Sharif Ahmad vs The State Of Uttar Pradesh Home ... on 1 May, 2024

2024 INSC 363 IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 1074

SHARIF AHMED AND ANOTHER

VERSUS

STATE OF UTTAR PRADESH AND ANOTHER

WITH

CRIMINAL APPEAL NO. OF 2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 9482

AND

CRIMINAL APPEAL NO. OF 2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 5419

JUDGMENT

SANJIV KHANNA, J.

Leave granted in the above matters.

2. The concerns which have arisen during the course of hearing the present appeals are of particular significance for meeting the ends of criminal justice, and relate to the nature of chargesheets filed in some jurisdictions by the state/police. For the sake of convenience, we would divide the judgment into two parts. The first part relates to the legal issue, that is, the contents of the chargesheet in terms of Section 173(2) of the Code of Criminal Procedure, 19731. The second part deals with the factual aspects of each of the cases, and our decision.

PART I

3. The issue in the first part relates to chargesheets being filed without stating sufficient details of

the facts constituting the offense or putting the relevant evidence on record. In some states, the chargesheets merely carry a reproduction of the details mentioned by the complainant in the First Information Report2, and then proceed to state whether an offence is made out, or not made out, without any elucidation on the evidence and material relied upon. On this issue, the recent judgment of this Court in Dablu Kujur v. State of Jharkhand3 aptly crystallises the legal position in the following words:

> "17. Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following:—
>
> (i) A report in the form prescribed by the State Government stating-
>
> (a) the names of the parties;
>
> (b) the nature of the information;
>
> (c) the names of the persons who appear to be acquainted with the circumstances of the case;
>
> (d) whether any offence appears to have been committed and, if so, by whom;
>
> (e) whether the accused has been arrested;
>
> (f) whether he has been released on his bond and, if so, whether with or without sureties;
>
> (g) whether he has been forwarded in custody under section 170.
>
> (h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Penal Code, 1860" 1 "Code", for short.
>
> 2 "FIR", for short.
>
> 3 2024 SCC Online SC 269.

(ii) If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr. P.C.

(iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on

which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub para (i) to (iii)."

4. The decision in Dablu Kujur (supra) refers to Section 157 of the Code which inter alia states that, if on information received or otherwise, an officer of the police station has reason to suspect commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognisance of the offence. Further, he shall proceed in person or depute any of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case, and if necessary, to take measures for discovery and arrest the offender. Such report is in the nature of a preliminary report. As per Section 169 of the Code, if it appears to the officer in-charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify forwarding the accused to the Magistrate, then the officer shall release the person if he is in custody on his executing a bond, with or without sureties, with a direction to such person to appear if and when so required, before the Magistrate empowered to take cognisance of the offence from the police report. 4

5. Section 170 of the Code deals with the cases where it appears to the officer that there is sufficient evidence or reasonable ground to proceed. In such an event he is required to submit a police report or chargesheet under Section 173(2) of the Code. Elucidating on Section 173(2) of the Code in Dablu Kujur (supra), this Court observed:

> "12. We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the chargesheet/Police Report do not comply with the requirements of the said provision. Though it is true that the form of the report to be submitted under Section 173(2) has to be prescribed by the State Government and each State Government has its own Police Manual to be followed by the police officers while discharging their duty, the mandatory requirements required to be complied with by such officers in the Police Report/Chargesheet are laid down in Section 173, more particularly sub-section (2) thereof.
>
> 13. It may be noted that though there are various reports required to be submitted by the police in charge of the police station before, during and after the investigation as contemplated in Chapter XII of Cr. P.C., it is only the report forwarded by the police officer to the Magistrate under sub-

section (2) of Section 173 Cr. P.C. that can form the basis for the competent court for taking cognizance thereupon. A chargesheet is nothing but a final report of the police officer under Section 173(2) of Cr. P.C. It is an opinion or intimation of the investigating officer to the concerned court that on the material collected during the course of investigation, an offence appears to have been

committed by the particular person or persons, or that no offence appears to have been committed.

4 We clarify and respectfully agree with the view expressed by this Court in Siddharth v. State of Uttar Pradesh and Another, (2022) 1 SCC 676, which has interpreted Section 170 of the Code. The word 'custody' used in the said Section does not contemplate either police or judicial custody, for otherwise the Section would lead to unpalatable and incongruous consequences. It is observed that in normal and ordinary course, the police should avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation. The word 'custody' in Section 170 has to be interpreted liberally and merely connotes presentation of the accused by the investigating officer. This is because personally liberty is an important aspect of the constitutional mandate. Existence of the power of arrest, and justification for exercise thereof are two different aspects. Section 170 of the Code does not impose an obligation on the officer in-charge to arrest each and every accused before or at the time of filing of the chargesheet.

xx xx xx

15. The issues with regard to the compliance of Section 173(2) Cr. P.C., may also arise, when the investigating officer submits Police Report only qua some of the persons-accused named in the FIR, keeping open the investigation qua the other persons-accused, or when all the documents as required under Section 173(5) are not submitted. In such a situation, the question that is often posed before the court is whether such a Police Report could be said to have been submitted in compliance with sub-section (2) of Section 173 Cr. P.C. In this regard, it may be noted that in Satya Narain Musadi v. State of Bihar, this Court has observed that statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5)…"

6. We would like to elaborate on certain aspects, as submission of the chargesheet is for taking cognisance and summoning of the accused by the Magistrate, which stages are of considerable importance and significance.

