Court No. - 30 **Reserved**

Case :- U/S 482/378/407 No. - 2124 of 2020

Applicant :- Mewalal Gautam

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Purnendu Chakravarty,Kapil Misra

Hon'ble Mohd. Faiz Alam Khan,J.

The instant application under Section 482 Cr.P.C. has been moved by the applicant- Mewalal Gautam with the prayer to quash the order dated 20.6.2020 passed by the court of Additional Sessions Judge, Court No.19, MP/MLA Lucknow along with the charge sheet and entire criminal proceedings of Sessions Trial No. 26/2018, arising out of Case Crime No. 458/2016, under Sections 504, 506, 509, 153-A, 34, 149 of IPC & Section 11(i) POCSO Act, relating to Police Station Hazratganj, Lucknow so far as it relates to the applicant.

Heard Shri Satish Chandra Mishra, learned Senior Counsel assisted by Shri Purnendu Chakravarty , learned counsel for the applicant as well as Shri Prachis Pandey, learned AGA for the State and perused the record.

Earlier notice of this case was issued to opposite party no.2 i.e. Smt. Tetra Devi who is the informant of instant case. However, as per the report of Incharge Chief Judicial Magistrate, Balia dated 23.12.2020 informant/ opposite party no.2 was not residing at the given address of Balia and was residing in the premises of Chaupar Hospital, Naval Kishore Road, Hazratganj, Lucknow. Thus the notice was sent to Chief Judicial Magistrate, Lucknow for service on opposite party no.2 at her address of Hazratganj, Lucknow and vide report of Chief Judicial Magistrate, Lucknow dated 5.1.2021 the notice of the instant case was received by the son of the opposite party no.2, namely, Daya Shankar Singh. Thus according to the report of Chief Judicial Magistrate, Lucknow the notice has been served on opposite party no.2 through her son, however, no one has appeared on behalf of opposite party no.2.

This Court vide order dated 14.9.2021 had directed the Registrar(Listing) to submit a report pertaining to the fact as to whether the instant application is cognizable by the designated Court of M.P./M.L.A? Registrar (Listing) has now submitted a detailed report dated 17.9.2021 stating that the case is cognizable by a regular

Bench and the report so submitted by the Registrar (Listing) has been made part of the record.

Facts in brief which appear necessary for disposal of this case are that on 22.7.2016 at 12.50 hours an FIR was lodged by opposite party no.2 Smt. Tetra Devi against 4 named persons including the instant applicant- Mewalal Gautam and many unknown persons,, alleging that the informant is aged about 78 years and on 20.7.2016 at about 3.02 P.M. B.S.P. Supremo had abused her, her daughter, her daughter-in-law, her grand-daughter and all ladies of the Nation in the Assembly and on 21.7.2016 at about 11.00 A.M., on the direction of Ms. Mayawati, accused persons Nasimuddin Siddiqui, Ram Achal Raj Bhar and Mewalal Gautam (applicant) had led an unlawful Assembly of BSP workers at Ambedkar Statue situated at Hazratganj, Lucknow and had abused the son of the informant, namely, Daya Shankar Singh and also displayed the banner and placards containing obscene slogans and also threatened her son of his life. Nasimuddin Siddiqui while abusing had stated that Daya Shankar is a dog and he must be hanged and also instigated the crowd to commit violence on caste basis and also inspired them to indulge in violence and has also raised obscene slogans asking her son to present his daughter, mother, sister and wife, which comes under the definition of rape. It is also stated in the FIR that grand-daughter of informant aged about 12 years, on viewing this incident on Television is in trauma. It is also stated that the accused persons had raised obscene slogans pertaining to outraging the modesty of women. The conspiracy according to her was to murder her son Daya Shankar Singh by Nasimuddin Siddiqui in connivance with Ms. Mayawati.

The allegations of FIR were investigated and the charge sheet was filed by the Investigating Officer against 5 persons including the instant applicant- Mewalal Gautam under Sections 504, 506, 509, 153-A, 34, 149 IPC and Section 11(i) of POCSO Act.

The Special Judge took cognizance of the offences and summoned the applicant and other accused persons to face trial for the offence under Sections 504, 506, 509, 153-A, 34, 149 IPC and Section 11(i) of POCSO Act.

The proceedings of the case was challenged by the instant applicant by filing application under Section 482 Cr.P.C. No. 6400 of 2018 and a Coordinate Bench of this Court, vide order dated 10.10.2018 quashed the order dated 11.1.2018 passed by the Special Court, whereby the cognizance was taken and directed the trial court to pass

a fresh order in accordance with law within three weeks from the date of production of a certified copy of the order.

