Karan Yadav and Another etc. Vs Union of India (UOI) and Another

Court: Allahabad High Court

Date of Decision: April 22, 2000

Acts Referred: Arms Act, 1959 â€" Section 24, 27
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 â€" Section 15(2)
Constitution of India, 1950 â€" Article 165, 225, 226, 227, 77
Criminal Procedure Code, 1973 (CrPC) â€" Section 11, 11(2), 14, 155(2), 156(1)
Evidence Act, 1872 â€" Section 60
General Clauses Act, 1897 â€" Section 21, 3
Land Acquisition Act, 1894 â€" Section 4, 4(1)
Negotiable Instruments Act, 1881 (NI) â€" Section 25
Penal Code, 1860 (IPC) â€" Section 109, 120B, 147, 148, 200
Terrorist and Disruptive Activities (Prevention) Act, 1987 â€" Section 15, 20, 20A(2), 3

Citation: (2000) CriLJ 4530 : (2001) 1 RCR(Criminal) 408

Hon'ble Judges: I.M. Quddusi, J

Bench: Single Bench

Advocate: Prem Prakash, for the Appellant; R.N. Tewari and Gridhar Nath, S.C. and A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

I.M. Quddusi, J.
These petitions were heard for quite a number of days in different months.

2. Heard the learned counsel for the petitioner, Sri Prem Prakash, Special Counsel for C.B.I., Sri R.M. Tewari and the learned Standing Counsel

for C.B.I., Sri Girdhar Nath.

3. In these case filed u/s 482 Cr.P.C. learned counsel for the petitioners has challenged the proceedings of the Court of Special Judicial Magistrate

CBI, Deharadun and the order taking cognizance mainly as under:-

(1) The jurisdiction of the C.B.I., who have investigated the case.

(2) The initiation of proceedings against the applicant are void ab initio.

(3) The charge sheet submitted by the said agency is illegal arbitrary and unconstitutional, and

(4) The charge sheet was filed on a date when there was a public holiday and the cognizance could not have been taken by the Court on a public

holiday. The charge sheet was filed against some accused persons (8 persons) and against some other accused persons (10 persons) a final Report

was mentioned in the report submitted u/s 173 Cr.P.C. Charge sheet and the Court could not have taken cognizance and passed order without

issuing notice to the complainant.

(5) There was no Gazette notification regarding creation of Court of judicial magistrate.

(6) The Judicial Magistrate 1st Class who had taken cognizance on the charge sheet was posted as Judicial Magistrate by the High Court in

District Deharadun and without firstly creating the "local area" comprising of the entire State or the part of the State the jurisdiction of that Court

could not have been extended beyond the territorial limits of the District Dehradun; and

(7) There is no legally admissible evidence against the petitioner establishing his involvement in the instant matter and as such the charge-sheet is

based on no evidence.

4. Let us take first of all the charge against each of the petitioner and the evidence collected by the investigating officer.

5. Criminal Misc. case No. 2148 of 1995 was filed by Karan Yadav and Jitendra Singh Yadav with the prayer that this Court quash the warrant

issued u/s 82 and 83 Cr.P.C. by the Court designated under the TADA and the Criminal proceedings launched in pursuance of the First

Information Report registered as Case Crime No. 371 of 1995 police Station, Dadri District Ghaziabad (now Case No. RC- 1(s)/93) u/s 147,

148, 307, 109, 120-B, IPC read with Section 3 of TADA. and the execution of the warrant issued by that Court as well as the arrest of the

applicants in the aforesaid case crime be stayed.

6. Vide order dated 25-2-1995, this Court passed an interim order as under :

Until further orders, the petitioners shall not be arrested in Case Crime No. 371 of 1992, PS. Dadri, district Ghaziabad. M. Katju, J.

7. The above petition was filed on 24-7-1995 in the Registry of this Court. Thereafter, Criminal Misc. Case No. 2799 of 1996 u/s 482 Cr.P.C.

was filed by Dhrampal Yadav with the prayer to quash the order of District and Session Judge, Meerut dated 17-7-1996 and also 4th and 10th

July, 1996, the orders passed by CJM, Ghaziabad and that of Sessions Judge dated 16-7-1996 and subsequent proceedings initiated against the

petitioner consequent upon the case Crime No. 371 of 1992, PS. Dadri District Ghaziabad (new No. RC-1 (s)/ 93-SIU-1 Dt. 13-9-1992) and

also notification dated 10-8-1993. It was further prayed that the further proceedings initiated against the petitioner including the arrest in the

aforesaid case crime be stayed. This petition was filed on 22-7-1996 and the matter thereafter came up before this Court. The case was

connected with criminal Misc. Application No. 2148 of 1995 filed by Karan Yadav and in the meantime, this Court stayed the arrest of the

petitioner in the aforesaid case Crime. It was stated that the State Government had sent direction to the Director General and the Inspector

General of Police Meerut Zone directing them not to afford sanction for prosecution under the TADA and the designated Court under TADA

released all the persons arrested by the CBI u/s 20 of TADA. The Inspector General of Police did not accord sanction for prosecution.

Thereafter, an amendment application was moved on behalf of the petitioner by learned counsel in which an amendment was sought in the prayer

clause to the effect that the proceedings of case No. 403 of 1996 arising out of case crime No. 371 of 1996, PS Dadri district Ghaziabad pending

in the Court of special Magistrate Dehradun and the order 7-10-1996 passed by the Special Magistrate, (CBI) and order dated 21-11-1995 of

learned Sessions Judge, Deharadun be quashed. Thereafter, Maharaj Singh and Dharampal Yadav filed another petition u/s 482 Cr.P.C. (being

Crl Misc. Application No. 1600 of 1997) on 14-3-1997 with the prayer that continuance of proceedings pursuant to orders dated 6-3-1997, 25-

3-1992, 7-10-1997 passed by 2nd Special Court of Chief Judl. Magistrate first class, Dehradun in Criminal Case No. 406 of 1996 be quashed

and during the pendency of the petition, further proceedings in the aforesaid criminal case No. 406 of 1996 (UOI v. Maharaj Singh and Ors.) be

stayed. On this, Hon''ble R.N. Ray, J. (as he then was) passed an order to list the case on 20th March, 1997 along with Criminal Misc.

Application Nos. 2799 of 1996, 4914 of 1996 and till then, further proceedings pursuant to the orders dated 6-3-1997, 25-2-1997, 28-1-1997,

14-1-1997, 7-10-1997 passed by Special Court of Judicial Magistrate, 1st Class, Dehardun in Criminal Case No. 403 of 1996 shall remain

stayed.

8. All the aforesaid petitions were clubbed together. Criminal Revision No. 194 of 1997 was also pointed out and this Court had summoned the

record of that Criminal Revision in which order dated 7-10-1996 passed by Special Magistrate, CBI, Dehradun was challenged but no interim

order was passed in that Revision.

9. Sri Girdhar Nath, learned Standing Counsel for the CBI has requested this Court that Criminal Revision the record of which has been

summoned during the course of arguments may not be heard and decided along with these cases, hence the same is not being considered.

10. After investigation, charge sheet in Case Crime No. 371 of 1995 PS. Dadri, Ghaziabad was filed, copy of which has been filed by learned

counsel for the petitioner along with the affidavit filed in support of the Amendment Application which shows that the charge sheet against 8

persons was filed and final report against 10 persons was also filed. The persons against whom charge sheet was filed are D. P. Yadav, Karan

Yadav, Tejpal Ghati, Parnit Bhat and Maharaj Singh, Pal Singh Jaipal Singh Gujar. The persons against whom final report has been submitted are

Azad Singh Bhati, Baljit Singh, Kishan Squadron, Surendra, Ram Kumar Jeet Pal, hawab Singh Chandel.

11. The contents of the charge sheet are as under :

The RC 1 (s)/93-SIU.I/SIC-I was registered under Sections 147, 148, 302, 307, 109, 120-B IPC and Section 3 of TADA(P) Act, 1987 relating

to the murder of Mahendra Singh Bhati, the then MLA of Uttar Pradesh Assembly and his friend Udai Prakash Arya on 13-9-1992 at 7.00 P.M.

at Railway Crossing Dadri, district Ghaziabad in SIC-I Branch of Delhi Special Police Establishment (CBI) on 14-8-1993 after the Government of

India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training vide its Notification No. 228/58/92-AVE.II dated

10-9-93 with the consent of the Government of Uttar Pradesh, had entrusted the investigation of Crime No. 371 of 1992, Police Station Dadri

District Ghaziabad to CBI.

2. The investigation disclosed that sometime during 1992 at District Ghaziabad (UP) and Delhi the accused namely Dharam Pal Singh Yadav D.P.