7. Section 173 of the Code reads:

> "173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given. (3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests

of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5). (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)".

8. Sub-section (2) to Section 173 makes a considered departure from sub-

Section (1) to Section 173 of the Code of Criminal Procedure, 18985. Sub- section (1)(a) to Section 173 of the 1898 Code had stipulated that as soon as the investigation is completed, the officer in-charge of the police station shall forward to the Magistrate, a report in the form prescribed by the local government, sending forth the names of the parties, nature of the information and the names of the people who appear to be acquainted with the circumstances of the case and state whether the accused person has been forwarded in custody or released on a bond.

9. We have referred to Section 173 of the 1898 Code, in view of reliance placed during the course of hearing on the decision of this Court in Tara Singh v. State6 and R.K. Dalmia etc. v. Delhi Administration7, which refer and relate to the 1898 Code.

10. In Tara Singh's case (supra), the question which had arisen was whether the challan preferred by the police was complete so as to enable the court to take cognisance within the meaning of Section 190(1)(b) of the 1898 Code. It was held that a challan submitted in the said case was complete except for 5 "1898 Code", for short.

6 AIR 1951 SC 441.

7 AIR 1962 SC 1821.

submission of the report of the Imperial Serologist and drawing of the sketch map of the occurrence. In this context, reference was made to Section 173(1) of the 1898 Code and that the report/challan should set forth, viz. the names of the parties, nature of the information and names of persons who appear to be acquainted with the circumstances of the case. The cognisance, it was held, was proper.

11. In R.K. Dalmia (supra), again a reference was made to Section 173(1) of the 1898 Code and that the chargesheet must contain name of the parties, nature of the information and the names of persons who appear to be acquainted with the circumstances of the case. These observations were made in the context of the submission made on behalf of the accused that there was a change in the

stand of the prosecution, which contention was rejected on several grounds, as mentioned in paragraphs 325 and 326 of the footnoted citation.

12. It is, therefore, apparent from the language of the legislation, that under the Code, that is, the Code of Criminal Procedure, 1973, the requirement and the manner of providing details in the chargesheet, stand verified.

13. The question of the required details being complete must be understood in a way which gives effect to the true intent of the chargesheet under Section 173(2) of the Code. The requirement of "further evidence" or a "supplementary chargesheet" as referred to under Section 173(8) of the Code, is to make additions to a complete chargesheet,8 and not to make up or reparate for a chargesheet which does not fulfil requirements of Section 173(2) of the Code. The chargesheet is complete when it refers to material and evidence sufficient 8 State Through Central Bureau of Investigation v. Hemendhra Reddy & Anr., 2023 SCC OnLine SC

515. to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should prima facie show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges9.

14. In the context of the present issue, it would be apt to refer to Section 190 and Section 204 of the Code, along with the provisions relating to contents of charge, namely, Sections 211 to 213 and Section 218 of the Code, which read as under:

> "190. Cognizance of offences by Magistrates.—(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—
>
> (a) upon receiving a complaint of facts which constitute such offence;
>
> (b) upon a police report of such facts;
>
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.
>
> xx xx xx

204. Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be— 9 See also, para 21 below on the power of the police to investigate under Section 173(8) of the Code.

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint. (4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint. (5) Nothing in this section shall be deemed to affect the provisions of Section 87.

xx xx xx

211. Contents of charge.—(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court. (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

212. Particulars as to time, place and person.—(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219:

> Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated.—When the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

xx xx xx

218. Separate charges for distinct offences.—(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

> Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.
>
> (2) Nothing in sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

15. On the submission of the police report, Dablu Kujur (supra) refers to an earlier decision of this Court in Bhagwant Singh v. Commissioner of Police and Another10, and discusses the power and the role of the Magistrate when he receives the police report and the options available to him, in the following words:

> “14. When such a Police Report concludes that an offence appears to have been committed by a particular person or persons, the Magistrate has three options: (i) he may accept the report and take cognizance of the offence and issue process, (ii) he may direct further investigation under sub- section (3) of Section 156 and require the police to make a further report, or (iii) he may disagree with the report and discharge the accused or drop the proceedings. If such Police Report concludes that no offence

> appears to have been committed, the Magistrate again has three options: (i) he may accept the report and drop the proceedings, or (ii) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (iii) he may direct further investigation to be made by the police under sub-section (3) of Section 156." It is in this context that the provisions of Sections 190 and 204 of the Code become important. Clause (a) of Section 190 states that the Magistrate can take cognisance of an offence on receiving a complaint of facts which constitute such offence. Clause (b) relates to a situation where the Magistrate receives a police report carrying such facts, i.e., facts which constitute such offence. In Minu Kumari and Another v. State of Bihar and Others11 this Court referred to the options available to the Magistrate on how to proceed in terms of Section 190(1)(b) of the Code, and held:
>
> "11...The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 10 (1985) 2 SCC 537.
>
> 11 (2006) 4 SCC 359.

190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .)

12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commr. of Police held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

13. We may add here that the expressions “charge-sheet” or “final report” are not used in the Code, but it is understood in Police Manuals of several States containing the rules and the regulations to be a report by the police filed under Section 170 of the Code, described as a “charge-sheet”. In case of reports sent under Section 169 i.e. where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e. referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, there is nothing in Section 173 specifically providing for such a notice.”