The accused persons, including the instant applicant, in pursuance of the order of this Court, dated 10.10.2018 appears to have filed objections at the stage of taking cognizance and vide order dated 20.6.2020 the special court dismissed the objections filed by the applicant and other accused persons and again took cognizance of offences under Sections 504, 506, 509, 153-A, 34, 149 IPC and Section 11(i) of POCSO Act against the applicant and other accused persons and had fixed 24.7.2020 for framing of charges.

Aggrieved by the same, the applicant has filed this application.

Shri Satish Chandra Mihsra, learned Senior Counsel submits that the instant case is nothing but a counter blast of an FIR lodged by the applicant against the son of opposite party no.2, namely, Daya Shankar Singh at Police Station Hazratganj, Lucknow on 20.7.2016 at about 12.40 hours under Sections 504, 509, 153-A IPC and 3(1) (X) SC/ST Act pertaining to some obscene comments made by son of opposite party no.2 against the Ex. Chief Minister of Uttar Pradesh Ms. Mayawati. This case was registered at Case Crime No. 452 of 2016 and Daya Shankar Singh on the basis of his obscene comments was also ousted from the political party with which he was affiliated, for six years.

It is further submitted that there is no evidence against the applicant of any kind and he had not uttered a single word or raised any slogan and no specific role has been assigned to him and the entire investigation is vindictive and shabby and there is no audio video clip showing the involvement of the applicant in any incident described in the First Information Report.

It is also submitted that during the investigation two compact Disc's (C D's) containing audio video clips of the incident were allegedly provided to the Investigating Officer by one Shri Puneet Singh, brother of Smt. Swati Singh and the same were also sent to Forensic Lab for examination, however, due to non compliance of Section 65 of I.T. Act the same could not be used as evidence and the transcription of the contents of C.Ds. also is not related with the applicant as the same admittedly are only containing the statements of Ms. Jannat Jahan, Smt. Usha Chaudhary and Nasimuddin Siddiqui and not a single word has been shown to have uttered by instant applicant.

It is also submitted that the presence of the applicant on the spot has not been crystallized and the applicant was not at all present at the site of the protest and all the proceedings of the case pending before the court below are nothing but the abuse of process of law and be quashed as there is not an iota of evidence/ material available, which may even prima facie connect the applicant with the offences, mentioned in the charge sheet.

It is further submitted that significantly the Investigating Officer has not recorded the statement of grand-daughter of the informant and therefore all the allegations pertaining to Section 11(i) of POCSO Act are imaginary and could not be believed and even if the case of the prosecution is taken on its face, no offence including offence under Section 11(i) of the POCSO Act could be attracted against the applicant and thus all proceedings of the case pending before the court below including charge sheet are liable to be quashed.

Learned Senior counsel in support of his submissions has relied on following case laws:-

(1) **Ahmad Ali Qurreshi and another Vs. State of U.P.** Criminal Appeal No. 138 of 2020, decided on 30.1.2020 (Supreme Court).

(2) **Sanjay Kumar Rai Vs. State of U.P.**, Criminal Appeal No. 472 of 2021, decided on 7.5.2021 (Supreme Corut)

(3) **R.P. Kapoor Vs. Stae of Punjab**, AIR 1975 Supreme Court 706.

(4) **State of Haryana Vs. Bhajan Lal and others**, 1992 SCC Cri. Page 426.

Shri Prachis Pandey, learned Additional Government Advocate vehemently submits that this Court while exercising jurisdiction under Section 482 Cr.P.C. could not enter into the area of appreciation of facts and evidence and thus all the submissions made by learned Senior counsel could only be appreciated in the trial by the trial court.

He further submits that so far as the evidenciary value of the C.Ds. Containing audio and video clips of the incident are concerned the same are also subject matter of the trial and at this stage the Court is not obliged to enter into the area of appreciation of facts.

It is further submitted that the trial court has committed a mistake in granting the applicant and other co-accused persons an opportunity of being heard at the stage of taking cognizance and the material as well as the evidence collected by the Investigating Officer is sufficient and is attracting the penal offences under which cognizance has been

taken and applicants have been summoned to face trial, including the offence under Section 11(i) of POCSO Act.

