

AFR

Reserved on 07.02.2023

Delivered on 22.02.2023

Case :- APPLICATION U/S 482 No. - 4227 of 2023

Applicant :- Parvez Parwaz And Another

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

Counsel for Applicant :- Manauvar Husain, Fatma Anjum, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. The present petition under Section 482 CrPC has been filed, impugning the order dated 11.10.2022 passed by the Additional District & Sessions Judge (Rape and POCSO)-3, Gorakhpur in Final Report No.1230 of 2017 (Parvez Parwaz Vs. Yogi Adityanath and others), arising out of Case Crime No.2776 of 2008, under Sections 153, 153-A, 153-B, 295, 295-B, 147, 148, 395, 436, 435, 302, 427 and 452 IPC read with Section 7 Criminal Law Amendment lodged at Police Station Cantt., District Gorakhpur.

2. The learned trial Court has rejected the protest petition filed by the petitioner by holding that as the sanction for prosecuting the accused was already refused under Section 196 CrPC and the said order was challenged by the petitioner/complainant up-to the Supreme Court and the Supreme Court had dismissed the appeal, therefore, the protest petition could not be accepted and the trial Court could not interfere with the order, refusing the sanction for prosecution of the alleged accused. There is a checkered history of litigation and a brief survey is required to be mentioned. The petitioner had initially approached this Court by filing Criminal Writ Petition No.16095 of 2007. The Division Bench of this Court by means of order dated 24.10.2007 dismissed the writ petition by observing that the the petitioner, if so advised, may file an application under Section 156(3) CrPC for a direction to lodge the FIR against Sri Yogi Adityanath and others. The petitioner, thereafter, filed an application under Section 156(3) CrPC for lodging of the FIR against the accused under Sections under

Sections 120-B, 153-A, 153-B, 295-A, 295-B, 143, 147, 435, 436, 452, 427, 395, 302 and 307 IPC and 3/4 Prevention of Damage to Public Property Act and Railways Act.

3. The said application was rejected by the learned Chief Judicial Magistrate vide order dated 29.07.2008. The petitioner, thereafter, filed Criminal Revision No.2346 of 2008 before this Court. This Court vide order dated 26.09.2008 set-aside the order dated 29.07.2008 passed by the learned Chief Judicial Magistrate, Gorakhpur and remitted back the matter to the learned Chief Judicial Magistrate to pass a fresh order in accordance with law. It was also directed that after registration of the FIR, on the basis of the application filed by the petitioner under Section 156(3) CrPC, proper investigation should be ensured.

4. On remand, the FIR was registered on 02.11.2008 at Police Station Cantt., District Gorakhpur against five accused persons, including Sri Yogi Adityanath, the then Member of Parliament from Gorakhpur Parliamentary Constituency.

5. The accused approached the Supreme Court by filing Criminal Appeal No. 2039 of 2012 against the order dated 26.09.2008 passed by this Court in Criminal Revision No. 2346 of 2008. The Supreme Court vide order dated 13.12.2012 dismissed the said appeal.

6. The petitioner, perceived that the investigation was not being properly conducted by the investigating agency in the FIR, therefore, approached this Court by filing Criminal Misc. Writ Petition No.21733 of 2008 for following prayers:-

“i. issue a writ, order or direction in the nature of Mandamus directing and commanding the investigate case crime respondents to No.2776 of 2008 (Annexure No.1) in fair and impartial manner by an independent investigating agency and not by Crime Branch of Criminal Investigation Department as per order dt. 3.11.2008 (Annexure No. 9).

ii. issue a writ, order or direction in the nature of Mandamus directing and commanding the respondents to include appropriate section of Indian Penal Code i.e. 120-B, 121, 121-A, 122 IPC section 3/4 Prevention of Damages to Public Property Act, 1984 and provision of Religious Institution