16. This Court in Bhushan Kumar and Another v. State (NCT of Delhi) and Another12 while referring to Sections 190 and 204 of the Code has observed that the expression “cognisance” in Section 190 merely means “becoming aware of”, and when used with reference to a court or a judge it connotes “to take notice of judicially”. It indicates the juncture at which the court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such an offence. This is different from initiation of proceedings. Rather, it is a condition precedent to the initiation of proceedings by a Magistrate or judge. At this stage, the Magistrate has to keep in mind the averments in the complaint or the police report, and has to evaluate whether there is sufficient ground for initiation of proceedings. This is not the same as the consideration of sufficient grounds for conviction, as whether evidence is sufficient for supporting the conviction or not, can be determined only at the stage of trial, and not at the stage of cognisance. This aspect is important and will be subsequently referred to when we examine the decision of this Court in K. Veeraswami v. Union of India and Others13, and the observations therein which have been referred to on several occasions in other judgments.

17. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issue of summons and this is not a prerequisite for deciding the validity of the summons. Nevertheless, the requirement of the Code is that the summons is issued when it appears to the Magistrate that there is sufficient ground for proceeding against the accused. Summons is issued to the person against whom the legal proceedings have commenced. Wilful disobedience is 12 (2012) 5 SCC 424.

13 (1991) 3 SCC 655.

liable to be punished under Section 174 of the Indian Penal Code, 186014. As a sequitur, keeping in mind both the language of Section 204 of the Code and the penal consequences, the Magistrate is mandated to form an opinion as to whether there exists sufficient ground for summons to be issued. While deciding whether summons is to be issued to a person, the Magistrate can take into consideration any prima facie improbabilities arising in the case. The parameters on which a summoning order can be interfered with are well settled by the decision of this court in Bhushan Kumar (supra). The Magistrate in terms of Section 204 of the Code is required to exercise his judicial discretion with a degree of caution, even when he is not required to record reasons, on whether there is sufficient ground for proceeding. Proceedings initiated by a criminal court are generally not interfered with by High Courts, unless necessary to secure the ends of justice.15

18. The decision in Bhushan Kumar (supra) also refers to Section 251 of the Code, which is a stage post appearance of the accused, and observes:

> "20. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."

19. Sections 211 to 213 and Section 218 of the Code deal with the contents of the charge. The object and purpose of these provisions is to bring the nature of 14 "IPC", for short.

15 R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335.

allegations against the accused to his notice. These allegations have to be proved and established by leading evidence. The accused should not be taken by surprise or be unbeknownst so as to cause prejudice to him. The provisions of the Code also prescribe how to interpret the words used in the charge in terms of Section 214 of the Code, the effect of defects in the charge in terms of Section 215 of the Code, the power of the court to alter the charge and recall of the witnesses when a charge is altered in terms of Sections 216 and 217 of the Code.

20. There is an inherent connect between the chargesheet submitted under Section 173(2) of the Code, cognisance which is taken under Section 190 of the Code, issue of process and summoning of the accused under Section 204 of the Code, and thereupon issue of notice under Section 251 of the Code, or the charge in terms of Chapter XVII of the Code. The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages. The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative document and evidence available to the court till that stage. Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc.

21. These provisions, however, have to be read along with the power of the police to investigate under sub-section (8) to Section 173 of the Code even when they have submitted a report under sub-section (2) to Section 173 of the Code. The police also has the power to produce additional documents and evidence, as has been held by this Court in Parkash Singh Badal and Another v. State of Punjab and Others16; Narendra Kumar Amin v. Central Bureau of Investigation and Others17; and Central Bureau of Investigation v. R.S. Pai and Another18.

22. Recently a three Judge Bench of this Court in Zakia Ahsan Jafri v. State of Gujarat and Another19, has observed:

> "11. This Court in Dayal Singh noted that the investigating officer is obliged to act as per the Police Manual and known canons of practice while being diligent, truthful and fair in his/her approach and investigation. It has been noted in the reported decision that an investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Concededly, upon completion of investigation, the investigating officer is obliged to submit report setting out prescribed details, to the Magistrate empowered to take cognizance of the offence referred to therein, without unnecessary delay. The report so presented is the conclusion reached by the investigating officer on the basis of materials collected during investigation. The duty of the investigating officer is to collate every relevant information/material during the investigation, which he must believe to be the actual course of events and the true facts unraveling the commission of the alleged crime and the person involved in committing the same. He is expected to examine the materials from all angles. In the event, there is sufficient evidence or reasonable ground that an offence appears to have been committed and the person committing such offence has been identified, the investigating officer is obliged to record his opinion in that regard, as required by Section 173(2)(i)(d) of the Code. In other words, if the investigating officer intends to send the accused for trial, he is obliged to form a firm opinion not only about the commission of offence, but also about the involvement of such person in the commission of crime.
>
> 12. Such opinion is the culmination of the analysis of the materials collected during the investigation - that there is "strong suspicion" against the accused, which eventually will lead the concerned Court to think that there is a ground for "presuming" that the accused "has" committed the alleged offence; and not a case of mere suspicion. For being a case of strong suspicion, there must exist sufficient materials to 16 (2007) 1 SCC 1.
>
> 17 (2015) 3 SCC 417.
>
> 18 (2002) 5 SCC 82.
>
> 19 (2022) 6 SCR 1: 2022 INSC 653.

