques were handed over to the co-accused persons by the informant and his brothers. The State argued that there is no provision of filing second anticipatory bail application under law, and that he applicant had filed a petition u/s 482

[63] 2024 AHC 74657.
[64] 2017 (7) SCC 706.
[65] 2024 AHC 150206.

Cr.P.C. before the HC and it failed as it was dismissed. The State alleged that the applicant did not care to surrender after the said order either, and was rather forum shopping. The Court ruled that "the filing of second anticipatory bail application is nothing but a misuse of precious time of the Court." The Court noted that the earlier anticipatory bail application had been withdrawn with liberty be granted to him to file regular bail application which was to be decided keeping in view the guidelines laid down by the Supreme Court passed in *Satendra Kumar Antil*.[66] The Court dismissed the application and stated:

> The said act of the applicant stands deprecated. It is onerous duty of the counsel not to act on the dictats of the litigant, but to give him proper advice and should cooperate in the court proceedings instead of stalling them by filing such frivolous applications.

The Court also referred to *Pratibha Manchanda and another* v. *State of Haryana*,[67] and reiterated the Supreme Court's opinion that:

> …the relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest.

In *Inam* v. *State of UP,*[68] the accused-applicants sought default bail u/s 167(2)(a)(i) of Cr.P.C., citing the reason that although the chargesheet had been filed in time, it was not accompanied with the report of ballistics examiner, and therefore the chargesheet was incomplete and in effect the applicant was entitled for default bail. The case pertained to charges of murder, wherein the accused-applicant was alleged of having fired shots at the deceased, due to which the deceased died of injuries sustained. The Court, looking at precedents laid down by SC, held that not sending of weapon, cartridge and pellets to ballistic expert for examination would not be fatal to the case of prosecution if the ocular testimony is found credible and cogent.[69] As such, since ocular evidence supported the prosecution case and the same was included in the chargesheet, it cannot be said to have been incomplete and thus enabling the applicant to claim default bail for the reason that FSL/ballistics report was not included.

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[66] *Satender Kumar Antil* v. *Central Bureau of Investigation*, (2022) 10 SCC 51.
[67] (2023) 8 SCC 181.
[68] 2024 AHC 185845.
[69] *Maqbool* v. *State of Uttar Pradesh*, AIR 2011 SC 184.

Nitin Tiwari v. *State of UP*[70] was an application u/s 482 Cr.P.C. where the applicant sought to quash orders passed by the Asst Sessions Judge and the Sessions Judge in case under Sections- 147, 148, 149, 302, 307, 504, 506, 34, 120-B I.P.C. Some of the accused were mentioned in the first chargesheet that was prepared by the police, but were not included in the subsequent (third, in fact) chargesheet that was filed pursuant to orders of further investigation by the Spdt of Police. The first was, though dated earlier, not actually submitted earlier, but was submitted along with a supplementary chargesheet, containing the names of the accused. The third and final one was the one without names of the applicants. The applicants moved a Discharge application dated u/s 227 Cr.P.C. on the ground that in the subsequent police report, the applicants were exonerated; therefore, there is no evidence against them, and on considering the subsequent police report, they may be discharged. The learned Sessions rejected this discharge application. Thereafter, charges were also framed against the applicants by the learned Sessions Judge u/s 228 Cr.P.C. The application was thus made before the HC u/s 482, thus. The HC referred to *Vinay Tyagi* v. *Irshad Ali @ Deepak & Ors,*[71] where the Supreme Court held that Court concerned in case of two different reports must have due regard to both the reports and thereafter form his opinion in accordance with law. The HC thus dismissed the application u/s 482, and held:

> …it is clear that while framing charges, the Court must consider all the police reports, and the same were duly considered in the impugned order … and merely making reference of the first chargesheet …, which was earlier not filed in Court but subsequently filed along with the supplementary chargesheet … will not make the impugned order perverse. Therefore, this Court holds that there is sufficient compliance with the direction of Hon'ble Supreme in Vinay Tyagi.