(Prevention of Misuse) Act, 1988 in crime No.2776 of 2008 and to investigate the issue of conspiracy also;

iii. issue a writ, order or direction in the nature of Mandamus directing and commanding the respondents to take disciplinary action against the officers who at the relevant point of time failed to act in accordance with law and had not taken any action to initiate criminal action against the culprits;

iv. issue a writ, order or direction in the nature of Mandamus directing and commanding the respondent No. 1 to provide adequate security to the petitioners;

v. issue a writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case;

vi. award the cost of the petition in favour of the petitioners;

vii. issue a writ, order or direction in the nature of certiorari quashing the impugned letter dt. 3.5.2017 (Annexure No. 16 to this writ petition) issued under the signature of Joint Secretary (Home), Government of U.P. to the S.P. CBCID Lucknow whereby state prosecution sanction of the accused persons has been refused; and

viii. issue a writ, order or direction in the nature of certiorari quashing the letter dt. 9.5.2017 (Annexure No. 17) issued by the respondent No. 2 addressed to the respondent No. 1 whereby it is mentioned that vide final report dt. 6.5.2017 case has been closed.”

7. Prayer nos. 7 and 8 were added during the pendency of the writ petition as on 03.05.2017 prosecution sanction under Section 196 CrPC was refused by the State Government and final report was submitted. The Division Bench of this Court vide judgment and order dated 22.02.2008 decided the said writ petition. The Division Bench framed following three issues for determination:

“(1) When the State fails to perform its statutory and constitutional duty to investigate a crime in a fair and impartial manner, whether the High Court in exercise of its jurisdiction conferred by Article 226 of the Constitution is vested with the power to transfer the investigation to be conducted by any other investigating agency.

(2) Whether in the facts and circumstances of the instant case, the State has failed to perform its statutory duty to conduct a

fair investigation in the matter and the same is liable to be transferred to some other independent agency to ensure fair investigation.

(3) Whether the State can pass an order under Section 196 Cr.P.C. in respect of a proposed accused in a criminal case who in the meantime gets elected as the Chief Minister and is the Executive Head as per the scheme provided under Article 163 of the Constitution of India.”

8. Issue no. 3 was answered as under:-

“In view of above discussions and the authoritative judicial pronouncements, whenever it is established that investigation has not been fair, proper and impartial there is power vested with the High Court to transfer the investigation to be conducted by any other investigating agency and the same can be invoked by the informant/victim or an aggrieved person. Issue no. 1 stands answered accordingly.”

9. While answering the issue no. 2, the Division Bench has held that direction for transferring investigation by any other investigating agency should not be given in absence of sufficient material on record to arrive at a conclusion that such material would disclose *prima facie* case for transferring the investigation from the agency which had been entrusted by the State to investigate the offence to another agency, but such power should not be exercised casually, as a routine manner or merely on some allegations made by the complainant. The Division Bench noted that there was no averment much less any other material placed on record of the petition on the basis of which a conclusion could be drawn that the investigation was not proceeding fairly, independently and impartially calling for transferring of the same to any other agency.

10. The Division Bench took pains to extract the averments made in the writ petition and factual foundation laid, seeking relief for transfer of the investigation to some other agency. The Division Bench had called for the original record of the case, including the case diary to satisfy conscience of the Court as to whether proper investigation had been carried out or not and had discussed the evidence brought on record in detail. The Division Bench noted that statements of 21