corroborate the facts and circumstances of the case; and be of such weight that it would facilitate the Court concerned to take cognizance of the crime and eventually lead it to think (form opinion) that there is ground "for presuming that the accused has committed an offence", as alleged – so as to frame a charge against him in terms of Section 228(1) or 246(1) of the Code, as the case may be. For taking cognizance of the crime or to frame charges against the accused, the Court must analyze the report filed by the investigating officer and all the materials appended thereto and then form an independent prima facie opinion as to whether there is ground for "presuming" that the accused

"has" committed an offence, as alleged. (It is not, "may" have or "likely" to have committed an offence, but a ground for presuming that he has committed an offence). The Magistrate in the process may have to give due weightage to the opinion of the investigating officer. If such is to be the eventual outcome of the final report presented by the investigating officer, then there is nothing wrong if he applies the same standard to form an opinion about the materials collected during the investigation and articulate it in the report submitted under Section 173 of the Code. It may be useful to refer to the decisions adverted to in Afroz Mohd. Hasanfata including in the case of Ramesh Singh and I.K. Nangia.

xx xx xx

63. Needless to underscore that every information coming to the investigating agency must be regarded as relevant. However, the investigating agency is expected to make enquiries regarding the authenticity of such information and after doing so must collect corroborative evidence in support thereof. In absence of corroborative evidence, it would be merely a case of suspicion and not pass the muster of grave suspicion, which is the pre-requisite for sending the suspect for trial. This is the mandate in Section 173(2)(i)(d) of the Code, which postulates that the investigating officer in his report must indicate whether any offence appears to have been committed and if so, by whom. The opinion of the investigating officer formed on the basis of materials collected during the investigation/enquiry must be given due weightage. That would only be the threshold, to facilitate the concerned Court to take cognizance of the crime and then frame charge if it is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code."

23. In K. Veeraswami (supra), K. Jagannatha Shetty, J. pronounced the judgment for himself and M.N. Venkatachaliah, J. (as His Lordship then was) on the question of contents of the chargesheet and observed:

> "75. In the view that we have taken as to the nature of the offence created under clause (e), it may not be necessary to examine the contention relating to ingredient of the offence. But since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge- sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as

> rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet." The latter portion of the aforesaid paragraph, referring to the details of the offence and the requirement for them to be proved in order to bring home the guilt of the accused at the later stage (the stage of trial) by adducing acceptable evidence, has to be understood in the context that the chargesheet need not elaborately evaluate the evidence, as the process of evaluation is a matter of trial. This does not mean that the chargesheet should not disclose or refer to the facts as to meet the requirements of Section 173(2) of the Code, and the mandate of the State rules. Further, the earlier portion of the same paragraph, while referring to the opinion of the investigating officer, does so to demonstrate the significance of the opinion of the investigating officer at this stage. However, this does not preclude the Magistrate from exercising her powers in adopting an approach independent from such opinion, as has been held by this Court in Bhagwant Singh (supra) and Minu Kumari (supra).

24. It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him.

25. In support of our reasoning, we would refer to the very next paragraph in the judgment of Shetty, J. in K. Veeraswami (supra) which reads as under:

> "76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in Satya Narain Musadi v.

State of Bihar that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

This paragraph examines the contents of the chargesheet and on elaboration of the same holds that it is in accordance with the terms of Section 173(2) of the Code as well as the provisions of the penal enactment. In furtherance of this, reference is made to Satya Narain Musadi and Others v.

State of Bihar20, in stating that the chargesheet should comply with the statutory requirements, and the various details prescribed therein should be included in the report.

26. The object and purpose of the police investigation is manyfold. It includes the need to ensure transparent and free investigation to ascertain the facts, examine whether or not an offence is committed, identify the offender if an offence is committed, and to lay before the court the evidence which has been collected, the truth and correctness of which is thereupon decided by the court. 20 (1980) 3 SCC 152.

27. In H.N. Rishbud and Inder Singh v. State of Delhi21, this Court notes that the process of investigation generally consists of: 1) proceeding to the concerned spot, 2) ascertainment of facts and circumstances, 3) discovery and arrest, 4) collection of evidence which includes examination of various persons, search of places and seizure of things, and 5) formation of an opinion on whether an offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the culmination of several stages that an investigation goes through. This Court in its decision in Abhinandan Jha and Others v. Dinesh Mishra22 states that the submission of the chargesheet or the final report is dependent on the nature of opinion formed, which is the final step in the investigation.

28. The final report has to be prepared with these aspects in mind and should show with sufficient particularity and clarity, the contravention of the law which is alleged. When the report complies with the said requirements, the court concerned should apply its mind whether or not to take cognisance and also proceed by issuing summons to the accused. While doing so, the court will take

into account the statement of witnesses recorded under Section 161 of the Code and the documents placed on record by the investigating officer.

29. In case of any doubts or ambiguity arising in ascertaining the facts and evidence, the Magistrate can, before taking cognisance, call upon the investigating officer to clarify and give better particulars, order further investigation, or even record statements in terms of Section 202 of the Code. 21 (1954) 2 SCC 934.