Yadav, s/o Tej Pal, r/o R-416 Raj Nagar Ghaziabad; Karan Yadav, s/o Indraj Yadav, r/o DG-11/197-A Viharpuri, New Delhi, Tejpal Singh

Bhati s/o Romal Singh r/o Railway Road, Dadri, Praneet Bhatti s/o Tejpal Singh Bhati r/o Railway Road, Dadri, Maharaj Singh s/o Raghuvansh

r/o village Panchli Khurd, PS. Jani district Meerut, Pal Singh alias Pala alias Harpal Singh alias Lakkad s/o Gurbachan Singh r/o village Tughalpur,

PS Manglore district Haridwar (UP), Jaipal Gujar s/o Ram Saran r/o village Nasirpur PS Mawana district Meerut, Aulad Ali s/o Hasham Ali r/o

upper Kot, Loni district Ghaziabad and other unknown entered into a criminal conspiracy to eliminate Mahendra Singh Bhati, the then MLA of

Janta Dal Party from Dadri, Ghaziabad constituency on account of political rivalry with D.P. Yadav, the then MLA from Bulandhsahr (UP) to take

revenge against the killing of Praveen Bhati s/o Tejpal Singh as well as to strike terror in public and in pursuance of the said criminal conspiracy the

aforesaid accused and other unknown held several meetings from time to time at Loni, Dadri, Delhi. Bad (ira, Djarijeda and Dharuheda and other

places, D.P. Yadav through Karan Yadav provided a new Maruti Car for its use in the commission of crime, Aulad Alia, procured and provided

prohibited weapons SLR & AK-47 with Ammunition and two hand grenades : Tejpal Singh Bhatti, Praneet Bhatti and other kept watch and

gathered information about the movements of Mahendra Singh Bhatti and also provided shelter to the assailants before and after the commission of

crime. Pala alias Lakkad and Jaipal Gujar killed Mahendra Singh Bhatti and Udai Prakash Arya on 13-9-92 at 8.45 P.M. at Railway Crossing

Dadri by firing from A.K.47 and SLR and caused fire arm injuries to 3 more persons and accused Maharaj Singh drove maruti Car No. DL.4CB-

3597 used in the commission of the crime and facilitated the escape the assailants in the said maruti car with their weapons and live hand grandes.

3. On 23-6-92 Mahender Singh Bhatti made a written complaint to SHO, PS. Dadri alleging therein that he was apprehending danger to his life

and the lives of his family members at the hands of Mohinder Fauji r/o Mewla Bhatti PS Loni district Ghaziabad Pala alias Lakkad r/o Purkaji

district Muzaffarnagar. Ajit r/o Sonpura PS Bisrakh and Neeraj r/o Mahmoodpur, district Bulandshahr and other who were camping in Dadri and

were given protection/shelter by the workers and district President of Bhartiya Janta Party Ghaziabad. Sh. Tejpal Bhatti was the District President

of Bhartiya Janta party Ghaziabad during June, 1992.

4. A White Maruti Standard Car bearing registration number DL.4-CB-3597 was purchased on 22-6-92 from M/S Saini Motors Ludhiana in the

fictitious name of Kunal Kapur r/o 8/14 Model Town Delhi for Rs. 1,67,000/- by accused persons to be used in the commission of crime and after

its use in the murder of Shri M. S. Bhatti, the said Car was sold off by accused Karan Yadav through Cheema Motors Janak Puri, New Delhi on

1-10-92 for Rs. 1.40.000/-.

5. In the month of June/July, 1992 on a number of occasions, accused Pal Singh alias Lakkad and Jaipal Gujar visited and stayed at the residence

of Tejpal Singh Bhatti in white maruti Car No. DL/4CB-3597 driven by accused Maharaj Singh and held meetings with accused Tejpal Singh

Bhatti and Parneet Bhatti to fulfil the object of Criminal conspiracy as stated above. Accused Pala alias Lakkad, Jaipal Gajjar, Maharaj Singh

visited Shiva Farm House. Dharudera, district Rewari and met Narayan Yadav, one of the owners and informed him that they were on same

special mission.

6. Accused Tejpal Bhatti, Praneet Bhatti, Maharaj Singh and others collected automatic weapons i.e. one SLR one Ak_47 and cartridges thereof

along with two live hand grenades from accused Aulad All at his residence in upper Kot Loni Ghaziabad, for their use in commission of crime.

7. One day prior to the murder of M.S. Bhatti and Udai Prakash Arya i.e. on 12-9-92 accused Pala alias Lakkad. Jaipal Gujjar, Maharaj Singh

and Karan Yadav visited Shiva Farm House. Dharuhera, district Rewari where Karan Yadav confided to Narayan Yadav that the weapons had

been arranged and M.S. Bhatti was to be eliminated shortly. Thereafter, accused Pal Singh alias Pala alias Lakkad. Jaipal Gujjar and Maharaj

Singh reached the residence of Tejpal Singh Bhatti in maruti Car No. DL-4CB-3597 and met Tejpal Singh Bhatti and Parneet Bhatti who gathered

information about the movements of M.S. Bhatti including that of visit to village Mahavar on 13-9-92 to unveil the status.

8. On 13-9-92 Mahender Singh Bhatti along with his supporters had reached village Mahavar and had attended the function there. The accused,

namely Pal Singh alias Lakkad alias Pala, Jaipal Gujjar, Maharaj Singh Praneet Bhatti in the said maruti Car No. DL.4CB-3597 left the residence

of Tejpal Bhatti around 10.00 hours and returned at about 4 P.M.

9. On the same day i.e. 13-9-92 at about 7 P.M. accused Pal Singh alias Pala alias Lakkad and Jaipal Gujjar with SLR & AK-47 and two hand

grenades in white colour maruti Car No. DL. 4CB-3597 driven by accused Maharaj Singh again left the residence of Tejpal Singh Bhatti and went

towards Railway Crossing Dadri. They spotted the Car of M.S. Bhatti halting at the railway crossing due to the closure of railway crossing. Both

Pala alias Lakkad and Jaipal Gujjar alighted from their car, went near the Car of M.S. Bhatti and fired from their automatic weapons w.e. SLR

and AK 47 on his Car as a result of which its occupants namely M. S. Bhatti and Udai Prakash Arya sustained firearm injuries and both died on

the spot. In addition 3 others namely, Ved Ram Kaushakik Gunman of M. S. Bhatti, O.P. Koyal who was sitting in a car ahead of late M.S.

Bhatti''s car and Dharmvir Singh with his cycle was crossing the railway crossing also sustained fire arm injuries. The people of Dadri area were

terrorised and panic was spread amongst the area people. They fled for shelter leaving their belongings, shops and establishments. The assailants

escaped in the said Maruti Car driven by Maharaja Singh towards NTPC Road shouting ""Ab Aur laravo Prakash Pahelwan se Chunav"". The

victims Car No. UGU 5004 was extensively damaged causing 32 holes due to indiscriminate firing. Both M.S. Bhatti and Udai Prakash Arya were

taken to District Hospital, Ghaziabad where they were declared as brought dead.

10. On 14-9-92 the post mortem of the dead bodies of M.S. Bhatti and Udai Prakash Arya was conducted in MMG Hospital Ghaziabad by Dr.

A. K. Rastogi who gave the cause of death of both M.S. Bhatti and Udai Prakash Arya as shock and haemorrhage due to ante-mortem injuries.

There were 9 entry wounds and 7 exist wounds on the dead body of M. S. Bhatti whereas there were 10 entry wounds and 8 exist wounds on the

dead body of Udai Prakash Arya. All these injuries were opined to have been caused by the firearms.

11. The injured Sri O. P. Kayal received 3 gun shot wounds i.e. penetrating wound in the back of left lumbear region (ii) penetrating wounds on

right side of umbilicus and (iii) penetrating wound on middle of anterior and lateral aspect of right thigh. He was admitted in Yashoda Hospital

Nehru Nagar Ghaziabad on 13-9-92 at 7.30 P.M. where he was medically treated upto 28-9-92. On 28-9-92 Sri O.P. Kayal was transferred to

Holy Family Hospital, Okhla Road, New Delhi where he remained under treatment up to 23-10-92 when he was discharged.

12. Another injured Ved Ram Kaushik, Gumman, received 4 gunshot wounds i.e. (i) lacerated wound on the right side of chest (ii) lacerated

wound on right side of neck (iii) punctured wound on right side of neck (iv) lacerated wound on one medial aspect of left leg.

13. The injured Sh. Dharmvir Singh received two gun shot wounds i.e. (i) firearm wound on back of right thigh (ii) fire arm wound on medial side

of right thigh and a lacerated wound on medial side left thigh.

14. The local police recovered 5 empties of AK 47, 7 empties of 7.66 mm from the place of occurrence. One rusted metallic bullet, one piece of

bullet jacket were also recovered from the car of the deceased. Two bullets each were recovered from the dead bodies of M. S. Bhatti and Udai

Prakash Arya during their post-mortem examination.

15. Accused Karan Yadav had arranged the hideout/shelter in Shiva Farm House of Narain Yadav at Dharuhera for assailants before and after the

commission of crime. After the commission of crime, while staying in the farm-house, accused Pala alias Lakkad made an extra judicial confession

before Narain Yadav stating that he and Jaipal Gujjar had killed M. S. Bhatti at the behest of D.P. Yadav etc. Karan Yadav also confessed that

the vehicle which was used in the commission of crime was provided by D.P. Yadav.

16. Accused Maharaj Singh was arrested on 18-5-94 and accused Aulad All was arrested on 23-3-95. Both the accused persons during their

police custody remand gave confessional statements voluntarily which were recorded u/s 15 of TADA(P) 1987.

17. On 18-6-96 accused Pala alias Lakkad and Jaipal Gujjar were arrested by the staff of PS Pehowa, District Kurukshetra (Haryana) and

recovered one AK-47 Rifle bearing No. K-01527/1994-T with five cartridges and one SLR/ALR bearing No. G-3 POP/12/67 with live

cartridges from the unlawful possession of accused Pal Singh alias Pala alias Lakkad and Jaipal Gujjar respectively. A case FIR No. 134 dt. 18-5-

1996 under Sections 307, 216A, IPC and 24/54/59 Arms Act, PS Pehowa, district Kurukshetra (Haryana) was registered against the said

accused.