witnesses were recorded, including the petitioner no. 1 and certain other witnesses named by him. Statements of four accused, including, Sri Yogi Adityanath were also recorded. The investigating agency also recorded statements of two police officers, Shyam Narain Singh, Station Officer and Brijendra Singh, who were allegedly present at the time of the incident and were on duty. The case diary would further go to show that another compact disk (DVD) containing alleged speech of Sri Yogi Adityanath was provided as evidence by the petitioner on 14.03.2013 to the CBCID at the time of recording his statement under Section 161 CrPC. The investigating agency obtained second a compact disk on 25.05.2014, containing the admitted voice of Sri Yogi Adityanath from Circle Officer, Pipraich for comparison with voice recorded in the compact disc handed over by the petitioner. Both the compact discs (DVD) were sent by the investigating agency for forensic examination on 02.07.2014 to Forensic Science Laboratory, Lucknow. However, the Laboratory returned back the compact discs to the investigating agency, stating that the lab was not equipped to carry out the required forensic analysis. Subsequently, the investigating agency again sent the two compact discs to Forensic Science Laboratory, Madhuvan Chowk, New Delhi. The said lab returned back the compact discs to investigating agency on the ground that it was only authorized to carry out analysis of incident(s) within the territorial jurisdiction of Delhi. Thereafter, the investigating agency, after obtaining order from the Additional Chief Judicial Magistrate on 14.08.2014, sent the compact discs to the Laboratory of Central Bureau of Investigation, CGO Complex, New Delhi along with case diary containing the admitted sample voice of Sri Yogi Adityanath. The CBI Lab, after carrying out examination of compact discs, submitted reports dated 13.10.2014 and 14.10.2014 respectively. After receiving the report as well as other evidence which came on record, including the statements of witnesses, the investigating agency prepared and sent draft final report on 09.04.2015, charging the accused for offence under Sections 143, 153,

153-A, 295-A read with Section 505 IPC, and the said report was forwarded to the superior officers for its approval by the competent authority. In the draft final report prepared under Section 173 (2) CrPC for offence under Sections 143, 153, 153-A, 295-A read with Section 505 IPC there was no evidence found in support of allegations for other offences for which the FIR was registered.

11. The allegation of the petitioner that the compact disc (DVD) filed by the petitioner in the Court of Additional Chief Judicial Magistrate along with affidavit on 05.05.2008 in proceeding under Section 156(3) CrPC was not sent for forensic examination, but a fake compact disc was sent, as such, the report submitted by the Laboratory was of no consequence and, thus, the investigating agency failed to perform its statutory duty to carry out fair, impartial and judicious investigation, the Division Bench had held that it was the petitioner who had supplied another compact disc to the CBCID at the time of recording his statement under Section 161 CrPC, and the said disc was sent for forensic examination. After analysis, the CBI Laboratory submitted two reports dated 13.10.2014, in respect of video contents, and the other dated 14.10.2014 in respect of voice examination. The forensic examination of the compact discs would reveal that the DVD containing videos were not original and they were edited and tampered. The forensic examination report has been extracted in the judgment delivered by the Division Bench. The Division Bench had held that from perusal of the case diary and in depth analysis of the investigation carried out, as depicted from the case diary, there was no failure on behalf of the investigating agency to perform its statutory duty for carrying out investigation in a fair, impartial and independent manner and, therefore, found no ground to transfer the investigation to some other agency. In respect of issue no. 3, the Division Bench did not find any procedural error, either in the conduct of the investigation or in the decision making process regarding refusal to grant sanction for prosecution or any other illegality in the order which required an interference by this Court in exercise of its extra-ordinary jurisdiction

under Article 226 of the Constitution of India.

12. The Division Bench noted that the record revealed that all the material collected by the investigating agency during the course of investigation, was placed before the sanctioning authority, and its subjective satisfaction was arrived upon perusal of the entire material. Therefore, it could not be said that no objective assessment was made to arrive at subjective satisfaction recorded by the sanctioning authority. The order, refusing the sanction, had been passed by the competent authority after due application of mind. Section 196 CrPC is a shield for public servants against vexatious and malicious prosecution.

13. The Division Bench of this Court did not find any procedural error, either, in the conduct of the investigation or in the decision making process, refusing prosecution sanction or any other illegality in the order which could have been interfered with by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Resultantly, the writ petition was dismissed.

14. The petitioner did not stop and, being dissatisfied with the judgment and order dated 22.02.2018 passed by the Division Bench of this Court, he approached the Supreme Court by filing Criminal Appeal No.1343 of 2022, arising out of SLP (Crl.) No.6190 of 2018.