It is further submitted by learned AGA that this Court could not appreciate facts and evidence as the appreciation of the facts and evidence is the prerogative of the trial court and the same should be left for being assessed by the trial court and the evidenciary value of the material collected by the Investigating Officer will have to be seen at the stage of trial and no interference is warranted either in charge sheet or in cognizance taking or summoning under.

Learned Additional Government Advocate in support of his submissions has relied on following case laws:-

(1) **Father Thomas Vs. State of U.P.** 2011(2) ACC 1457 (F.B.)

(2) **Miss 'A' Vs. State of U.P.** 2021 (114) ACC 622.

(3) **Rajeev Kaurav Vs. Bhai Saheb and others** (2020)3 SCC 317.

(4) **Sau Saravswati Bai Vs. Lalita Bai and others** 2019 (107) ACC page 327.

(5) **Mohd. Allauddin Khan Vs. State of Bihar** 2019 (109) ACC page 66

(6) **State of Gujarat Vs. Feroz Mohd. Hassan Fatta** 2019 (195) AIC 41.

(7) **Anvar P.V. Vs. P.K. Basheer and others** (2014)10 SCC 477.

Having heard learned counsel for the parties and having perused the record, it transpires from the record that accusation against the applicant and other co-accused persons as contained in the First Information Report are to the tune that on 21.7.2016 at about 11.00 A.M. on the direction of Ms. Mayawati, Nasimuddin Siddiqui, Ram Achal Raj Bhar and applicant- Mewalal led an unlawful assembly of B.S.P. workers to the Ambedkar Statue situated at Hazratganj, Lucknow and hurled abuses against the son of the informant, namely, Daya Shankar Singh and also raised obscene slogans and play-cards and has also openly demanded that Daya Shankar Singh must present his daughter, sister, mother and wife to them, which comes under the definition of rape and when this was telecasted through the T.V. Channels the grand-daughter of the informant who at that point of time was aged about 12 years had gone into a shock after witnessing this indecent incident on television.

The defence of the instant applicant- Mewalal Gautam is to the tune that even if the case of the prosecution and material/ evidence collected during investigation is taken on its face the same could not attract any offence and specifically Section 11(i) of the POCSO Act could not be attracted at all and there is no evidence/ material available against the applicant, while the sole objection of learned AGA is to the tune that this court at this stage could not appreciate the facts and the submissions made by learned Senior counsel could only be appreciated in the trial by the trial court.

I have perused the record including the case diary in order to appreciate the facts as they are appearing on its face in order to assess as to whether on the admitted set of facts as alleged by the prosecution any offence is emerging to have been prima facie committed by the instant applicant- Mewalal Gautam.

The subordinate court has taken cognizance under Sections 504, 506,509, 153-A (34), 149 IPC and Section 11(i) of POCSO Act 2012 and have summoned applicant- Mewalal Gautam and other accused persons to face trial, with regard to them. For ready reference and convenience these Sections are being reproduced in verbatim herein-below.:-

"504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

***509**. Word, gesture or act intended to insult the modesty of a woman. —Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending* ,

soon before the death of the deceased. *that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.*

[153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—
(1) Whoever—
(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2[or] 2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.—If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Section 11 of Protection of Children from Sexual Offences Act, 2012 : Sexual harassment

A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or"

I must deal at first the preliminary objection which has been raised by learned AGA pertaining to the procedure adopted by the trial court in allowing the accused persons to participate in the process of taking cognizance and in his attempt he has relied on a Full Bench Decision of this court, namely, Father Thomas Vs. State of U.P. (supra) wherein in paragraphs 31 and 32 of the report it has been observed that the accused is not entitled to be heard at the stage of taking cognizance and also to demonstrate that the prospective accused persons were having no locus to be heard at the time of taking cognizance and issuance of process.

Shri S.C. Mishra, learned Senior counsel has not given much importance to this aspect of the matter and rightly so to the extra ordinary procedure adopted by the trial court in hearing the accused persons at the time of taking cognizance of the offences and issuance of process. Thus there is no need to devote much time over this issue as the trial court even after providing an opportunity of being heard (which was not atall warranted) has taken the cognizance of the offences under Sections 504, 506, 509, 153-A 34,149 IPC and Section 11(i) of POCSO Act 2012 (wherein the charge sheet was filed) and had also summoned the applicant and other co-accused persons to face trial. Thus there is no doubt that though a strange procedure has been adopted by the trial court in providing an opportunity of being heard to the accused persons at the time of taking cognizance of offences but the State could not claim to have been aggrieved or prejudiced by such an unwarranted procedure as ultimately the trial court has taken the cognizance of the offences mentioned herein before and has also summoned the accused persons including the instant applicant to face trial. The State has also not challenged the order of taking cognizance and thus there appears no grievance occurred to the State by the irregularity which has been committed by the trial court nor the State appears to have been prejudiced by the same. The trial court appears to be under an impression that since this Court while deciding application under Section 482 Cr.P.C. No. 6400 of 2018, vide order dated 10.10.2018 had set aside the order of taking cognizance dated