Rajiv Jindal v. *State of UP*[72] concerned with application for bail by the accused in respect of offence u/s Sections 420, 467, 468, 471 I.P.C. on the allegations that the accused obtained fake GST registrations and registered businesses under the name of and using the details of the informant, but without his knowledge or consent. The GST registrations were obtained in the Punjab and Maharashtra. Similarly, several informant-victims came to realize that their details had been used to obtain fake GST registrations. The Court noted that after registration of the FIR when forgery had been done by using the Aadhaar Card and PAN Card of the informant, fake GST firms were registered, Investigating Officer proceeded on

[70] 2024 AHC-LKO 3587.
[71] AIR 2013 SC (Cri) 292.
[72] 2024 AHC 146622.

the information as provided by a secret informer and arrested two accused who disclosed about the office where work of the firm was being done. On the aforesaid information of the arrested accused persons, the Investigating Officer reached the office premises, wherein he found other persons working for the firm of the arrested accused persons. Laptops, mobiles, SIM Cards, fake invoices were recovered, thus, discovering such fact which connected them with the main accused who had got registered the fake firms and the consequential forgery or theft of GST was found.[73] Considering the serious nature of offences, the Court stated:

> Para. 127 - While, the general rule favours granting bail, there are several exceptions where courts may deny bail due to specific circumstances. *These exceptions are based on factors that indicate a potential risk to society, the judicial process, or the investigation. Some points that should be kept in mind while granting bail are;* the nature and gravity of the offence, likelihood of flight risk, risk of tampering with the evidence of witnesses, repeated offenders or habitual criminals, danger to society or the victim, possibility of committing another offence while on bail, interference with justice, specific statutory provisions like the Narcotic Drugs and Psychotropic Substances Act, 1985, Unlawful Activities (Prevention) Act (U.A.P.A.) and the Prevention of Money Laundering Act, 2002 (P.M.L.A.), *lastly economic offence and white collar crimes.*
>
> Para. 128 - *The present case relates to economic offences, such as large-scale fraud, money laundering and corruption, are often viewed seriously because they affect the economic fabric of the society. The Courts may deny bail in such cases especially if the accused holds a position of influence or power. In the present case, money trail of crores, which affects the society at large scale, is involved which started from registration of fake firms by using Aadhaar and PAN Cards of the informant who had not applied for such registration.*
>
> [Emphasis by author, not Court]

Considering the same, the Court refused to grant bail to the applicants. As regards the challenge against jurisdiction, the Court observed:

> …under the GST Regime ITC (Input Tax Credit) follows supply chain not only in intra-state but also inter-state supply. Thus, on the ground of jurisdiction as argued by learned counsel for the applicant, this Court is of

[73] *Id.* at para. 126.

> the view that though registration of fake firms were at Punjab and Maharasthra, the complainant is resident of New Delhi and the FIR has been lodged at Gautam Buddh Nagar, the genuineness of complaint questioning the territorial jurisdiction cannot be raised on the basis of occurrence as the same cannot be said to be at one place where the GST firm was registered but its connections with other fake firms are also required to be seen.

3. Substantive Criminal Law

In *Parvez* v. *State of U.P,*[74] the accused was charged u/s 363, 366, 376 I.P.C. and 3/4 P.O.C.S.O. Act on allegations that he enticed away the minor daughter of the informant. Statements of the victim-daughter u/s 164 and a part of the FIR itself, however, implied that the daughter had accompanied the accused on her own free will and consent. On the basis of this, the accused had sought bail on the promise of cooperating with trial. Considering the Supreme Court's precedent in *Satender Kumar* and the intent of bail provisions, the Court granted bail to the accused on the conditions of cooperating with the trial and not tampering with evidence. The Court reiterated the importance of bail and stated:

> The well-known principle of "Presumption of Innocence Unless Proven Guilty," gives rise to the concept of bail as a rule and imprisonment as an exception. A person's right to life and liberty, guaranteed by Article 21 of the Indian Constitution, cannot be taken away simply because he or she is accused of committing an offence until the guilt is established beyond a reasonable doubt. Article 21 of the Indian Constitution states that no one's life or personal liberty may be taken away unless the procedure established by law is followed, and the procedure must be just and reasonable… It is settled principle of law that the object of bail is to secure the attendance of the accused at the trial.

In *Dharmendra @ Bheema and Another* v. *State of UP,*[75] the applicants had filed a criminal writ petition challenging an FIR filed under the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986. The petitioners sought to quash the FIR and prevent coercive action, arguing that authorities violated established rules by including incorrect and incomplete information in their "gang-chart" and failing to follow proper approval procedures. Particularly, the appellants claimed that while preparing the gang-chart, the respondents violated the Uttar Pradesh Gangster and Anti-Social Activities

[74] 2024 AHC 111764.

[75] Criminal Misc. Writ Petition No. 1049 of 2024.