18. On 3-7-96 after obtaining the permission of the Court of CJM, Kurukshetra above said two fire arms recovered from the accused Pala alias

Lakkad and Jaipal Gujjar by the Haryana Police on 18-6-96 were collected in this case. Both these firearms along with the 5 empties of AK-47

and 7 empties of 7.62 mm so recovered and also the 4 bullets so recovered from the dead bodies of deceased M.S. Bhatti and Udai Prakash

Arya were sent to CFSL/New Delhi for comparison and expert opinion. The opinion of Ballistics Expert of CFSL/New Delhi vide report No.

CFSL 16F-546 dated 25-7-96 has established that 5 empties of AK-47 and 3 bullets were fired from AK-47 rifle which was recovered from Pal

Singh. It has also been established that 7 empties of 7.52 mm and one bullet were fired from aforesaid SLR which was recovered from Jaipal

Gujjar on 18-6-96.

19. On 15-7-96 accused Pal Singh alias Pala alias Lakkad while in police custody remand made a voluntary disclosure in the presence of

witnesses to the effect that about a week prior to the incident of murder, he under the assumed name of Harpal Singh had got the said Maruti Car

serviced at a Maruti Service Station near Kachahary, Gurgaon, Pal Singh alias Pala alias Lakkad also pointed out that the said service station

which was found to be Somko Automobiles, Gurgaon where Maruti Car No. DL-4CB-3597 was got serviced by Harpal Singh on 7-9-92.

20. On 25-9-92 i.e. after the commission of crime, accused Pal Singh alias Pala alias lakkad had stayed in Rainbow Guest House at Panipat

where he had signed the guest house register in the assumed name of Harpal Singh. The signature of Harpal Singh existing in the Guest House

register has been established to be in the hand writing of accused Pal Singh @ Pala @ Lakkad vide CFSL opinion No. CFSL/96/D-594/ 2353

dt. 21-8-96.

21. The aforesaid facts and circumstances establish that accused namely, Dharam Pal Yadav @ D.P. Yadav, Karan Yadav, Tehpal Singh Bhatti,

Praneet Bhatti, Pal Singh @ Pala @ Lakkad, Jaipal Gujjar, Maharaj Singh and Aulad All have committed the offences punishable u/s 120-B read

with Sections 302, 307, 325 IPC. The accused Pal Singh @ Pala @ Lakkad and Jaipal Gujjar have also committed the offences punishable under

Sections 302, 307, 325 IPC and Section 27 of the Arms Act.

22. The accused persons, namely Azad Singh Bhatti, Baljit Singh Bhatti, Krishan Bhatti, Nawab Singh Chandala, Sqn. Ldr. Brahampal Singh,

Mehkar Singh, Ran Singh, Jeet Pal, Surender Bhatti, Ram Kumar @ Rame Pradhan were arrested on different dates and released on bail. Due to

insufficient evidence against them they are not being sent up for trial and they may be discharged from their bail bonds. Their names have been

mentioned in Column No. 2 of the charge sheet.

23. Accused Pal Singh @ Pala @ Lakkad and Jaipal Gujjar are in judicial custody. Accused Tejpal Singh Bhatti, Praneet Bhatti, Maharaj Singh

and Aulad All were arrested by CBI but were granted bail by Designated Court, Meerut. However, the Allahabad High Court has restrained CBI

from arresting D.P. Yadav and Karan Yadav and hence they have not been arrested. It is therefore, prayed that the aforesaid accused be

summoned and tried according to law.

24. The charge sheet is being submitted against accused persons named above for the offence committed by them under the provisions of IPC and

Arms Act as the requisite sanction for their prosecution and of others as required u/s 20-A(2) of TADA (P) 1987, as amended has been declined

by Inspector General.

25. The list of witnesses, documents and the articles relied upon are annexed herewith.

(Sd/- N.C. Jha)

Dy. Superintendent of Police

CBI : SPE : SLC.I New Delhi.

12. A list of witnesses containing as many as 47 names together with list of documents as well as list of articles have also been annexed with the

charge sheet.

13. Arguments in these cases were started from 21-2-1997. They were heard for quite a long time. Written arguments were also filed by the

learned counsel for the parties. Arguments of learned counsel for the Petitioners Sri Prem Prakash, Sri R. M. Tiwari, earned special counsel for the

CBI and Sri Girdhar Nath, learned Standing counsel for CBI concluded on 5-2-1998, hence the arguments were concluded almost in one year.

14. Learned counsel for the petitioner has submitted written arguments stating therein that the CBI has not filed any counter affidavit in reply to the

supplementary affidavits dated 3-12-1996 and 26-2-1997 and to the amendment application and argued that since the contents of the

supplementary affidavits referred to above have not been controverted, the contents thereof be accepted and relied upon by the Court. In support

of his contention, he has cited case laws reported in Manohar Vs. State of Karnataka and Others, Smt. Naseem Bano Vs. State of U.P. and

others, (S.M.D. Kiran Pasha v. Govt. of A.P.), Hazara Singh Gill Vs. The State of Punjab, .

15. Learned counsel for the petitioner has vehemently contended that order of the Central Government dated 10-8-1993, copy of which has been

filed as Annexure 2 to the application through which the investigation of the case was entrusted to CBI establishes that this order has not been

expressly made in the name of the President of India as provided in Clause (1) of Article 77 of the Constitution. He has further contended that this

order has also not been validly authenticated by the Competent Officer under the "Transaction of Business Rule, 1961" made under Clause 3 of

the Article 77 of the Constitution of India. Thus, the order dated 10-8-1993 is void and unconstitutional. In this regard he has placed on Ghaio

Mall and Sons Vs. The State of Delhi and Others, .

16. Earlier a counter affidavit has been filed by N. C. Jha, posted as Deputy Superintendent of Police, CBI, SIC-I New Delhi who happens to be

the Investigating Officer of the case in question stating therein that the application/petition is not maintainable in the High Court during the

investigation stage. In sub-para 1 of paragraph 5 of the counter affidavit, it has been averred that FIR No. 371 of 1992 was registered at Police

Station Dadri, district Ghaziabad, U.P. relating to the murder of Mahendra Singh Bhatti (MLA) and his companion one Udai Prakash Arya and

injuries were caused to other persons as well on 13-9-1992 with automatic weapons and a case under Sections 147, 148, 149, 302, 307, 109

read with Section 120-B, IPC Section 3 of TADA (P) Act, 1987 was later on added by the local police. The case was initially investigated by the

local police, but subsequently the investigation of the case was transferred to the Central Bureau of Investigation (CBI) and as such, case was

registered as RC-1(S)/93 SIU.I /CBI /New Delhi and after investigation, charge sheet in the case was submitted on 7-10-1996 as has been stated

above. Two accused persons namely Pal Singh @ Pala @ Lakkad and Jaipal Singh Gujjar were arrested by the Kurukshetra Police (Haryana) on

18-6-1996. As the aforesaid two accused were produced in the Court of CJM, Ghaziabad, from Central Jail, Ambala, the Court after due

application of mind granted police custody remand for 8 days in respect of the aforesaid two accused persons. The aforesaid accused persons

then challenged the order of CJM, Ghaziabad in the Court of Sessions Judge, Ghaziabad by filing a Revision which was dismissed as infructuous

by the said Court. Thus it is obvious that the affected persons were Pal Singh @ Pala @ Lakkad and Jaipal Gujjar and D. P. Yadav petitioner has

no locus stand! to challenge the validity of the orders passed by the learned Chief Judl. Magistrate and learned Sessions Judge, Ghaziabad. It has

been further averred that the CBI was placed under the Ministry of Personnel, Public Grievances and Pensions and as per rules of business, the

notification regarding the entrustment of the case to the CBI was rightly issued by the Ministry of personnel, Public Grievances & Pensions. There

is no illegality of impropriety whatsoever in the notification dated 10-8-1993. In para 15 of the counter affidavit, it has been averred that accused

Maharaj Singh was taken to the Court of Designated Judge, Meerut on 3-6-1994 at the orders of the Metropolitan Magistrate, Delhi. As the

Court of Designated Judge, Meerut was found to be closed due to elections, the accused Maharaj Singh was produced before the Addl. Chief

Judl. Magistrate who had sent the accused Maharaj Singh to judicial custody.

17. Sri R. M. Tiwari, learned counsel appearing as special counsel on behalf of the CBI has also submitted synopsis of the arguments on behalf of

the CBI. In regard to the validity of the Gazette notification dated 28th August, 1993 published on the basis of Notification dated 10-8-1993

issued by the Under Secretary to the Government of India, Ministry of Personnel, Public Grievances. He also drew the attention of this Court to

the interpretation of sub-Clause 8(b) of Section 3 of General Clauses Act, 1897. He has placed reliance on the case of Major E.G. Barsay Vs.

The State of Bombay, , Zalam Singh and Others Vs. Union of India and Others, (Full Bench). In regard to the jurisdiction of the Special Jdl.

Magistrate (CBI) he has placed before this Court the provisions of Sections 11 and 14 of the Cr.P.C. read with Section 21 of the General Clauses

Act, 1897. He has also relied upon the Notification dated 6th February, 1990 issued by the Governor of U.P. and the Notification dated 17th

August, 1995 issued by the High Court of Judicature at Allahabad. He has placed number of rulings and the relevant case laws which would be

discussed hereinafter by this Court.