22 AIR 1968 SC 117.

30. Our attention has been drawn to the format prescribed for the State of Uttar Pradesh, which by column 16 requires the investigating officer to state brief facts of the case. In addition, the State of Uttar Pradesh has issued a circular dated 19.09.2023, which refers to an earlier circular bearing No. 59 of 2016 dated 20.10.2016, and states that the investigation provisions contained in the Code and the police regulations with reference to Section 173 of the Code are not being consistently complied with and followed by the investigating officers and the supervising officers. The need to provide lead details of the offence in the chargesheet is mandatory as it is in accord with paragraph 122 of the police regulations. Similar directions were issued on 09.09.2022 following the direction of the High Court of Judicature at Allahabad that brief narration of the material collected during investigation, which forms the opinion of the investigating officer, should be mentioned in the chargesheet.

31. Therefore, the investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons.

PART II

32. As we turn to the second part of our judgment, it would be appropriate to lead our decision in each case with a brief overview of its pertinent facts:

> A. Appeal arising out of SLP (Crl.) No. 1074/2017 • The appellants have been involved in a drawn-out litigation with several parties over the ownership of Property No. 80-A, 23,072 sq. ft., forming a part of Khasra no. 1016/647 and 645, situated within Chandrawli/Shahdara, now in Abadi, at Circular Road, Shahdara, Delhi-110032.23 • Appellant No.2 – Sharif Ahmad and Appellant No.3 – Anwar Ahmad (since deceased), purchased a part in the subject property on behalf of their partnership firm Dream Land & Co., while Appellant No.1 – Vakil Ahmad (since deceased) had done so in his individual capacity.
>
> • To avoid prolixity, we would refrain from setting out the facts of the litigation in detail.

> • The challenge before us relates to the First Information Report No. 108/2016 dated 23.05.2016, filed by Respondent No.2/complainant - Mohd. Iqbal, under Sections 420, 406 and 506 IPC at police station Hafizpur, Hapur, U.P. against the appellants. The FIR stated that the appellants had agreed to sell the subject property to Respondent No. 2 and had received part payment for the registry of the subject property. However, the appellants did not register the property and also failed to refund the concerned amount to Respondent No. 2.
>
> • The Police recorded the statements of Respondent No.2, and the witnesses under Section 161 of the Code.
>
> • According to these statements, the appellants had refused to refund the amount paid by Respondent No. 2 despite repeated requests to do the same.
>
> • A complaint dated 03.09.2016 was filed against Respondent No. 2 at Police Station Tis Hazari by relatives of the appellants on account of receiving threats to their life.
>
> • The appellants challenged FIR No. 108/2016 in W.P. (Cr.) No.20221/2016 before the Allahabad High Court and sought quashing of the proceedings.
>
> 23 “subject property”, for short.

By an order dated 15.09.2016, the High Court stayed the arrest of the appellant until filing of the chargesheet.

• On 24.10.2016, a chargesheet was filed against the appellants under Sections 405 and 506 IPC.

• The appellants approached the Allahabad High Court in Cr. M.A. No. 960/2017 seeking the quashing of the chargesheet and of proceedings in Case No. 410/2016. The appellants submitted that the chargesheet is vague, filed without proper investigation, and fails to make out any offence. • The Allahabad High Court dismissed the application for quashing of the chargesheet through the impugned order dated 12.01.2017. • Hence, the appellants have filed the present appeal.

33. The FIR as registered, on the question of intimidation states that on 19.03.2016 the appellants had flatly refused to refund the money and had told Respondent No. 2 that they can do whatever they want. They had threatened the entire family of the complainant.

34. The chargesheet submitted by the investigating officer in the present case, under column 16 referring to the facts of the case, reads as under:

> “Sir, the above said case was got registered by the complainant Shri Iqbal on 23/5/16 at this police station, the investigation of which handed over to me S.I., the investigation of which done by me S.I. and from all the investigation till now, statement of the complainant, statement of the witnesses and inspection of place of

> occurrence, the deal of plot measuring 2600 which is at behind Sadar Police Station was finalized by the accused persons with the complainant and his partner Surender Sharma for 4 crore, for which by not getting executed the registry of the same at the time of the complainant and after receiving a sum of Rs. 1 crore of his partner Surender Sharma as earnest money, selling of plot to Kusum Jain and D.K. Jain, by not refunding a sum of Rs. 1 crore of the complainant and his partner, grabbing by doing breach of trust, making pretexts on demanding again and again and the threat to kill, hence the offence under section 406, 506 I.P.C. is thoroughly proved upon the accused persons Sharif Ahmed, Anwar Ahmed, Vakil Ahmed, Aadil Ahmed, the occurrence of section 420 I.P.C. is not found, hence the challan of the accused persons, by charge sheet No. 153/16 is filled in the court, it is prayed that punishment may be given by calling the proof."

35. A reading thereof would indicate that it refers to the complaint made by Respondent No. 2 – Iqbal on 23.05.2016 relating to the deal of a plot in respect of which part consideration was paid as earnest money. But thereafter, the appellants had sold the plot and were not refunding the earnest money and by doing so have committed breach of trust under Section 406 of the IPC. It also refers to the alleged pretexts being made by the appellants on money being demanded and a threat to kill being extended. It is also recorded that an offence under Section 506 has been proved to have been committed. At the same time, the chargesheet states that no offence under Section 420 of the IPC is found to have been committed.

36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment.24 Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out.

The offence of cheating under Section 415 of the IPC requires dishonest 24 See Section 405 of the IPC and judgments of this Court in State of Gujarat v. Jaswantlal Nathalal AIR 1968 SC 700; Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736; Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta (1996) 5 SCC 591. inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially: to compel or deter by or as if by threats.25 The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in Manik Taneja and Another v. State of Karnataka and Another26, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threating another person with causing an injury to his person, reputation or 25 "intimidate". Merriam-Webster.com. Merriam-Webster, 2024. 26 (2015) 7 SCC 423.

property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct.