(Prevention) Rules, 2021 since incorrect and incomplete information was furnished before the Authorities by the Station House Officer concerned; that the gang-chart has been approved by the Competent Authority without application of mind; and that the details of criminal history of accused on dossier do not reflect any discussion of District Magistrate and the Senior Superintendent of Police in a joint meeting which is contrary to Rule 5(3)(a) of the Rules.[76] The Court looked at the legislative intent and implications of special legislations, especially stringent legislations. The Court referred to major Supreme Court decisions including *Girdhari Lal & Sons* v. *Balbir Nath Mathur*[77] and stated:

> The primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning and there need no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary.

The Court also referred to *Swedish Match AB & Anr. Securities & Exchange Board, India & Anr*[78] and stated:

> The more stringent the Law, the less is the discretion of the Court. Stringent laws are made for the purpose to achieve its objectives. This being the intendment of the legislature, the duty of the court is to see that the intention of the legislature is not frustrated.

Another question before the Court was regarding validity of an F.I.R. under section 3 of the Act only, without mentioning any other offences described it section 2(b) thereof. On this, the Court respectfully disagreed with the judgment of Co-ordinate Bench in *Asim @ Hassim* v. *State of U.P. and another,*[79] reiterating that:

> First Information Report is always lodged under the provision inflicting penalty of imprisonment and/or fine against the accused and not under the

[76] *Id.* at para. 4.
[77] 1986(2) SCC 237.
[78] (2004) 11 SCC 641.
[79] Criminal Misc. Writ Petition No. 18729 of 2023.

> provision where the offence itself is defined…. [That is], 'criminal breach of trust' is defined under Section 405 but FIR is registered under Section 406 I.P.C.; 'forgery' is defined under Section 463 I.P.C. but F.I.R. is lodged under Section 465/467/468/471 I.P.C., murder is defined under Section 300 but F.I.R. is lodged under Section 302, so on and so forth… Admittedly, Section 3 is the penal provision under the Act, 1986 in relation to the offences described under various sub-sections of Section 2 of the Act and, hence, this Court is of the view that it is not necessary to mention any one or the other clause of Section 2 while registering F.I.R. under the Act of 1986, for which, mentioning of Section 3 is sufficient.[80]

However, referring to the Supreme Court decision in *Shraddha Gupta* v. *State of U.P,*.[81] the Court noted that the SC mandated that:

> …for framing a charge for the offence under the Gangsters Act and for continuing the prosecution of the accused under the above provisions, the prosecution would be required to clearly state that the appellants are being prosecuted for any one or more offences covered by anti-social activities as defined under Section 2(b).

The HC thus came to the opinion that the prosecution would be under an obligation to clearly state that the accused persons are being prosecuted for any one of the offences covered by anti- social activities as defined under Section 2(b) - however, that stage would come while framing the charge for the offence under the Gangster Act. No such requirement comes at the time of bare registration of F.I.R. and, therefore, mentioning Section 3 of the Act, 1860 only would suffice at that stage.[82] Considering the importance of the legal questions involved, the Court referred two legal questions to be placed before Hon'ble the Chief Justice for constituting Larger Bench:

> (A) Whether, in the light of Rule 60 of the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Rules, 2021 the words "certified copy of the charge-sheet" used in Rule 10(1) mean certified copy issued from the trial Court after submission of police report by the Investigating Agency before the trial Court and after the Court takes cognizance thereupon, or a certification made on the charge sheet by the police officer involved in investigation prior to its submission before the trial Court is sufficient as per

[80] *Id.* at paras. 48 and 49.
[81] 2022 SCC OnLine SC 514.
[82] *Id.* at para. 51.

section 76 of the Evidence Act, 1872, where the offences are not covered by those specified under Rule 22(2)?

(B) Whether in view of the scheme of penal law covered by Indian Penal Code, 1860 and/or the Uttar Pradesh Gangster and Anti-Social Activities (Prevention) Act, 1986, is it necessary at all to mention in the F.I.R. any one or more of the offences described under Section 2(b) of the Act?