18. Sri Girdhar Nath, learned Standing Counsel for CBI has also submitted written submissions. He has placed reliance on the case of Usman Bhai

v. State AIR 1986 SC 922, State of Maharashtra v. Abdul Hamid 1994 SCC 595 : 1994 AIR SCW 2930. He has vehemently urged that

consideration regarding validity of the notifications referred to above is beyond the purview of powers conferred u/s 482 Cr.P.C. Therefore, the

prayer for quashing the order of the Central Government authorising the CBI to investigate the incident in question is not liable to be considered by

the Court in a petition filed u/s 482 Cr.P.C. He has also referred the provisions of Section 190(1)(b) Cr.P.C. contending that the learned

Magistrate is bound to take cognizance after submission of the charge sheet before him.

19. Learned counsel for the petitioners in support of his submission to the effect that learned Standing Counsel has not filed any counter affidavit to

controvert the contents of two supplementary affidavits dated 3-12-96 and 26-2-1997, has cited the following case laws.-

(1) Manohar Vs. State of Karnataka and Others, ;

(2) Smt. Naseem Bano Vs. State of U.P. and others, ;

(3) S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others, ;

(4) Hazara Singh Gill Vs. The State of Punjab, .

(5) ILR (1972) 1 All 577.

(6) JIC 1996 All 691.

20. In the said cases it has been held that if the averments have not been controverted by filing counter affidavit the trial should have been

proceeded on the basis that the said averments had been admitted by the respondents. But this position is in respect of the facts of the case and it

is to be seen that whether on the basis of the facts narrated in the affidavit, the petitioners are entitled to any relief or not.

21. Learned counsel cited the case law laid down in State of Haryana Vs. P.C. Wadhwa, IPS, Inspector General of Police and Another, , in

which it has been held that the Business Rules have been framed under Clauses (2) and (3) of Article 165 of the Constitution for the more

convenient transaction of the business of the Government of Haryana and for the allocation of business among the Ministers.

22. In National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, , it has been held that it is the duty of the party which is in

possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be

permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the

appellant who are under the obligation to act fairly.

23. In the matter of I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, , it has been held by the Apex

Court that requirement by a statute of publication in official Gazette is not dispensable one or a director requirement. It is mandatory requirement.

Non publication of G.O. in official Gazette makes it as non statutory order which being an order of exemption from tax cannot be acted upon.

24. In Venkataswamappa Vs. Special Deputy Commissioner (Revenue), , it has been held that it is true that normally publication in the

newspapers should be preceded by a publication in the Gazette, notification. In this case while sending the notification, which was approved by the

Government for publication in the Gazette, simultaneously direction was issued to have it published in the Gazette. Therefore, it would appear that

before publication in the Gazette was made, it was published in one of the newspapers, is only an irregularity in the procedural steps required to be

taken under the Act. It does not vitiate the validity of the notification published in the Gazette on 23-2-1989.

25. In Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, it has been held that a bare perusal of Section 4(1) clearly

shows that in order to comply with the statutory requirements therein set out, a notification stating therein ''the land which is needed or is likely to

be needed for a public purpose'' has to be published in the Official Gazette. The second part of the sub-section provides that ''the Collector has to

cause public notice of the substance of such notification to be given at convenient places in the locality in which the land proposed to be acquired is

situated.

26. Reference of the case State of Mysore Vs. Abdul Razak Sahib, was made in which it has been observed that ""in the case or notification u/s 4

of the Land Acquisition Act, the law has prescribed that in addition to the publication of the notification in the Official Gazette, the Collector must

also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land

Acquisition Act cannot be said to have been complied with. The publication of the notice in the locality is a mandatory requirement.

27. In case of State of Uttar Pradesh Vs. Sabir Ali and Another, , the Apex Court has held that the trial before the Magistrate who was not

empowered to try the offence the proceedings were rightly declared void u/s 530 (p) of the Code of Criminal Procedure.

28. In Kuldip Oil Industries Ltd. Vs. Ch. Pratap Singh, , the division bench of this Court has held that when a day is declared to be a holiday under

the provisions of Section 25 of the Negotiable Instruments Act, the High Court also falls in line with such a notification and takes steps to have the

day in question declared a holiday also for the civil Courts subordinate to it, by issuing a notification u/s 15(2) of the Bengal, Agra and Assam Civil

Courts Act, 1887. But this law is applicable in civil cases only.

29. In Kisan Dhondu Vs. Shevantabai, (sic) it has been held that the trial of an accused person on a Sunday or any other holiday would not

necessarily marks the proceeding invalid, but is irregular as being contrary to the provision of Circular No. 37 of Criminal Circulars of the Bombay

High Court. It was also held that irregularity in procedure which has prejudiced the accused who could not be said to have had a full opportunity to

defend himself.

30. But in that case it was held that it was not suggested that there was any urgency or any special circumstances for adopting this unusual course.

31. In the matter of Emperor Vs. Mahomed Kasim Gulam Mohideen, the division bench had held that where the trial was held on Sunday and

application for adjournment for the obvious purpose of getting legal aid was refused and it was in no circumstances that the accused pleaded guilty,

this was not a fair trial and in the exercise of its powers either u/s 439 or under inherent jurisdiction the High Court ought to set aside both the

conviction and sentence and ordered re-trial.

32. In contempt case of Bhagwant Singh Vs. Commissioner of Police and Another, it has been held by the Apex Court that there can therefore, be

no doubt that when on a consideration of the report made by the officer in-charge of a police station under sub-Section 2(1) of Section 173

Cr.P.C. the Magistrate is not inclined to take cognizance and issue process, the informant must be given an opportunity of being heard so that he

can make his submissions to persue aid the Magistrate to take cognizance of the offence.

33. In regard to the opportunity having been given to injured person or relative of the deceased, the Apex Court has held as under -

...We cannot not spell out either from the provisions of Criminal P.C. 1973 or from the principle of natural justice, any obligation on the Magistrate

to issue notice to the injured person or to a relative, of the deceased for providing such person an opportunity to be heard at the time to

consideration of the report unless such person is the informant who has lodged the first information report. But even if such person is riot entitled to

notice from the Magistrate, he can appear before the Magistrate make his submisison when the report is considered by the Magistrate for the

purpose of deciding what action he should take on the report.

34. In Bilal Ahmed Kaloo Vs. State of Andhra Pradesh, the Apex Court has held that "" Any confessional statement madebto a police officer is

inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the

penal code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand

or fall depending on the other evidence.

35. In the matter of State of U.P. Vs. R.K. Srivastava and Another, , the Apex Court has held as under (Paras 4, and 5) :

The question whether the facts disclosed in the F.I.R. constitute the offence with which the accused have been charged. It is manifestly clear from

the allegations in the F.I.R. that the respondent or the other accused had no intention whatsoever to make any wrongful gain or to make any

wrongful loss to the Bank. They had accepted the said three cheques amounting to Rs. 45.500/- and sent the same for clearance after debiting the

LOC account. The said cheques have been encashed and the money was received by the State Bank of India. It may be that there was some

delay in crediting the LOC account or that he money against the three cheques were credited in the accounts of the said Shri Sarwant Singh and his

wife, but the allegations made either in the F.I.R. or in the charge sheet do not show that the respondent and other said P.C. Saxena had acted

dishonestly that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss. In our opinion the High Court has rightly held

that the allegations in the F.I.R. do not constitute any offence of cheating, nor do they constitute any offence of forgery. It is true that it has been

alleged that the said sum of Rs. 54.500/- was withdrawn on the basis of false credit entries made in the books of accounts of the Bank and

connected credit and debit vouchers were also prepared and passed by the respondent and the other accused. When the said sum of Rs. 54.500/

- had been allowed to be withdrawn by the said Shri Sarvant Singh and his wife, necessary entiries had to be made in the books of accounts, but it

is not understandable how these entries can be characterised as false entries. No document has been referred to in the F.I.R. as the outcome of

forgery.

The High Court has rightly held that as the criminal proceedings have been started against the respondent on the basis of a F.I.R. which does not

contain any definite accusation, it amounts to an abuse of process of Court and, as such, is liable to be quashed. We entirely agree with the view

expressed by the High Court.

36. In the matter of State of Jammu and Kashmir, Vs. Romesh Chander and others, the Apex Court has held as under (Para 7 of AIR) :-

Sri Manhas, learned counsel appearing for the State, contends that the trial Court and the High Court were not right in discharging the accused. It

is necessary to mention that DFO Khajaria and Chowdhary Lal have died. Therefore, the prosecution against them stands abated. The question is

whether prima facie case has been made out against the respondents ? Sri D.D. Thakur, learned Senior Counsel appearing for respondents 5 to 7,

the lessee, contends that they did not commit any offence and they do not come under the provisions of either Ordinance 5 of 1985 of the Act

which was quashed by the High Court or Act 7 of 1987. Therefore, no case has been made out against them. As stated earlier, we decline to

consider the matter on merits for the reason that the High Court should have considered all the relevant provisions of the Act and offences and the

contentions of the taking into consideration the averments made in the charge-sheet. It is now settled law that the charge sheet constitutes prima

facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and

the allegations made in the charge sheet and then consider whether any offence has been committed to frame charges for trial before discharging

the accused. Since the High Court has not done that, we think it proper that the High Court should reconsider the matter and dispose of it in

accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in

the High Court.