40. In view of the aforesaid position, we quash the chargesheet and the summoning order. The appellants are discharged. We clarify that the observations made above will have no bearing on the civil proceedings, if any, already initiated or which may be initiated in future by the respondent/complainant.

B. Appeal arising out of SLP (Crl.) No. 5419/2022 • On 26.06.2019 the complainant – Wakeel Ahmad filed a complaint before the Additional Chief Judicial Magistrate, alleging that the accused persons, including the appellant – Imran, routinely take money on the pretext of bainama of property, and subsequently deny entering into such agreement and receiving any money.

• The court allowed the said complaint and ordered the concerned Police Station to register the complaint under Sections 420 and 120B IPC. FIR No. 519/2019 dated 26.07.2019 was registered at Police Station Chandpur, Bijnor, Uttar Pradesh. The complainant also stated that the accused persons had threatened the complainant against pursuing legal action against them. • By an order dated 19.09.2019, the High Court partly allowed the appellant's anticipatory bail application and directed the police not to arrest the appellant till the submission of the chargesheet.

• Chargesheet No. 582/2019 dated 18.10.2019 was filed, submitting that charges under Sections 420 and 120B IPC are established. The chargesheet lists the details of the accused as mentioned in the FIR and the relevant column relating to brief facts in the chargesheet reads:

> "Requesting to the Hon'ble Court is that on 28.07.2019 the Hon'ble Court ordered under section 156(3) Cr. P.C. for registering a FIR No. 519/2019 under the section of 420, 120B IPC against
>
> 1. Ziyauddin S/o Gyasudding aged about 70 years
>
> 2. Zamaluddin S/o Gyasuddin aged about 65 years
>
> 3. Kamaluddin S/o Gyasuddin aged about 50 years
>
> 4. Rahisuddin S/o. Unknown
>
> 5. Imran aged about 36 years S/o Zamaluddin
>
> 6. Kahsif S/o Zamaluddin aged about 31 all are residence of Mohalla Ktarmal, kasba Chandpur, Chanpur, Bijnor, UP. the crime under section 420, 120B IPC is proved against the Ziyauddin S/o Gyasudding, Zamaluddin S/o Gyasuddin, Kamaluddin S/o Gyasuddin, Rahisuddin S/o Unknown, Imran S/o Zamaluddin, Kahsif S/o Zamaluddin.

Hence, filing this charge sheet before the Hon'ble court and requesting to this Hon'ble court to punish the all the accused." • By an order dated 10.05.2021, the Allahabad High Court granted interim anticipatory bail to the appellant till 03.01.2022, in terms of the conditions mentioned in the order, and observed that the appellant herein may approach the High Court again if so advised, in case of a change in circumstances. • On 23.03.2022, Allahabad High Court dismissed the Criminal Misc. Anticipatory Bail Application No.2235/2022 filed by the appellant, on the grounds of non-bailable warrants having been issued against the appellant and the chargesheet having been filed.

• Hence, the appellant has filed the present appeal.

41. We have already referred to the facts and also to the ingredients of the offence under Section 420 IPC. The assertions made in the FIR allege that the accused are frauds who have taken bainama (earnest money on the property), but thereafter are making excuses. The complainant had visited the accused at their house who had then threatened them to implicate them in false cases. They denied having received the money.

42. We allow the present appeal and direct that in the event of the appellant being arrested, he shall be released on bail by the arresting officer/investigating officer/trial court on the terms and conditions to be fixed by the trial court.

43. However, what is surprising and a matter of concern in the present case, is that the police had initially rightly not registered the FIR, which had prompted the complainant to approach the Court of Additional Chief Judicial Magistrate, Chandpur, Bijnor, Uttar Pradesh, alleging that he is an

honest and respected person in the society and is well established in business, while the accused are fraudulent individuals. The Additional Chief Judicial Magistrate had subsequently ordered for the FIR to be registered on the basis of the written complaint.

44. We would also like to emphasise on the need for a Magistrate to be cautious in examining whether the facts of the case disclose a civil or a criminal wrong. Attempts at initiating vexatious criminal proceedings should be thwarted early on, as a summoning order, or even a direction to register an FIR, has grave consequences for setting the criminal proceedings in motion.27 Any effort to settle civil disputes and claims which do not involve any criminal offence, by 27 Deepak Gaba and Others v. State of U.P. and Another, (2023) 3 SCC 423. way of applying pressure through criminal prosecution, should be deprecated and discouraged.28 C. Appeal arising out of SLP (Crl.) No. 9482/2021 • The complainant and Respondent No. 2 herein – Rajesh Wangvelu made a written complaint to the Station Officer, Police Station Aliganj, Lucknow, alleging that on 23.12.2019 at about 12:15 p.m. two officers of the National Research Laboratory for Conservation of Cultural Property, Lucknow29, namely, Bachhan Singh Rawat, Security Officer and Mahendra Kumar, Division Clerk/Caretaker had attacked him with a helmet and lathi, and had threatened to kill him. At about 1:12 p.m. FIR No. 556/2019 dated 23.12.2019 was registered against Bachhan Singh Rawat and Mahendra Kumar under Section 323, 504 and 506 IPC.