11.1.2018 and had further directed the trial court to pass a fresh order, an opportunity of being heard should be given to the accused persons. However, the same was totally unwarranted and uncalled for and was against the settled law. Since the State appears to have neither been prejudiced nor aggrieved, the irregularity committed by the trial Court has not resulted in any prejudice either to the State or to the applicant and thus though providing an opportunity of being heard is an irregularity but the same is not of such an magnitude which may have any bearing on the outcome of the instant case.

The law with regard to quashing of the charge sheet or the order whereby the cognizance has been taken or proceedings of quashing a criminal case is now no more *res integra* and the same has been set at rest by Catena of judgments passed by Hon'ble Supreme Court.

In **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr. MANU/SC/0297/2012 : (2012) 5 SCC 424** while considering **Chief Enforcement Officer v. Videocon International Ltd.,MANU/SC/7011/2008 : (2008) 2 SCC 492** it was held that the expression cognizance merely means to 'become aware of'. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. It is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process Under Section 204 of the Code. Similar view was taken in **Darshan Singh Ram Kishan v. State of Maharashtra MANU/SC/0089/1971 : (1971) 2 SCC 654,** wherein it is held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and thereafter takes judicial notice of the offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report. In **Kishun Singh and Ors. v. State of Bihar MANU/SC/0460/1993 : (1993) 2 SCC 16**, the Court reiterated the position that when the Magistrate takes notice of the accusations and applies his mind to the allegations made

in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. In **S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and Ors. MANU/SC/7011/2008 : (2008) 2 SCC 492**, it was held that "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.In **U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and Anr. MANU/SC/8395/2008 : (2009) 2 SCC 147**, it is reminded that It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the magistrate is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. In **G.H.C.L. Employees Stock Option Trust VS. India Infalin Ltd., MANU/SC/0271/2013 : 2013(4) SCC 505**. it was emphasized by the Honble Supreme Court that summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.

Hon’ble Supreme Court in **State of Gujrat Vs Afroz Mohammed Hasanfatta** reported in **MANU/SC/0139/2019** while considering the need of the magistrate to record reasons for taking of cognizance and issuance of summons in cases based on police report (Charge Sheet) framed a point mentioned below and answered it as under :-

“While directing issuance of process to the Accused in case of taking cognizance of an offence based upon a police report Under Section 190(1)(b) Code of Criminal Procedure, whether it is mandatory for the court to record reasons for its satisfaction that there are sufficient grounds for proceeding against the Accused?

“19..... in Raj Kumar Agarwal v. State of U.P. and Anr. MANU/UP/1095/1999 : 1999 Cr. LJ 4101, Justice B.K. Rathi, the learned Single Judge of the Allahabad High Court held as under:

...As such there are three stages of a case. The first is Under Section 204 Code of Criminal Procedure at the time of issue of process, the second is Under Section 239 Code of Criminal Procedure before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process Under Section 204 Code of Criminal Procedure detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process Under Section 204 Code of Criminal Procedure, however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, ... At the stage of Section 204 Code of Criminal Procedure if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge Under Section 239 or 240 Code of Criminal Procedure the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

8. A bare reading of Sections 203 and 204 Code of Criminal Procedure shows that Section 203 Code of Criminal Procedure requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such' requirement Under Section 204 Code of Criminal Procedure. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality.

We fully endorse the above view taken by the learned Judge.

20. In para (21) of ***Mehmood Ali Rehman***, this Court has made a fine distinction between taking cognizance based upon charge sheet filed by the police Under Section 190(1)(b) Code of Criminal Procedure and a private complaint Under Section 190(1)(a) Code of Criminal Procedure and held as under:

21. Under Section 190(1)(b) Code of Criminal Procedure, the Magistrate has the advantage of a police report and Under Section 190(1)(c) Code of Criminal Procedure, he has the information or knowledge of commission of an offence. But Under Section 190(1)(a) Code of Criminal Procedure, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance Under Section 190(1)(a) Code of Criminal Procedure. The complaint is simply to be rejected.