37. In the matter of MM Rajendran v. K. Ramakrishnan, (1997) 6 SCC 85 , it has been held as under :

We have examined the application filed by the appellant u/s 482 of the Code of Criminal Procedure, the complaint filed by the respondent and the

other record. In our opinion arguable questions have been missed in the petition filed by the appellant but the same have not been dealt with at all

by the learned Single Judge while dismissing the petition. The impugned order is wholly cryptic. There is no discussion let alone a finding, whether

the facts stated in the complaint even prima facie disclose the commission of an offence u/s 200, I.P.C. Does the complaint contain the essential

ingredients of the offence alleged against the appellant has also not been dealt with. The appellant has inter alia raised the question of limitation as

well as necessity for obtaining sanction for his prosecution, those also have not been considered. Under the circumstance the impugned order

cannot be sustained.

38. In Pepsi Foods v. Special Judicial Magistrate JT (1997) 8 (SC) : 1997 ALJ 2406 the Apex Court has held as under (Paras 28, 29 and 30 of

All LJ) :--

Summoning of an accused on a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the

complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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. He has to

examine the nature of allegations in the complaint and the evidence both oral and documentary in support thereof, and would that be sufficient for

the complaint to succeed in bringing charge home to the accused. It is not that the Magistrate is silent spectator at the time of recording of

preliminary, evidence before summoning of the accused, Magistrate has to carefully scrutinise the evidence brought on record and may even

himself put question to the complainant and his witnesses to elicit answers to find out the truthfulness ,of the allegations or otherwise and then

examine if any offence is prima facie committed by all or any, of the accused.

No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that

the accused cannot approach the High Court u/s 482 of the Code of Article 227 of the Constitution to have the proceeding quashed against him

when the complaint does not make out any case against him and still he must under go the agony of a criminal trial.

It is no comfortable thought for the appellants to be told that they could appear before the Court which is at a far off place in the Ghazipur in the

State of Uttar Pradesh, seek their release on bail arid then to either move an application u/s 245(2) of the Code or to face trial when the complaint

and the preliminary, evidence recorded makes out no case against them. It is certainly one of those cases where there in an abuse of the process of

the law and the courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the

Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted

such a rigid approach which certainly has had led to miscarriage or justice in the case. Power of judicial review is discretionary but this was a case

where the High Court should have exercised it.

39. In the matter of R.P. Kapur Vs. The State of Punjab, the Apex Court has held as under (At p 869) :-

There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against

an accused person may amount to abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of

justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly

appears that there is a legal bar against the institution or continuance of the said proceedings. The High Court would be justified in quashing the

proceeding on that ground absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the

allegations in the first information report or . the complaints come even if they were taken at their face value and accepted in their entirety, not

constitute the offence alleged in such cases no question of appreciation of evidence arises, it is a matter merely of looking at the complaint or the

first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that

it would be manifestly unjust to allow the process of the criminal Court to be issued against the requisite person. A third category of cases in which

the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made

against the accused person do constitute an offence alleged but there is either legal evidence adduced in support of the case or evidence. Adduced

clearly or manifestly fails to prove the charge. In dealing with this clause of cases it is important to bear in mind the distinction between a case

where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the acquisition made and in cases

where there is legal evidence which on its appreciation may or may not support the acquisition in question. In exercising its jurisdiction u/s 561A

the High Court would not embark upon an enquiry to face whether the evidence in question is reliable or not. That is the function of the trial

Magistrate inordinately it would not be open to any part, to invoke the High Courts inherent jurisdiction and contend that on a reasonable

appreciation of the evidence the acquisition made against the accused would not be sustained. Broadly stated that is the nature arid scope of the

inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decision on the

point.

40. In the matter of The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, , the Apex Court

has held as under (para 108) :-

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 the series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the

Code which we have extracted and reproduced above, given 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 jusice, though it may not be possible to lay down

any precise, clearly defined and sufficiently channelised and inflexible guideline or rigid formulae and to give in exhaustive list or myriad kinds of

cases wherein such powers 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 allegation in the first in-formation report and the other materials, if any, accompanying the F.I.R. do not disclose a cognizable

offence, justifying an investigation by police officers u/s 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 F.I.R. 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 F.I.R. 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 u/s 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so abusrd 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 there 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 in continuance of the proceedings and/or where there is specific provision in the Code for the concerned Act

providing, efficacious redress for the grievance of the aggrieved party.

(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.

41. In the matter of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, the Supreme Court has held as under:-

Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside.

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make

out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the

accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can even reach a

conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been passed either on no evidence or on

materials which are wholly irrelevant or admissible, and

(4) Where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of complaint by legally competent authority

and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contigencies where the High Court can quash

proceedings.

42. Sri Giridhar Nath, learned Standing Counsel for C.B.I, has placed reliance on case law State of Bihar and Another Vs. P.P. Sharma, IAS and

Another, in which Hon. Supreme Court has held as under :-

At the stage when the police report u/s 173, Cr.P.C. has been forwarded to the Magistrate after completion of the investigation and the material

collected by the Investigating officer is under the gaze of judicial scrutiny the High Court would do well to discipline itself not to undertake quashing

proceedings in exercise of its inherent jurisdiction.

Entertaining the writ petition against charge sheet and considering the matter on merit on the guise of prima facie evidence to stand an accused for

trial amounts to pre-trial of a criminal trial under Article 226 or 227 even before the competent Magistrate of the Sessions Court taken cognizance

of the offence. The charge sheet and the evidence placed in support thereof, from the base to take or refuse to take cognizance by the competent

Court. It is not the case that no offence had been made out in the charge sheets and the First Information Report. Grossest error of law has been

committed by the High Court in making pre trial of a criminal case in exercising its extra-ordinary, jurisdiction under Article 225. Once the

proceedings are entertained, the further proceedings get stayed....The documents relied on by the accused respondents relied on by the accused

respondents were subject to proof at the trial and if proved to be true and relevant then only they might serve as a defence for the respondents at

the trial. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course ""in annihilating the still born

prosecution"" by going into the merits on the plea of proof of prima facie case adverted to those facts and gave findings on merits.

43. He has further cited case law laid down in case of Krishnan and another Vs. Krishnaveni and another, , in which the Apex Court, has held as

under (Para 10 of AIR) :-

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant cannot be allowed to take recourse to

the revision to the High Court u/s 397(1) or under inherent power of the High Court u/s 462 of the Code. Since it may amount to circumvention of

the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu powers u/s 433 of the Code. So,

when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Court or the required

statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate, requires

correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarrriage of justice would ensue. It is, therefore, to

meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent powers and would be justified , under

such circumstances, to exercise the inherent, power and in an appropriate case even revisional power u/s 497(1) read with Section 401 of the

Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction

of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously

before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witnessby promise or

inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.

44. He has further cited other case laws which are being discussed hereinafter :-

45. In the matter of Ganesh Narayan Hegde Vs. S. Bangarappa and Others, the apex Court has held as under (Para 12 of AIR SCW) :-

While it is true that availing of the remedy of the revision to the Sessions Judge u/s 399 does not bar a person from invoking the power of the High

Court u/s 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers.

While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his

revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it

would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges.

46. He has also placed reliance on case State of Haryana and others Vs. Ch. Bhajan Lal and others, .

47. Sri Giridhar Nath has further submitted that the Ministry of Personnel, Public Grievance and Pensions is a separate Ministry as per the

Notification dated 31-4-1984 issued by the Government of India. The C.B.I, is placed under Ministry of Personnel, Public Grievances and

Pensions as per the Rules of Business and the Notification regarding the entrustment of the investigation of the instant case has rightly been issued

by the Central Government through its appropriate Ministry.

48. He has further placed reliance on case law laid down by the Apex Court in State of Himachal Pradesh Vs. Shri Pirthi Chand and another, .

49. It has been further submitted by the learned standing Counsel for C.B.I, that only one Special Judicial Magistrate was posted at Dehradun who

was giving remands to the accused persons during the course of investigation of this case. The charge sheet u/s 173, Cr.P.C, was also submitted

before the same Magistrate on completion of the investigation and the cognizance of the offence was also taken by him. Since the creation of the

Court of Special Judicial Magistrate was done by the State of U.P. vide its Notification dated 6-2-1990 any function discharged by the Special

Judicial Magistrate or any judicial act performed by him cannot be challenged before this Court, by the petitioner.

50. In the matter in question the charge sheet was filed before the Special Judicial Magistrate, Dehradun on 7-10-1996 i.e. on the 90th day from

the date of arrest of accused persons. The 7th of Oct. 1996 was not a gazetted holiday rather a local holiday as declared by the State Government

of U.P. under the Negotiable Instrument Act. Luckily, the same Special Judicial Magistrate was also the Duty Magistrate on 7-10-1995 before

whom report u/s 173, Cr.P.C. was submitted and he took cognizance of the offences after visiting the jail premises, hearing accused persons and

changing the nature of the custody of two accused persons to that u/s 309, C.P.C. hearing, the arguments of the C.B.I, and passing appropriate

order on the subject.

51. He as further submitted that with regard to the contentions regarding the appreciation of evidence by the TADA Court during investigation

period, such contentions cannot be made now, since the charge sheet has been filed only under I.P.C. provisions and riot under the provisions of

TADA (P) Act, 1987 for want of the special sanction to such effect by the concerned IGP.