• A statement under Section 161 of the Code was also recorded, where Rajesh Wangvelu stated that he was discriminated against for belonging to a different State. He had done nothing wrong and did not allow his subordinates to do anything wrong, for which reason Bachhan Singh Rawat and Mahender Kumar remained angry with him. He added in his statement that the appellant – Manager Singh was also present during this altercation. He had abused him and stated – “maaro sale ko, bahut imandaar banta hai” i.e., “hit him, he wants to be too honest”. Bachhan Singh Rawat and Mahendra Kumar had hit him till he fainted. When he regained consciousness, they had left the place. • Manager Singh, as the Director General of the NRLC, claims that he had noticed several discrepancies and administrative errors committed by Rajesh Wangvelu, who was working as the Library and Information Officer. 28 Indian Oil Corpn. v. NEPC India Ltd. and Others, (2006) 6 SCC 736. 29 “NRLC”, for short.

• After issuing show-cause notices to Rajesh Wangvelu and considering his response, the Ministry of Culture issued a letter dated 02.08.2019, under the signature of appellant, indicating that Rajesh Wangvelu prima facie appeared to have committed temporary embezzlement of Rs. 38,338/- and for which action should be taken.

• A decision to shift the library was also confirmed by a committee, to which Rajesh Wangvelu had expressed his displeasure. On the day of shifting, i.e. 23.12.2019, a physical altercation occurred between Rajesh Wangvelu and the officers Bachhan Singh Rawat and Mahendra Kumar.

• Manager Singh has relied upon written communication of Bachhan Singh Rawat in which he has stated that on 23.12.2019 at about 12:00 noon, he was informed by Mahendra Kumar, that Rajesh Wangvelu had taken some items in his bag without the gate pass. Information in this regard had been given to Manager Singh and the Vigilance Officer. When Bachhan Singh Rawat had tried to

frisk Rajesh Wangvelu, he had, in presence of another staff member Dr. Neeta Nigam, threatened Bachhan Singh Rawat and Mahendra Kumar with dire consequences and had sprayed chemical on their faces. Rajesh Wangvelu had assaulted them and thereupon had run away from the spot. On 23.12.2019 Manager Singh had accordingly written a letter to the Station Officer of Aliganj Police Station, informing him of the incident. Manager Singh is also relying on the communication dated 26.12.2019 written by him to the Director General of Police, Lucknow, and the communication dated 06.01.2020 by the appellant Manager Singh to the sub-inspector, and inquiry officer Police Station Aliganj.

• Rajesh Wangvelu was examined at 01:30 p.m., and his medical legal report dated 23.12.2019 refers to six injuries which have been found to be caused by a hard and blunt object. The injuries were simple. Rajesh Wangvelu, however, also relies upon a report dated 24.12.2019, obtained by a private diagnostic centre, which states that there was a fracture at the head of the fifth metacarpal bone of the left hand.

• Manager Singh filed a petition for quashing of the proceedings arising out of FIR No. 556/2019 before the Allahabad High Court. He was given the benefit of arrest till the filing of the chargesheet, by an order of the High Court dated 09.01.2020.

• On 04.02.2020, a chargesheet was filed with an addition of Sections 308, 325 and 120B IPC, and impleading Manager Singh as an accused. The chargesheet under Section 173 of the Code, submitted before the court in the present case, under the column relating to brief facts of the case reads as under:

> "Sir, the aforesaid case was registered on the basis of written report/complaint of the complainant of the case and the investigation was being done by the S.I. Shri Ramchandra Mishra. On 15.01.2020 I have received the investigation. During the investigation, on the basis of the statement of the complainant as well as on the basis of medical report, section 120B/308/325 IPC was added and the name of accused Manager Singh has come into light, in which Bachan Sing Rawat and Mahendra Kumar were sent in judicial custody on 24.12.19. Till the filing of charge sheet, the accused Manager Singh has been granted stay of arrest by the court. The offences under Section 323/504/506/120B/308/325 IPC are duly proved against the accused Bachan Singh Rawat, Mahendra Kumar and Manger Singh. Therefore, charge sheet is filed against the accused Bachan Singh Rawat, Mahendra Kumar and Manager Singh under Section 323/504/506/120B/308/325 IPC before the Hon'ble Court. It is requested to summon the proof and punish and accused." • On the chargesheet being submitted in the court of the Magistrate, order dated

10.02.2020 was passed recording that the chargesheet has been submitted for offences under 323, 504, 506, 120B, 308, 325 of the IPC against Bachhan Singh Rawat, Mahendra Kumar and Manager Singh. The order, taking cognisance and issuing summons, reads:

> "The chargesheet was filed under the offence number 556/2019, Section 323, 504, 506, 120B, 308, 325, IPC, Police Station Aliganj against the accused Bachan Singh Rawat, Mahendra Kumar and Manager Singh. Reviewed all prosecution forms. The grounds for taking cognizance are sufficient. Cognizance is taken.
>
> ORDER Register the case. The copies are ready attached. Accused Bachan Singh Rawat and Mahendra Kumar are out on bail. Jamanatnama is attached in the file and the arrest of the accused Manager Singh was a stay on the arrest till the filing of the chargesheet in the sequence of the order of the Hon'ble High Court, Miscellaneous Bench – 262/2020 order dated 09-01-20. Summons issued against the accused. Giving copy for paperwork. Attendance should be presented on 01-03-2020." • It appears that the matter was taken up for hearing by the Special Chief Judicial Magistrate, Lucknow on 18.02.2021, which records the presence of the counsel for Rajesh Wangvelu and that application for exemption from personal appearance was moved on behalf of Bachhan Singh Rawat and Mahendra Kumar. Manager Singh was absent and bailable warrants were issued against him, and he was required to appear on 04.03.2021.
>
> • On 04.03.2021, an application for exemption from personal appearance was moved on behalf of Manager Singh on the ground that he had gone out for personal reasons where he had taken ill. This application was rejected on 04.03.2021 by the Special Chief Judicial Magistrate, recording that Manager Singh had not obtained bail till then and there is no provision for granting exemption from personal appearance prior to obtaining bail. Therefore, non-

bailable warrants have been issued against him.