21. In summoning the Accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the Accused Under Section 204 Code of Criminal Procedure is not the same at the time of framing the charge. For issuance of summons Under Section 204 Code of Criminal Procedure, the expression used is "*there is sufficient ground for proceeding*....."; whereas for framing the charges, the expression used in Sections 240 and 246 Indian Penal Code is "*there is ground for presuming that the Accused has committed an offence*.....". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons Under Section 204 Code of Criminal Procedure, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons Under Section 204 Code of Criminal Procedure.

22. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Code of Criminal Procedure and in accordance with the Rules of investigation. Evidence and materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before fling the charge sheet. The court thus has the

advantage of the police report along with the materials placed before it by the police. Under Section 190 (1)(b) Code of Criminal Procedure, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the Accused. Such an order of issuing summons to the Accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the Accused. In a case based upon the police report, at the stage of issuing the summons to the Accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking on file. ”

In **Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, , MANU/SC/0053/2013** Hon'ble Supreme Court held as under :-

"23. Based on the factors canvassed in the f, soon before the death of the deceased. oregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. "

Recently in **Ahmad Ali Quraishi and Ors. Vs. The State of Uttar Pradesh and Ors., MANU/SC/0104/2020,** Hon'ble Supreme Court while considering the scope of extra ordinary powers contained under section 482 Crpc held as under :-

"10. Before we enter into facts of the present case and submissions made by learned Counsel for the parties, it is necessary to look into scope and ambit of Inherent Jurisdiction which is exercised by the High Court Under Section 482 Code of Criminal Procedure. This Court had occasion to consider the scope and jurisdiction of Section 482 Code of Criminal Procedure. This Court in **State of Haryana and Ors. v. Bhajan Lal and Ors. MANU/SC/0115/1992 : 1992 suppl. (1) SCC 335**, had elaborately considered the scope and ambit of Section 482 Code of Criminal Procedure/Article 226 of the Constitution in the context of quashing the criminal proceedings. In paragraph 102, this Court enumerated seven categories of cases where power can be exercised Under Article 226/Section 482 Code of Criminal Procedure by the High Court for quashing the criminal Proceedings. Paragraph 102 is as follows:102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

(6) Where the is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.

12. This Court time and again has examined the scope of jurisdiction of the High Court Under Section 482 Code of Criminal Procedure and laid down several principles which govern the exercise of jurisdiction of the High Court Under Section 482 Code of Criminal Procedure. A three- Judge Bench of this Court in **State of Karnataka v. L. Muniswamy, MANU/SC/0143/1977 : (1977) 2 SCC 699**, held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated: (SCC p. 703)

7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary

public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

13. A three-Judge Bench in **State of Karnataka v. M. Devendrappa, MANU/SC/0027/2002 : (2002) 3 SCC 89,** had the occasion to consider the ambit of Section 482 Code of Criminal Procedure By analysing the scope of Section 482 Code of Criminal Procedure, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6: (SCC p. 94)

6. ... All courts, whether civil or criminal possess, in the absence of any express provision, has inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

14. Further in para 8 the following was stated: (Devendrappa case, SCC p. 95)

8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an Accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power Under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal.

16. After considering the earlier several judgments of this Court including the case of State of Haryana v. Bhajan lal (supra), in Vineet Kumar (supra), this Court laid down following in paragraph 41:

41. Inherent power given to the High Court Under Section 482 Code of Criminal Procedure is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction Under Section 482 Code of Criminal Procedure to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect: (SCC p. 379, para 102)

102. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge."

So far as the submission of learned Senior counsel pertaining to the fact that even if the case of the prosecution is taken on its face no offence is emerging against the applicant, perusal of the record would reveal that it is stated in the first information report lodged by opposite party no.2 against the applicant and other co-accused persons that they had led an unlawful assembly of BSP workers to the Ambedkar Statue situated at Hazratganj, Lucknow and had protested by displaying obscene playcards, raised obscene slogans and had instigated the crowd to indulge in violence and had openly demanded

the son of the informant to present his daughter, sister, mother and wife to them and the crowd as well as the applicant and other co-accused persons had also raised s, soon before the death of the deceased. logans to murder the son of the informant and also to hang him.