52. He has submitted that in respect of the mention of name of Ram Naresh as a witness alleged to have been examined by the local police and

that he has not been relied upon by the CBI in its investigation, no such man was found to exist. Therefore; the CBI can rely only on the persons

exam- , ined by it during the course of the investigation of the case and cited as prosecution witnesses in the charge sheet.

53. It was also submitted that it is wrong to say that there was no evidence against the accused persons and the charge sheet was filed on hearsay

evidence. He has also submitted that there was sufficient evidence of cogent and overwhelming nature against the accused petitioner and other

accused persons and this is not proper stage to appreciate the evidence.

54. He has placed reliance on case law laid down in Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, in which the Apex Court has held as under

:-

It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the

complaint or in the charge sheet filed u/s 173, as the case nay be, It was held in State of Bihar v. Rajendra Agrawalia that it is not open for the

Court to sift or appreciate the evidence at the stage with reference to the material and come to the conclusion that no prima facie case is made out

for proceeding, further in the matter.

It is equally settled law that it is open for the Court, before issuing the process to record the evidence and on eonsideration of the averments made

in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On finding that such an offence

has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matter. If it is a

charge sheet filed u/s 173 of the Code, the facts stated by the prosecution in the charge sheet on the basis of the evidence collected during

investigation would disclose the offence for which cognizance would be taken by the Court to proceed further in the matter. Thus it is not the

province of the Court at that stage to embark upon and sift evidence and to come to the conclusion whether offence has been made out or not.

55. He has further submitted that investigating agency is to initiate the action on prima facie findings of evidence during the course of investigation

and it is not the business of the I.O, to discard any evidence before filing of the report u/s 173, Cr.P.C.

56. It is also submitted that points with regard to the taking of cognizance of the offences by the Special Judicial Magistrate on 7-10-1996 have

already been evaluated by the learned Sessions Court Dehradun vide order dated 21 -11 -1996 and the learned Sessions Court has declined to

interfere with the orders of the Magistrate. The same points and similar grounds cannot be raised before this Hon''ble Court in the garb of a petition

u/s 482, Cr.P.C. which would amount to second revision.

57. His further submission is that the Magistrate is bound to take cognizance u/s 190(1)(b), Cr.P.C. after submission of charge sheet to him. He

has no other option except to take cognizance as laid down by the Bench comprising of 5 Hon''ble Supreme Court Judges in the case reported in

N. Subramania Iyer Vs. The Official Receiver, Quilon, wherein it has been held that the words may take cognizance'' occurring in Section 190(1)

(b), Cr.P.C. means ''must take cognizance.''.

58. Sri R.M. Tewari, Special Counsel C.B.I, has also made submission that the C.B.I, has jurisdiction to investigate the instant case, He has

submitted that vide D.O. Letter dated 25-10-1992 of Shri Prabhat Kumar, Chief Secretary (Home), Government of U.P. addressed to Shri

Dandapani, Secretary, Department of Personnel, Government of India, New Delhi requesting to get the investigation done by C.B.I, and the order

dated 27-2-1993 was issued by Shri K.K. Bakshi, Principal Secretary, Government of U.P. u/s 6 of the D.S.P.E. Act, 1946, as well as

Notification dated 10-8-1993 issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel

and Training) for Publication in the Gazette of India, in part II Section 1 and the Gazette of India Notification No. 35 dated 28th Aug. 1993 are

relevant. In view of this the C.B I. had been given jurisdiction to investigate the case in question.

59. In regard to the jurisdiction of the Special Judicial Magistrate (CBI) Dehradun to take cognizance of the offence and to proceed with the

committal proceeding of the case he has submitted that Sections 11 and 14 of the Cr.P.C. 1973 read with Section 21 of the General Clauses Act,

1997 are relevant. Notification dated 6th Feb. 1990 was issued by the Governor of U.P. and other notification was issued by the High Court of

judicature at Allahabad on 17th August, 1995.

60. He has placed reliance on the case laws reported in (1983) 1 Crimes 1152 (All)(ii) Bharat Traders and Others Vs. The Special Chief Judicial

Magistrate and Others, , in which it has been held that once special Court of Magistrate is established no other Court in the local area shall have

jurisdiction to try any case or class of cases for the trial of which the Courts have been created.

61. In respect of the order of the Special Judicial Magistrate (CBI) at Dehradun taking cognizance of the offence on 7-10-1996, he has submitted

that Special Judicial Magistrate was deputed for remand duty vide order dated 1-10-1996 by the Chief Judicial Magistrate, Dehradun Rule 84 of

General Rule Civil, 1947 framed by the High Court empowers the competent Court to work on holidays in emergency.

62. He has further submitted that C.B.I, held juridiction to enquire under the TADA Act but since no sanction was granted to prosecute the

petitioners and others only the charge-sheet under the I.P.C. provisions was filed.

63. The question for consideration is whether the CBI had jurisdiction to investigate the case and whether the Notification dated 10-8-1993 issued

by the Under Secretary, Government of India, Department of Personnel, and Pension (Department of Personnel and Training) was valid one or

not. Sri Girdhar Nath, learned Standing Counsel for CBI has raised objection that the Executive Action taken by the Government cannot be

considered while deciding petitioner u/s 482, Cr.P.C. But in this case, the petitioners have raised objections to the effect that the cognizance taken

by the Special Magistrate , CBI was without jurisdiction and charge sheet filed by the CBI was also without jurisdiction as it had no authority to

investigate the case. Hence, the whole charge sheet is based on the authority of the CBI. Thus, it is the basis, on which the report u/s 173 Cr.P.C.

has been filed and the learned Magistrate had taken cognizance thereof, is also liable to be seen.

64. u/s 6 of Delhi Special Police Establishment Act, 1946, it is provided that ""nothing contained in Section 5 shall be deemed to enable any

member of the Delhi Police Establishment to exercise powers and jurisdiction in any area in the State, not being a Union Territory or railway area,

without the consent of the Government of the State. In view of this, the consent of the Government is mandatory. In this regard a D.O letter dated

25-10-1992 issued by the under Secretary, Homes, U.P. is relevant which has been addressed to the Secretary, Department of Personnel and

Training Govt. of India, New Delhi in which it has been mentioned that the State Government has decided that the CBI may be entrusted

investigation of the incident in question and as such, the orders may be got issued from the Government of India for entrusting the investigation to

the CBI. Vide order dated 27-2-1993 issued by the Principal Secretary, Home, it has been ordered that the Governor of Uttar Pradesh accords

consent to the exension of the powers and jurisdiction to the members of the Delhi Police Establishment in the whole of the State of U.P. for

investigation of the crime in question. Thereafter, the notification was issued under the signature of the Under Secretary to Government of India,

Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) on 10-8-1993 authorising the CBI to investigate the

case u/s 6 read with Section 5(1) of the Delhi Special Police Establishment Act referred to above. The objection of learned counsel for the

petitioner is that this notification has not been expressed in the name of the President. Learned Standing Counsel for the CBI has produced a

photostat copy of the relevant note and submitted that the approval was accorded by the concerned Minister. Hence, if the order was not

expressed in the name of the President, the same cannot be said to be illegal or void order. In the matter of Rai Bahadur Ganga Bishnu Swaika and

Others Vs. Calcutta Pinjrapole Society and Others, , it has been held by the Apex Court that by Rules, of Business made under Clause (3), the

Governor may allocate all his functions to Mininsters except those which he is required by or under the Constitution to exercise in his own

discretion, and, in relation to the business allotted to perform such functions as may be assigned to him. In Samsher Singh Vs. State of Punjab and

Another, it has been held that the Rules of Business again, may empower Minister in-charge of a subject to make standing Orders regarding

disposal of cases under his charge. The President exercises functions on the advice of Council of Ministers and if in the Rules of Business, an order

has been signed or approved by the Minister concerned, even if the order has not been expressed in the name of the President, there can be no

illegality. The President has framed rules of business namely Government of India (Allocation of Business) Rules, 1961 and in its 167th

Amendment made vide Notification dated 15th March, 1955, the vigilance and disciplines has been kept under the administrative Referns and

Public Grievances and Pension, hence the notification issued under the signature of the Under Secretary of Government of India, Ministry of

Personnel Public Grievances, Pension and Training (Department of Personnel & Training) was a valid one and the orders entrusting the

investigation to the CBI was valid and the CBI had jurisdiction to investigate the crime in question.

65. Now the question arised in respect of the jurisdiction of the Special Judicial Magistrate CBI, Dehradun. In this regard, learned counsel for the

petitioner has challenged that there was no notification under Sees. 11 (1-A) and 11(2) of the Code of Criminal procedure. Sri Girdhar Nath,

learned Standing Counsel for CBI has shown notification dated 16-11-1976 published in the official Gazette dated 4th December, 1976. Under

Sub-section 1 and (1-A) of Code of Criminal procedure establishing the Courts of Judicial Magistrate of 1st Class at Dehradun and Lucknow to

which jurisdiction of Ghaziabad was conferred. But the learned counsel for the petitioner has raised objection that there are two Courts of Special

Judicial Magistrate at present but the notification of 1976 was in respect of only one Court. Hence, that notification would not be applicable.