15. During the hearing of the appeal, learned counsel for the petitioner did not press issue nos. 1 and 2, as framed by the Division Bench in its judgment and order dated 22.02.2018. The arguments were advanced only on issue no. 3 relating to denial of sanction for prosecution under Section 196 CrPC. The Supreme Court noted the fact that the investigation was over and closure report (F.R. No.01 of 2017) dated 06.05.2017 was filed in the Court by the investigating agency. Against the final/closure report, a protest petition was filed. The same was pending for consideration before the trial Court.

16. In view of the aforesaid facts and circumstances, the Supreme Court did not think it necessary to go into the contentions raised by both sides on issue of denial of sanction for prosecution and the legal

submissions made in relation to the said issue. However, the legal question, on the issue of sanction for prosecution, was left open to be considered in an appropriate case. The Supreme Court had dismissed the appeal, observing as under:-

“12. In the instant case, a short affidavit was filed on behalf of the second respondent wherein it is stated that the investigation was closed vide FR No.1/17 dated 06.05.2017. This position is not disputed by the appellants. Thus, as of now, the position that emerges is that the investigation has culminated in a closure/refer report. Learned counsel for the appellants has informed us that a protest petition has been filed which is pending considering before the trial Court.

13. In the aforesaid circumstances, we do not think it necessary to go into the contentions raised by both sides on the issue of denial of sanction for prosecution and the legal pleas sought to be raised in relation to the said issue. However, we think it appropriate that the legal questions on the issue of sanction be left open to be considered in an appropriate case.”

17. As noted above, the challenge in this petition under Section 482 CrPC is to the decision of the learned trial Court dated 11.10.2022 wherein the learned trial Court has rejected the protest petition against the final/closure report no. 1 of 2017 dated 06.05.2017. The impugned order would disclose that the petitioner had again raised the same issue i. e. legality / validity of the order, refusing sanction for prosecution and the issue of compact disc which had attained finality upto the Supreme Court. The learned trial Court, in its well considered impugned judgment, has held that once the issue of legality/validity of sanction for prosecution had attained finality upto the Supreme Court, the same issue could not be re-opened. The issue of improper investigation was also decided by the High Court in its judgment and order dated 22.02.2018 passed in Criminal Misc. Writ Petition No.21733 of 2008, and before the Supreme Court, the petitioner did not raise the said issue before the Supreme Court and the only issue, which was raised before the Supreme Court, was of validity of order of refusal for prosecution sanction. In view thereof, the trial Court has held that there is no ground to interfere with the final/closure report

no.01 of 2017 and dismissed the protest petition.

18. Mr. S.F.A. Naqvi, learned Senior Advocate, assisted by Ms. Fatma Anjum and Mr. Manauvar Husain, Advocates has submitted that the question of legality of order, refusing sanction for prosecution, was left open by the Supreme Court and, therefore, it cannot be said that the issue had attained finality. It has been further submitted that while deciding the protest petition filed by the petitioner against the closure/final report no.01 of 2017, the trial Court could/ought to have decided the issue of legality of the order, refusing prosecution sanction. The learned Senior Advocate has again raised the issue of alleged improper investigation by the investigating agency and submitted that considering the aforesaid, the impugned order is to be set-aside and the trial Court should be directed to decide the issue of final/closure report afresh.

19. On the other hand, Mr. Manish Goyal, learned Additional Advocate General, assisted by A.K. Sand, learned Additional Government Advocate, representing the respondent – State, has submitted that the issues raised in the protest petition and in this petition had attained finality upto the Supreme Court. The petitioner cannot be permitted to raise the same issues time & again. The Supreme Court had left open the question of sanction and legal submissions to be decided in an appropriate case, but not in this case again. The learned Additional Advocate General has further submitted that the contention raised by the learned Senior Advocate for the petitioner that the trial Court should have decided the question of validity of order, refusing sanction is completely incorrect. Once the Supreme Court has not entertained the plea of validity of order, refusing prosecution sanction, the trial Court has rightly refused to go into the said issue. It has been further submitted that it does not lie in mouth of the petitioner to raise the question of improper investigation inasmuch as out of three issues, two issues were not pressed by the petitioner before the Supreme Court. It has been further submitted that the petitioner has been indulging in vexatious prosecution of the

elected and popular Chief Minister of this State, who has changed the face of the State since he assumed the charge of the State in the year 2017. It has been further submitted that some forces are working against the popular Chief Minister to derail the progress of the State. Such a vexatious prosecution should be dealt with sternly. It has been further submitted that the petitioner has a long criminal history of 14 cases, which would read as under:-