The perusal of case diary which has been provided by the state, would also reveal that Smt. Tetra Devi (informant) in her statement recorded by the Investigating Officer under Section 161 Cr.P.C. had clearly stated that the protest at Ambedkar Statue was held/ organized under the leadership of Nasimuddin Siddiqui, Ram Achal Rajbhar and Mewalal Gautam (applicant) where alleged obscene /threatening slogans were raised and speeches were given and was also stated on television Smt. Swati Singh has also stated in her statement that the protest was organized under the leadership of Pradeep Singh, O.P. Srivastava, Nasimuddin Siddiqui and Mewalal Gautam (applicant) and Ram Achal Rajbhar which was also telecasted on the T.V. Channels. Both these witnesses have also stated in detail about the slogans raised pertaining to threats given to the son of the informant, Daya Shankar Singh and also the intimidation given through the speeches of the leaders who were present there.

As has been stated earlier Smt. Tetra Devi in her statement recorded under Section 161 Cr.P.C. has taken name of applicant- Mewalal Gautam as the person who along with Nasimuddin Siddiqui, Ram Achal Rajbhar has led the unlawful assembly of B.S.P. workers to the statue of Ambedkar where obscene slogans abuses were hurled and raised against the son of the informant and intimidation to his life was also given.

It is also stated by her that speeches which were given by the accused persons were sufficient to incite violence on caste basis and also that Daya Shankar Singh was asked to submit his wife, sister, mother and daughter to them.

It is also apparent that the informant had also stated that her grand-daughter who is about 12 years of age was shocked by witnessing this scene on television. However, neither the informant nor any prosecution witnesses had revealed the name of grand-daughter nor her statement was recorded by the investigating officer. Ms. Swati Singh who is the wife of Daya Shankar Singh has also supported the version of the First Information Report and has named the applicant as one of the leader who had led the crowd to the protest site where obscene slogans, castiest remarks were made and incitement to

commit violence was given and abuses were also hurled. She also stated that her daughter who was aged about 12 years, at that time was in shock after witnessing this on television. However, she also did not disclose the name of her daughter. One Puneet Singh has also been examined by the Investigating Officer and he has also supported the version of the FIR as well as the statement of Smt. Tetra Devi and Ms. Swati Singh. During the investigation above mentioned Puneet Singh had also provided two C.Ds. Containing audio and video of the protest site to the Investigating Officer and authenticity of these C.Ds. is alleged to have been established by the Forensic Lab. Transcription of contents of these C.Ds. as contained in the case diary, would reveal that there are audio/ video clips containing intimidation and obscene slogans raised and inflamatory speeches given by some leaders and slogans raised by protesters against Daya Shankar Singh but there is no audio video clip pertaining to the instant applicant- Mewalal Gautam. There are also slogans raised by the crowd whereby the son of the informant was asked to present his sister and daughter etc. One Amar Singh stated to be a photographer has also provided one D.V.D. containing audio / video of the protest which has also been authenticated by the Forensic Lab as genuine and shown to have contained similar audio/ video clips.

It is also evident that Section 149 & 34 IPC has also been invoked against the applicant and other co-accused persons while Section 34 of the IPC provides that when a Criminal Act has been done by other persons in furtherance of the common intention of all, each of such person is liable for the act of the others, as the act has been done by him alone. Similarly under Section 149 or he IPC it has been provided that if an offence is committed by any member of unlawful assembly in prosecution of common object of that assembly or the object which members of that unlawful assembly knew that it is likely to be committed in achieving that object, every person who at the time of committing of that offence is a member of such unlawful assembly shall be guilty of that offence, unless he choses to withdraw from such assembly at an appropriate time.

Thus, the above mentioned definition of Section 34 and 149 IPC provides for vicarious liability in certain factual position. At this stage of the trial it could not be concluded as to whether the applicant was not present at the site of the protest as the prosecution witnesses have specially stated that applicant along with other co-accused persons has led the protest and had taken the crowd of the BSP

workers to the protest site, where illegal activities were allegedly held. Thus the instant case is not a case where no offence at all is emerging against the applicant.

However, so far as the submissions of Ld Senior Counsel pertaining to the fact that there is no material/ evidence pertaining to the offence under Section 11(1) of POCSO Act, is concerned, it would be better to refer to the relevant provisions of the POCSO Act.

The title of the Protection of Children from Sexual Offence Act, 2012 states that the Act has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and provide for establishment of special courts for trial of such offences and for the matters connected therewith or incidental thereto.Section 7 pertaining to "sexual assault" which reads as under:

7. Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section 8 provides for the punishment for sexual assault and reads as under:

8 - Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

Section 10 provides Punishment for aggravated sexual assault-

10 - whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

And

Section 11 pertains to "sexual harassment"-A person said to commit sexual harassment upon a child **when such person with sexual intent**-

(i)-**utters any word** or makes any sound, or makes any gesture or exhibits any object or part of body **with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or**

Section 12 provides for punishment for sexual harassment as under :-

12 - whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also liable to fine.