Therefore, the Special Judicial Magistrate, Dehradun had no jurisdiction to take congnizance. Vide notification dated 21-12-1990 issued Section

11(2) of the Cr.P.C. two officers namely V.K. Sharma and A.C. Sharma were appointed as the Presiding Officers, 1st and IInd as Special Court

of Judicial Magistrates, Dehradun respectively. But the learned counsel for the petitioner has raised objection that the cognizance has ''been taken

by Sri Rajiv Sharma and not by Sri A.C. Sharma. hence, there should have been notification u/s 11(2) for appointment of Sri Rajiv Sharma. He

has submitted that there is no such notification. Therefore, the cognisance taken by Sri Rajiv Sharma was without jurisdiction, he has also raised

objection that there is no Notification published in the official Gazette regarding creation of Courts and the local area thereof. It is unfortunate that

more than ample opportunity was given to the learned standing counsel for the CBI but no notification has been produced before this Court. This

Court even after reserving the judgment in the matter had waited a lot so that learned Standing Counsel for CBI may produce a copy of the

Gazette notification. Thereafter, the case was listed for further hearing again but no copy of the Gazette notification has been produced before this

Court as yet.

66. In the absence of Gazettee notification this cannot be ruled out that Sri Rajiv Sharma was a Judicial Magistrate 1st Class and was posted at

Dehradun. The question only remains of jurisdictions to take cognizance. It has been submitted by the learned Standing counsel for the CBI Sri

Girdhar Nath that before taking cognizance, the learned Judicial Magistrate has visited the jail and had given opportunity of hearing to the accused

persons before taking cognizance. The question whether he had jurisdiction to take cognizance or not is immaterial in view of the decision of the

Apex Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and others, , it has been held as under (Para 12 of AIR) :-

The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises, it is therefore fallacious thinking that only a Magistrate

having jurisdiction to try the case has the power to take cognizance of the offence, if he is a Magistrate of the First Class his power to take

cognizance of the offence is not impaired by territorial restriction. After taking cognizance he may have to decide as would reach only during the

post-cognizance stage and not earlier.

67. In view of the fact that the Judicial Magistrate has to consider the committal of the case, at this stage, it cannot be said that the cognizance

taken by the Judicial Magistrate at Dehradun was illegal or without jurisdiction,

68. With regard to the contention that the accused persons were not provided opportunity before taking cognizance, it is to be mentioned that no

where, it has been said that the accused persons had ever raised any objection or have desired that they be heard through counsel and be

permitted to engage counsel of their own choice.

69. In the matter of Rajathi Vs. C. Ganesan, . While considering the case of Krishnan and another Vs. Krishnaveni and another, , it has been held

by the Apex Court that the question before the Court was if in view of the bar of second revision under Sub-section (3) of Section 397 of the

Code was prohibited, inherent power of the High Court is still available u/s 482 Cr.P.C. u/s 482 Cr.P.C. it was held in para 10 of AIR as under :-

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person-accused complainant-cannot be allowed to take recourse to

the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 Cr.P.C. since it may amount to circumvention of the

provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu powers u/s 401 and continuous

supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice

or abuse of the process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed

or sentence imposed by the Magistrate requires correction. It is but the duty of the High Court to have it corrected at the inception lest grave

miscarriage of justice would enure. It is therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved

with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional

power u/s 397(1) read with Section 401 of the Code.

70. This Court is conscious that the powers u/s 482 of the Code should be exercised sparingly, in rarest of rare case and in maost appropriate

cases.

71. his Court while exercising jurisdiction u/s 482 Cr.P.C. Cannot make scrutiny of evidence or evaluate the genuineness or reliability of the

documents. This Court has to see only whether the evidence collected by the prosecution are legally admissible under law or not.

72. Learned counsel for the petitioner has submitted that Rule 186 of General Rules (Criminal) provides as under :

On a holiday a criminal court may dispose of such work of urgent nature like granting of bail or remand or do such other work that may with

propriety be done out of Court and it will not be proper to refuse to do any act or make any order urgently required merely on the ground or the

day being a Gazetted holiday.

73. Learned counsel has urged that it was not a Gazetted holiday on 6-10-1996 when charge sheet was filed. It was local holiday and taking

cognizance of the charge sheet was a routine work and an urgent work and 90 days were not going to be completed on that date. In this regard,

this Court is of the view that once a charge was filed'' before the learned Magistrate when he was sitting on remand duty, it could not be refused by

him. With regard to taking cognizance, this Court is of the view that once cognizance has been taken which is under challenge and this Court has to

see whether cognizance has been taken properly and whether the case against the petitioners is a case of no evidence or not. it is immaterial at this

stage to see that whether cognizance taken by the Magistrate on holiday was a proper one or not in as much as it cannot be held illegal. With

regard to the next contention of the learned counsel for the petitioner that against ten accused report u/s 173 Cr.P.C. and final report against 8

persons has been filed hence, without affording opportunity to the accused the Migistrate could not have accepted the same. This Court is of the

view that it is not open for the accused persons to raise this objection, it is for the complainant to raise such objection that the report has been

accepted by the Magistrate without providing him opportunity. The accused are concerned with their case only i.e. to the extent that the

cognizance taken on the charge sheet filed against them is proper or not.

74. According to the prosecution case, before the submission of the charge sheet and after collecting evidence, there were four main accused

namely (1) Sqn Leader Brahmapal Singh (2) Tejpal Bhati (3) Praneet Bhati (4) Dharampal Yadav. The motive to eliminate Mahendra Singh Bhati

in order to take revenge of the murder of his brother. Praneet Bhati also wanted to take revenge of the murder of his brother. Tejpal Bhati is the

father of Praneet Bhati who also wanted to take revenge of his son''s murder i.e. brother of Praneet Bhati. The accused Dharampal Yadav had a

political rivalry with Mahaendra Singh Bhati. The evidence collected against Sqn. Leader Bhrahmapal was the confessional statement of accused

Maharaj Singh. According to Maharaj Singh, Aulad AH under TADA, and statement of Ram Singh Head Constable. According to Maharaja

Singh, Jaipal Gujar, Rame Pradhan, Praneet Bhati and Sqn. Leader Bhrahmapal and he himself as well as Pala alias Lakkad had gathered at the

residence of Rame Pradhan in which Pala alias Lakkad had told that new Maruti white car has been given by Dharampal Yadav for the purpose of

murder of Mahendra Singh Bhati. Here he has not named accused Karan Yadav.

75. Another confessional statement of Aulad Ali was recorded, according to which about 5 months before the murder of Mahendra Singh Bhati,

persons namely Tejpal Bhati, Praneet Bhati, Pilot alias Pala, Rame Pradhan and Jaggi Pradhan had come to him and told that meeting be arranged

with Mahendra Fauji as they had to get some work done. Two months thereafter, Tejpal Bhati, Pilot alias Brahmapal, Praneet Bhati, Rame

Pradhan and Jaggi Pradhan came to his sitting room and at that time Pala alias Lakkad and Jaipal Gujar were also present there. Tejpal Bhati had

told him that Mahendra Singh Fauji became ready to do their work. Tejpal Bhati informed him that Mahendra Singh Bhati had got his sons

murdered and he has to take revenge of the same. Brahmapal also stated that the murder of his brother Raj Kumar had also been got done by

Mahendra Singh Bhati. He had to take revenge of their same also. Then Jaggi Pradhan told that he was sent by Dharapal Yadav as Mahendra

Singh Bhati intereferes in his political and other activities.

76. The above statements were recorded under TADA Act. A perusal of which shows that if the statement under TADA Act are taken into

account, then there was direct evidence against Wing Commander Bhrahamapal, Tej Pal Bhati and Praneet Bhati, but against D.P. Yadav there

was no direct evidence but only a third person has said that D.P. Yadav had made arrangement of new Maruti Car. However, final report has

been submitted by the CBI against Sqn. Leader Brahamapal saying that there is no evidence against him. It appears that the CBI has not taken into

consideration the confessional statement recorded under TADA Act, in the proceedings under Indian Penal Code. The statement of one Narayan

Yadav was recorded twice at different intervals. Firstly, his statement was recorded on dt. 26-8-1994 and secondly on 16-8-1996. he has stated

as under :-

I may state further that I have known Karan Yadav of Delhi for last about 15 years and he is also related to me and he was married to one of my

niece, although not real. About 15 years before he was married to Santosh d/o Rampat of my village, but Karan deserted her about 3 years before

and has since married some other woman initially both Karan and my self were in Congress but recently Karan has joined BJP by whom he was

not given ticket by Congress to contest the election of MLA in Delhi. I also know D.P. Yadav for last 3-4 years arid mostly our meetings have

been of political nature.

I may state further that around July, 1998 Karan Yadav came to my farm house alongwith two other persons whose names were told as Pala and

Jaipal to me by Karan. They had come around 1600 hours in the white Maruti Car of Karan. Karan told me that both these persons would stay at

the Farm House for two days. And at that time, 2-3 of my friends e.g. Ajit son of Vishwamohar resident of village Khaira near Najafgarh, Delhi,

were also present at the farm house. Karan Yadav left the Farm House around 2100 hours. Both Pala, Jaipal, myself and my friends stayed in one

Farm House in the night.

77. Thereafter, on 16-8-1996, again, statement of Narayan Yadav was recorded in which he had stated that when Karan Yadav came alongwith

Pala, Jaipal Gujar and Maharaj Singh at his farm house. At that time, Karan Yadav introduced all the three also. He had also told him that they are

persons of Dharam Pal Yadav and he has given them white Maruti Car for getting some big work done. Pala alias Lakkad and Jaipal Gujar are

hardened criminals and they were involved in so many cases of dacoity and murder and kidnapping. When Narayan Yadav asked about that big

work Pala alias Lakkad said that there is political rivalry of Dharampal Yadav with Mahendra Singh Bhati and Mahendra Singh Bhati has also got

murdered son of Tej Pal Bhati in an accident and in order to kill Mahendra Singh Bhati they were deputed by Tejpal Bhati and Dharampal Yadav.