In *Dharamveer* v. *State of UP,*[83] the Court was concerned with an appeal that had been pending for around four decades. The case was based on an occurrence of armed attack in 1984, where the appellant accused, along with others, were convicted u/s 324/34 I.P.C. The incident related to attack using swords and country pistols, where the victims suffered injuries to legs and torso. Despite the appeal assailing the conviction itself, the HC in appeal found that the witnesses and prosecution narrative was properly proven and there thus was no reason to interfere in the conviction itself. However, in respect of the sentence, the Court noted that the criminal machinery came into motion about 4 decades ago and the present appeal has been pending for a long period of 38 years. It found that the accused-appellants alone cannot be held responsible for long delay in disposal of this *appeal* and noted that all accused were of either old age, in their 60s, or deceased pending appeal. The sentence was reduced to period already undergone, and the appellants who were already on bail were permitted not to surrender and their sureties were accordingly discharged. In respect of sentencing discretion, the Court stated:

> Awarding sentence in a matter is always a difficult task which requires balancing of various considerations. The principle of law is well settled that the principle of proportionality between the punishment and crime cannot be brushed aside and the sentence must be just and proper. No doubt the concept of proportionality permits of discretion to the Court but the same has to be guided by certain principles. Hon'ble Supreme Court in Sumer Singh v. Surajbhan Singh and others[84] has observed that neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. There can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed. The discretion

[83] 2024 AHC 193097.
[84] (2014) 7 SCC 323.

> should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A Court while imposing sentence has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances.

In *Dhruvjeet Singh* v. *State of UP*,[85] five accused persons including Dhruvjeet Singh the father and his four sons were attributed role of causing murder of deceased Ajay Singh, who was brother of the informant by creating riot by forming unlawful assembly having armed with firearms at the deceased person's house. This was proved at trial on the basis of evidence on record that deceased received three firearm shots at the time of incident. The motive was stated to be enmity between the deceased and accused. Accused Dhruvjeet Singh, the father of other accused persons, was attributed role of exhorting co-accused, who are his sons, to kill informant's side and co-accused persons were alleged to have acted upon this and opened indiscriminate fires on informant's side. This resulted in causing of fatal injuries to the deceased, with whom Dhruvjeet Singh had picked up quarrel in the local market earlier on the same day. The Court found that it was admitted fact that Dhruvjeet Singh was bare arm and was not wielding any weapon in his hand when his sons were armed with firearms. The Court opined that the question of exhorting his sons to kill the informant's side loses its significance as some of the co-accused were already prepared to kill the deceased. Considering this, the Court felt that the accused could not be said to have abetted the commission of offence. It referred to the Supreme Court decision in Jainul Haque v. State of Bihar:[86]

> The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim. *Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant.*
>
> [Emphasis by author, not Court]

Similarly, in respect of conviction read with s. 34, the Court referred to *Suresh and another* v. *State of U.P.*[87] and quoted:

[85] 2024 AHC 94290-DB.
[86] AIR 1974 SC 1651.
[87] 2001 3 SCC 673.

> …the accused who is to be fastened with liability on the strength of Section 34, I.P.C. should have done some act which has nexus with the offence. Such act need not be very substantial; it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention….*But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34, I.P.C. cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34, I.P.C.*
>
> [Emphasis by author, not Court]

Similarly, referring to *Surendra Chauhan* v. *State of M.P.*,[88] the Court cited that "…the essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result." The Court thus acquitted appellant Dhruvjeet Singh stating that his complicity in the offence by allegation that "…he exhorted his sons to kill the informants does not inspire confidence and his involvement in the offence appears to be doubtful. He deserves to be accorded benefit of doubt, in respect of all charges. This is also noteworthy that except alleged exhortation, no overt act has been attributed to him in the evidence of witnesses of fact." Conviction of the accused sons who fired the shots was upheld by the Court.

In *Jhande Yadav @ Jhundu* v. *State of UP,*[89] several accused persons were tried for the offence of murder for shooting to death, the deceased person with whom they had prior enmity. The charges were u/s 302/149, and some accused gave confessional statements to the Magistrate u/s 164 Cr.P.C. However, the HC found that the "accused were not warned by the concerned Magistrate prior to recording of their statements. They were even not made to understand before recording of their statements that the same can be read against them and were not given time to think over and then depose. The reading of the statement goes to show that the statements were recorded in a mechanical manner and then the Magistrate concerned made a note therein that he had warned the accused and had made him to understand the consequences but they volunteered to give their statements." Also, the case rested on the testimony of a single witness. The Court, in that regard, found:

[88] 2000 4 SCC 110.
[89] 2024 AHC 153656-DB.

> …case as it rests on the testimony of a single witness the same has to be wholly reliable. The testimony of PW-1 Babu Yadav cannot be in any manner said to be of sterling quality and he cannot be treated to be a witness wholly reliable. There has been falsehood stated by him, improvements in his statement and also variations which go to the root of the matter and in any event, he cannot be trusted as a wholly reliable witness.

Considering the fault in the confessional statements and the unreliability of the single witness, the HC set aside the conviction and acquitted the accused.