Sections 29 and 30 of the Act are pertaining to the statutory presumptions read as under:

29 - When a person is prosecuted for committing or abetting or attempting to commit any offence Under Section 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

30 - (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the Accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the Accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation-In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

Hon'ble Supreeme Court in **Attorney General for India and Ors. vs. Satish and Ors. (18.11.2021 - SC) : MANU/SC/1086/2021**, while considering various provisons of POCSO Act opined as under :-

"30. So far as the object of enacting the POCSO Act is concerned, as transpiring from the statement of objects and reasons, since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO Act was enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of special Courts for trial of such offences and for matters connected therewith and incidental thereto. While enacting the said Act, Article 15 of the Constitution which empowers the State to make special provisions for children, and the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, as acceded to by the Government of India, prescribing a set

of standards to be followed by all the State parties in securing the best interest of the child, were also kept in view. The POCSO Bill intended to enforce the rights of all children to safety, security and protection from sexual abuse and exploitation, and also intended to define explicitly the offences against children countered through commensurate penalties as an effective deterrence.

36. It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the Legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence Under Section 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the Accused, the existence of such mental state. Of course, the Accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per Sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Section 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, "sexual intent" would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption Under Section 30 as regards the existence of "culpable mental state" on the part of the Accused."

There is difference between sexual assault and sexual harassment and even the POCSO Act recognizes it. Section 7 defines sexual assault, whereas Section 11 defines sexual harassment. There is less punishment to sexual harassment as laid down under Section 12 of the said Act. A composite reading of Section 11 and Section 30 of the POCSO Act therefore, makes it manifest that prosecution for sexual harassment requires the establishment of sexual intent also and the Special Court shall presume its existence if the commission of the act constituting sexual harassment, save the sexual intent, has been established by the material collected by the investigating officer.

However, it shall also be a defence for the accused to prove the fact that he had no such sexual intent with respect to the act charged as an offence in that prosecution. The fact that he had no such sexual intent as alleged is however, required to be proved beyond reasonable doubt and not merely when its existence is established by preponderance of probability. Unless the explanation is supported by proof the presumption of law created by Section 30 of the POCSO Act cannot be held to be rebutted. However the burden is always on prosecution to prove those initial facts on the basis of which the rebuttable, presumption provided under section 30, could be drawn.

Thus, having regard to facts of the instant case, rebuttable presumption of law created by Section 30 of the POCSO Act could have placed the onus upon the Applicant to rebut the presumption only when the prosecution has successfully established the fact that the appellant had done any act defined under Section 11(i) of the Act with the intention that it is seen by the victim (In this case the grand daughter of the informant) and it is only thereafter the Court is required to draw a presumption that the Appellant had sexual intent in doing so. The Special Court has no choice in the matter thereafter. However, this presumption cannot be understood to mean that the initial burden of proof which is always on the prosecution has been done away with by Section 30 of the POCSO Act. The burden of proving the facts constituting sexual harassment always rest on the prosecution who has asserted it. The presumption started to operate only when the prosecution had established the initial facts that the applicant had done the acts alleged in Section 11(i) of the Act with the intention that the victim will see it. Section 2(1)(j) of the POCSO Act defines "sexual harassment' as having the same meaning as assigned to it in S. 11 thereof. Section 11(i) of the Act stipulates that a person is said to commit sexual harassment upon a child when such person with **sexual intent**;- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of the body shall be seen by the child. The prosecution has to make out a case establishing the basic ingredients for attracting the provisions thereof and unless it is established by the prosectution by positive evidence, the rigour of the provisions in the POCSO Act cannot be pressed into service. Section 11(i) of the POCSO Act is an offence of specified class where it is required that illegal act mentioned therein should have been done by the offender in view of

the victim or the objectionable material has been sent to the victim by any mode either electronic or physical.