Narayan Yadav had stated that earlier he did not speak as he apprehened his involvement in the crime in question. A perusal of this statement, it

appears that there is direct evidence against Karan Yadav, Maharaj Singh who was driving the car, Pala alias Lakkad and Jaipal Gujjar but there

is no direct evidence against Dharampal Yadav. Only a third person has said to Narayan Yadav something against Dharampal Yadav.

78. It is relevant to quote herewith the relevant portions of the statement of Ram Singh (HC No. 146/AP) which is under Statement dt. 10-10-

1993.

I worked as Gunman of Tejpal Singh Bhati at Dadri for about six months during July, 1992 to December, 1992. During those days , he was

District President of BJP and now there is some other person as District President of BJP of Ghaziabad. I used to reside there in the house of Sri

Tejpal Singh Bhati. One son of Sri Tejpal Singh Bhati had died in an accident about 5-6 months prior to my joining duties there....Shri Tejpal Singh

Bhati believes that his son was murdered by his political enemy such as M.S. Bhati and after the murder of Sri M.S. Bhati, Tejpal Singh Bhati and

his son Pranit Bhati were quite happy....

Statement recorded on 14-4-1994.

I remember that abourt l1/2 months or two months prior to the murder of M.S. Bhati black colour film on their car was not fixed by Pranit Bhati at

a shop in Ghaziabad. i do not remember that the name of the shop, i have myself visited Rame Pradhan''s residence at village Badpura two times

with Tejpal Singh Bhati and twice with Pranit Bhati. I may also state that sometime about a month prior to the murder of M.S. Bhati, I went with

Pranit Bhati and his father. Tejpal Singh Bhati in their car and when we reached near village Badpura. Rame Pradhan and Sqn. Leader Brahampal

of Tilapata village joined us in the car. The car was taken to Loni where Tejpal Singh Bhati and myself were dropped at a small tea stall near PS

Loni and Pranit Bhati as well as Rame Pradhan and Berahampal went to some place. They returned after sometime and myself and Tejpal Bhati

boarded the same car and we went to residence-cum-clinic of BJP President namely probably Dr. Ranjit Singh and thereafter, we returned back

to the residence Tejpal Singh Bhati where myself and he got down . I went to the resident of Rame Pradhan with Tejpal Singh Bhati on first

occasion which was about 15-20 days prior to the murder of MS Bhati. This visit was in the morning, may be at about 10 AM and we went in the

white Maruti car DL-3CB/4817 of Tejpal Bhati which was. driven by Maharaj Singh. On reaching the vehicle was parked at some distance

because it could enter the street leading to the house of Rame Pradhan. i was asked to wait there. After a few minutes, Tejpal Bhati accompanied

with Rame Pradhan, Pilot i.e. Brahampal of village Tilapta and Maharaj Singh came. The car was again driven by Maharaj Singh we all went to

Loni. I was on the front seat. Myself was dropped at the residence-cum-clinic of above doctor. BJP Block President and other persons mentioned

above went away in the car. This was quite unusual as Tejpal Singh Bhatihad earlier never dropped me like this. They returned back after about

two hours or, so they took me along and we returned to Tejpal Singh Bhati''s residence. Here myself and Tejpal Singh Bhati got down and

Maharaj Singh took the car away after staying for a few minutes. After a few days again I accompanied Tejpal Singh Bhati in his car to Rame

Pradhan"s house at Badpura village. The car was driven by his driver Srichand. I remember that on that day Maharaj Singh was staying in the

house of Rame Pradhan. After a few minutes Tejpal Singh Bhati returned back and we returned to the residence of Tejpal Singh Bhati. During all

these days I saw that Maharaj Singh was openly roaming about in Dadri and on a few occasions, he had come to the residence of Tejpal Singh

Bhati even on rickshaw....

Statement dated 10-7-1994.

On being asked to clarify about my visit to Delhi with Pranit Bhati and Rame Pradhan when they were being led by two persons of Delhi in their

white Maruti car, I may state that we had gone from that place in Delhi to Pranit Bhati"s in-laws place in Faridabad and stayed there in the night

and returned back to Dadri next day morning.

On being asked to state the persons who visited with me on my second visit with Tejpal Singh Bhati to Loni stated that persons that who

accompanied us were besides Tejpal Singh Bhati/Rame Pradhan/Sqn. Leader Brahamapal of village Tilapta and Maharaj Singh. Pala alias Lakkad

had not accompanied us and I distinctly remember that because the car was driven by Maharaj Singh.

79. The contention of learned counsel for the petitioner that there was direct evidence of Head Constable Ram Singh against Sqn. Leader Brahm

Pal and final report has been submitted by the CBI in his favour alleging that there was no evidence, cannot be taken into consideration by this

Court as he has no locus standi to raise such objection. The same could be raised by the complainant at the proper stage and not by the accused

persons.

80. There is no other evidence although one of the document shows that Mahendra Singh Bhati had given in writing on 23-6-1992 that he had got

information that Mahendra Singh Fauji, Pala alias Lakkad and some other culprits are roaming within Dadri area and they are active since last four

days. They can attack on himself or on his family at any time. They have got protection of local workers of BJP and the District President of BJP

which is in the full Knowledge of Dadri Police, in the first information report, although no name was mentioned but it has been mentioned that the

culprits had run away through two Maruti Cars. It has also been mentioned in the FIR that while running, the assailants were uttering that ""Ab aur

ladwana Prakash Pahelwan Ko Chunav"" which means that now let Prakash Pahelwan fight election more.

81. Section 60 of the Evidence Act provides that oral evidence must, in all cases whatever, be direct; that is to say if it refers to fact which could

be seen, it must be evidence of a witness who says he saw it. If it refers to a fact which could be heard, it must be evidence of a witness who says

he heard it. If it refers to a fact which could be perceived by other sense or in any other manner, it must be the evidence or witness who says he

perceived it by that sense or in that manner, if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the

person who holds that opinion on those grounds.

82. In the present case, prima-facie direct involvement of the petitioner Karan Yadav and Maharaj Singh cannot be ruled out.

83. In para 2 of the charge sheet, the following sentence has been written in respect of petitioner-Dharam Pal Yadav :-

...The aforesaid accused and other unknown held several meetings from time to time at Loni, Dadri, Delhi, Badpura, Dharuheda and other places;

D.P. Yadav through Karan Yadav provided a new Maruti Car for its use in the commission of Crime.

84. But there is no evidence on record that the accused Dharampal Yadav had held meeting with any of the other co-accused as mentioned above.

Hence, in the absence of any evidence, the aforesaid allegations did not find any support from any material available on record. There is also no

direct evidence that Dharampal Yadav provided new Maruti Car. Hearsay evidence is not admissible under the law. Hence, in the absence of

evidence or the materials collected by the CBI, it can be said that at this stage that the case of the Dharampal Yadav comes under no evidence.

Although, registration of Maruti Car was in the name of one Kunal Capoor and in the evidence collected by the CBI, Karan Yadav had gone to

sell Maruti Car to Gurbinder Singh who sold it to one Jagdamba Motor Raja Garden. The statement of Gurbinder Singh is also there in this regard

apart from the statement of one Gopal Sharma who has named Karan Yadav but in taking and selling the car, nobody has named Dharampal

Yadav and therefore, it cannot be said that there is evidence warranting involvement of Dharampal Yadav in the crime in question.

85. Since the case of Dharampal Yadav has been taken in criminal misc. Case No. 2799 of 1996 the other petitions filed by him along with

Maharaj Singh has become infructuous in so far as it relates to that petitioner-Dharampal Yadav the same is liable to be dismissed as such. Jitendra

Singh Yadav who had filed Criminal Misc. Case No. 2148 of 1995 alongwith Karan Yadav is not an accused in the charge sheet. Therefore

petition on his behalf has also become infructuous and is liable to be dismissed.

86. In the result, the Criminal Misc. Case No. 2799 of 1996 (Dhrampal Yadav v. State and Ors.) is allowed. The proceedings taking cognizance

by learned Special Judicial Magistrate, Dehradun against Dharampal Yadav are quashed with the liberty to the CBI to file fresh charge sheet in

case, legally admissible evidence becomes available against Dharampal Yadav.

87. Criminal Misc. Case No. 2148 of 1995 (Karan Yadav and Anr.) filed by Karan Yadav and Jitendra Singh Yadav, and Crl. Misc. Case No.

1600 of 1997 (Maharaj Singh and Anr. v. IInd Special Court Dehradun and Ors.) are hereby dismissed. However, it is made clear that any

observation made herein above shall not be considered against the petitioners/applicants or other accused during trial.

88. The learned Judicial Magistrate concerned is directed to proceed further in accordance with law expeditiously in the matter.

89. The interim orders passed in these cases shall stand vacated.

90. After the judgment was pronounced in open Court, Sri Girdhar Nath, learned Standing Counsel for the CBI prayed for issuance of the

certified copy of this order as early as possible.

91. The Registry of this Court is directed to issue certified copy of this order to the learned counsel for the petitioner on payment of usual charges

and to the learned Standing Counsel for CBI free of costs, by 24-4-2000.