• Another order dated 04.03.2021 records that bailable warrants were issued against Manager Singh but he had remained absent. To ensure his personal appearance non-bailable warrants were issued against him. • By the impugned order dated 16.03.2021, the High Court had dismissed the petition filed by Manager Singh under Section 482 of the Code, to quash the criminal proceedings against him.

• On 03.09.2021, the High Court granted a further period of 10 days' time to Manager Singh to surrender. He did not surrender and filed another application seeking extension of time to surrender.

• On 03.12.2021, Manager Singh filed the present appeal challenging correctness of the impugned order dated 16.03.2021. • Rajesh Wangvelu has, before us, referred to FIR No. 224 of 2020 registered under Sections 406, 419, 420, 467, 468, 471 IPC on account of certain contracts having been awarded by Manager Singh, Dr. Neeta Nigam, Bachhan Singh Rawat, Mahendra Kumar, to M/s. V.K. Singh Construction Company, Punjab, in which case a final report has been submitted to the court. He has also referred to an office order dated 03.09.2021 passed by the Government of India, Ministry of Culture, terminating services of Manager Singh with immediate effect.

45. Having regard to the facts of the present case, including the chargesheet as filed, which in our opinion is bereft of all details and particulars, we quash the summoning order against Manager Singh. The Special Chief Judicial Magistrate, would re-examine the entire matter in terms of the observations made in the present judgment and thereupon proceed in accordance with law.

46. We, however, would allow the present appeal to the extent that the non-

bailable warrants issued against Manager Singh are unsustainable and should be quashed. It is a settled position of law that non-bailable warrants cannot be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State. While there are no comprehensive set of guidelines for the issuance of non-

bailable warrants, this Court has observed on several occasions that non- bailable warrants should not be issued, unless the accused is charged with a heinous crime, and is likely to evade the process of law or tamper/destroy evidence.30

47. Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code31 should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi and Another v. Rani Jethmalani32 held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption.33 Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.34

48. It is also directed that Manager Singh shall be released on bail by the arresting officer/ investigating officer/trial court on the terms and conditions to be fixed 30 Inder Mohan Goswami and Another v. State of Uttaranchal and Others, (2007) 12 SCC 1; Vikas v. State of Rajasthan, (2014) 3 SCC 321.

31 Section 205 of the Code. Also see, Section 317 of the Code. 32 (1979) 4 SCC 167.

33 See also, Puneet Dalmia v. Central Bureau of Investigation, Hyderabad, (2020) 12 SCC 695. 34 See, Popular Muthiah v. State Represented by Inspector of Police (2006) 7 SCC 296 and earlier judgment of the Calcutta High Court in Rahim Sheikh (1923) 50 Cal 872, 875. by the trial court in connection with the chargesheet originating from FIR No. 556 of 2019. The direction given by the High Court in its order dated 09.01.2020 restricting the grant of anticipatory bail till the filing of the chargesheet is accordingly modified. We have issued the said direction in exercise of power under Article 142 read with Article 136 of the Constitution of India in view of the peculiar facts of the present case, including issue of non- bailable warrants etc. by the court of Special Chief Judicial

Magistrate. CONCLUSION

49. In view of the aforesaid discussion,

(i) the appeal arising out of SLP (Crl.) No. 1074/2017 preferred by Sharif Ahmed and Adil is allowed and the criminal proceedings are quashed;

(ii) the appeal arising out of SLP (Crl.) No. 5419/2022 is allowed with the direction that in the event of being arrested, the appellants – Imran and Kamaluddin shall be released on anticipatory bail in connection with the chargesheet under Sections 420 and 120B IPC arising out of FIR No. 519/2019 dated 26.07.2019 registered at Police Station Chandpur, District Bijnor, Uttar Pradesh on terms and conditions to be fixed by the trial court. In addition, the appellants – Imran and Kamaluddin shall comply with the conditions mentioned in Section 438(2) of the Code;

(iii) the appeal arising out of SLP (Crl.) No. 9482/2021 preferred by Manager Singh is partly allowed by –

(a) quashing the summoning order issued against Manager Singh, with an order of remand to the Magistrate in terms of the observations in this judgment;

(b) quashing the non-bailable warrants issued against Manager Singh; and

(c) directing release of Manager Singh on bail by the arresting officer/investigating officer/trial court on terms and conditions fixed by the trial court in connection with the chargesheet under Sections 323, 504, 506, 120B, 308 and 325 IPC, arising out of FIR No. 556/2019 dated 23.12.2019 registered at Police Station Aliganj, District Lucknow, Uttar Pradesh.

.....J. (SANJIV KHANNA) .....J. (S.V.N. BHATTI) NEW DELHI;

MAY 01, 2024.