It is to be recalled that where the police report filed by the investigating officer concludes that an offence appears to have been committed by particular person or persons and in such a case, trial Court may (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding(in this case he will have to inform victim/ informant), or (3) before taking offence may direct further investigation under Section 156(3) and require the police to make a further report. If after taking into consideration material placed with the 'Charge Sheet' there is **sufficient ground** for proceeding against the persons named in the Charge Sheet the processes may be issued against them under Section 204 Cr.P.C. In summoning the accused, it is not necessary for the trial Court to examine the merits and demerits of the case and whether the materials collected is adequate for the conviction. The court is not required to evaluate the evidence and its merits. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. In cases instituted on a police report, the Magistrate is required to pass an order of issuing summons to the accused on the basis of his subjective satisfaction considering the police report and other documents and material submitted by investigating officer, including the statements of witnesses and after satisfying himself that there is sufficient ground for proceeding against the accused person(s). **[See Bhagwant Singh v. Commr. of Police [(1985) 2 SCC 537 : 1985 SCC (Cri) 267,India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132, 1989 SCC (Cri) 306,Gangadhar Janardan Mhatre vs State Of Maharashtra, 2004 Supp(4) SCR 772]]**

In **Punjab National Bank v. Surendra Prasad Sinha MANU/SC/0345/1992** Hon'ble Supreme Court reminded the duty of trial court while taking cognizance in following words:-

"6. .....There lies responsibility and duly on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta."

In **State of Bihar v. Murad Ali Khan 1988 (4) SCC 655,** it was observed as under :-

"It is trite that jurisdiction under Section 482, Cr. P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the Court or not."**[Emphasis Mine]**

Hon'ble Supreme Court in **Devendra and Ors. vs. State of U.P. and Ors. (06.05.2009 - SC) : MANU/SC/0941/2009,** opined as under :-

"25. There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."**[Emphasis Mine]**

In the instant case after going through the whole case diary made available by the state , no evidence or material is found which may be termed as sufficient to attract even prima facie the commission of offence by applicant under Section 11(i) of the POCSO Act. So much so the statement of the alleged victim has not been recorded by the investigating officer or to put it correctly the victim was never produced before the investigating officer without any valid excuse and the basic ingredient of the offence i.e." sexual Intent' is also missing. There is no transcription of any speech made by instant applicant in the 'case diary' nor he was shown to have made any speech in the DVD or CD provided by the two prosecution witnesses to the investigating officer. So even if the material collected by the investigating officer in the case diary is believed as it is, the ingredients of offence of section 11(i) POCSO Act is not attracted.

Thus, in the considered opinion of this Court, cognizance of offence under section 11(i) of the POCSO Act has been taken by the trial Court without there being any material or evidence available in the case diary with regard to this offence and there was no 'sufficient ground' available to proceed against the applicant for this offence, thus the impugned order of the special court is liable to be set aside to this extent only. But certainly if the case of the prosecution is taken on its face, it could not be said that other offence(s) wherein the cognizance has been taken are not emerging against the applicant. No need to say that the trial Court,if during the course of the trial found that evidence has been produced attracting any provision of the POCSO Act or of any other law, it may proceed in accordance with law, but at this stage there is nothing in the case diary which may attract ingredients of section 11(i) of POCSO Act.

Thus, there appears no illegality committed by the trial court in taking cognizance of the offence under Sections 504, 506, 509, 153-A, 34, 149-A of IPC and in summoning the applicant to face trial for these offences , but so far as taking of cognizance for offence under Section 11(i) POCSO Act is concerned there is absolutely no material or evidence available in the case diary which may attract section 11(i) of the POCSO Act and there is no sufficient ground to proceed against the applicant under this offence. Thus the trial Court appears to have committed an illegality in taking cognizance of offence under Section 11(i) POCSO Act and in summoning so far as the applicant Mewa Lal Gautam is concerned, to face trial under Section 11(i) POCSO Act and the order of the trial Court is liable to be set aside only to this extent, however having regard to all the material collected by the Investigating Officer there appears no illegality in either taking cognizance or in summoning the applicant Mewa Lal Gautam to face trial for other offences i.e. under Sections 504, 506, 509, 153-A, 34, 149 of IPC.

Keeping in view all the facts and circumstances of the case and for reasons mentioned herein before the instant petition is **partly allowed** and the order dated 20.6.2020 of the trial Court is set aside, **only to the extent of taking cognizance under section 11(i) of the POCSO Act**, only with regard to the instant applicant- Mewa Lal Gautam. The trial against the applicant shall continue pertaining to other offences wherein he has been summoned by the trial Court, strictly in accordance with law.

The trial Court will make all out efforts to conclude the trial at the earliest.

Observations made here in above are not to be construed as opinion of this Court on merits of the case.

Order Date 7.12.2021
Muk