In *Shyamveer* v. *State of UP,*[90] the HC decided on a conviction for rape and house trespass with intent to hurt, long with charges under the S.C./S.T. Act (ss. 376, 452 I.P.C. and s. 3(2)(v) of the S.C./S.T. Act) and was sentenced to life imprisonment. The facts of the case were that the victim- witness woman had been dragged from her house and raped in an adjacent building by the accused who was also a resident of the same village. Her son intervened during the act, upon which the accused ran. FIR was lodged two days later, and by the time of medical examination, no forensic evidence of the assault was left on her body. However, the witnesses had been reliable in their evidence, and nothing was adduced to show that the victim-witness has any reason to falsely implicate the accused. Considering these, the Court upheld the conviction but reduced the sentence to 7 years instead of life imprisonment. Important jurisprudence laid down by the Court was with respect to the evidence of physical injuries on the victim, which earlier rape law jurisprudence required and later developments have ruled against. The Court stated that the lack of medical evidence of injuries could be attributed to the passing of around 40 hours between the incident and medical examination, and reiterated that "…In a case of rape, any force used by the perpetrator to drag the victim or push her on the ground to commit rape necessarily need not cause such serious injury that it would leave a scar even after two days." [91] This is in line with the rape law that does not place any onus on the woman to sustain physical injuries to prove that the rape has occurred. Since the victim's testimony was consistent throughout and the witness testimony of her son corroborated this, the Court was satisfied by the evidence, and sustained the conviction, despite the lack of medical evidence. However, the Court also stated that "…no lady would otherwise make a false accusation against her own dignity merely for getting some money as compensation"[92] while rejecting the appellant's suggestion that the case was falsely instituted to collect compensation from the State. Although the Court's intention seems to have been genuine, the statement reveals the

[90] 2024 AHC 77384-DB.
[91] *Id.* at para. 18.
[92] *Id.* at para. 19.

persisting perception that rape is an offence against a woman's dignity and that the victim thereby loses a part of it when the offence is perpetrated against her. The notion is antithetical to the efforts of the criminal law, and undermines the possibility of more victims proactively reporting incidents of sexual offences, fearing the stigma attached to the same.

The Court had the opportunity to clarify the powers of a revisional Court hearing a revision against acquittal, in *Smt. Kamla Devi* v. *State of UP*.[93] It was s 498-A matter (along with charges under ss. 3/4 of Dowry Prohibition Act) filed by the mother of the daughter-in-law (victim), where the conviction by Chief Judicial Magistrate was reversed and the parties were acquitted by the Additional Sessions Judge (*State of UP* v. *Krishna Kumar,* and *Krishna Kumar* v. *State of UP* respectively). Looking at the facts of the case, the HC conceded with the Addtl Session Judge's conclusion that the informant was not able to prove the gravamen of the offence as alleged in the FIR – that is, that any harassment in terms of dowry had been perpetrated by the accused husband or mother-in-law. Particularly, the allegation was that the in-laws harassed her seeking transfer of her property to their names. But the Court noted that no documentary evidence was presented showing her right, title and interest in the alleged plot. In the absence of any documentary evidence to show that first informant was in possession of plot, the allegations made in the first information report were held to be baseless. Having said that, the HC also examined the more important question of law – the powers of the revisional court in respect of examining an order of acquittal. Regarding that, the Court referred to the Supreme Court's decision in *K. Chinnaswamy Reddy* v. *State of Andhra Pradesh*[94] and stated:

> Revisional jurisdiction should be exercised by the High Court in exceptional cases only when there is some glaring defect in the procedure or a manifest error on a point of law resulting in flagrant miscarriage of justice. However, this was also a case in which revisional jurisdiction was invoked against an order of acquittal. If the Court lacks jurisdiction or has excluded evidence which was admissible or relied on inadmissible evidence or material evidence has been overlooked etc., then only this Court would be justified in exercising revisional power and not otherwise.

Similarly, the Court cited *Ram Briksh Singh and others* v. *Ambika Yadav*[95] and noted so, regarding the use of revisional powers, especially against acquittal:

[93] 2024 AHC 85145.
[94] AIR 1962 SC 1788.
[95] 2004(7) SCC 665.

Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.

4. Conclusion

The High Court has mostly applied jurisprudence established by the Supreme Court to the cases that were brought before it, to interpret procedural and substantive laws within the bounds of the established principles. Particularly, in several cases, the Court upheld the trial Court's powers to add accused to the trial using powers under procedural laws, to uphold the ends of justice.