“1.FIR/Crime No. 0430 of 1992, U/S 10/13 (1) The Unlawful Activities (Prevention) Act, 1967 read with Section 153A/188 IPC, Police Station Rajghat, District Gorakhpur;

2. FIR/Crime No.0226 of 2003, U/S 143, 336 and 427 IPC read with Section 7 Criminal Law Amendment Act, Police Station Rajghat, District Gorakhpur;

3. FIR/Crime No. 0255 of 2003, U/S 143, 195A/253A/505 Kha IPC read with Section 7 Criminal Law Amendment Act, Rajghat, District Gorakhpur;

4. FIR/Crime No. 0260 of 2003, U/S 3 (II) National Security Act, Police Station Rajghat, District Gorakhpur;

5. FIR/Crime No.01079 of 2010, U/S 147, 148, 149, 307 and 354 IPC read with Sections 3(II)(v) SC/ST Act, Police Station Rajghat, District Gorakhpur;

6. FIR/Crime No.0112 of 1992, U/S 452, 323, 504 and 506 IPC, Police Station Rajghat, District Gorakhpur;

7. FIR/Crime No.0175 of 2018, U/S 376D IPC, Police Station Rajghat, District Gorakhpur;

8. 0817 of 2010, U/S 147, 352, 323, 504, 506 and 307 IPC read with Section 7 Criminal Law Amendment Act, Police Station Kotwali, District Gorakhpur;

9. FIR/Crime No.0402A of 1991, U/S 448/506 IPC, Police Station Kotwali, District Gorakhpur;

10. FIR/Crime No.0303 of 1983, U/S 2 Prevention of Nation Insult Act, Police Station Kotwali, District Gorakhpur;

11. FIR/Crime No.0101 of 2001, U/S 279/304 IPC, Police Station Kotwali, District Gorakhpur;

12. FIR/Crime No.0479A of 2004, U/S 395, 147, 148, 149, 307

and 504 IPC read with Sections 3(II)(v) SC/ST Act, Police Station Rajghat, District Gorakhpur;

13. FIR/Crime No.01063 of 2018, under Sections 120-B, 193, 195, 196, 419, 420, 467, 468, 469, 474 and 481 IPC, Police Station Cantt., District Gorakhpur; and

14. FIR/Crime No.0679 of 2019, U/S 120-B, 347, 365, 392, 452 and 506 IPC, Police Station Cantt., District Gorakhpur.”

20. It is submitted on behalf of the State that the petitioner claims to be a social worker as per his application under Section 156(3) CrPC. Such a person having criminal history of serious offences, as mentioned, cannot be said to be a social worker. It appears that the petitioner is an impostor who has been set up by the forces, who are adverse to Sri Yogi Adityanath, State and India. When they could not succeed to contain his rise in politics they had set up an impostor, the petitioner to be indulged in vexatious prosecution. The petitioner's resources, to fight such a litigation, should be investigated. It is, therefore, submitted that the present petition is nothing but an abuse of process of the Court, and it is required to be dismissed with an exemplary cost.

21. I have considered the submissions advanced by the learned Senior Advocate for the petitioner as well as learned Additional Advocate General for the respondent – State.

22. The facts and issues have been extracted in detail herein above which are not in dispute. The question, which would require to be answered, is that whether it could have been opened to the learned trial Court to decide the issue of validity of the order, refusing prosecution sanction of the respondent when the Supreme Court had dismissed the criminal appeal and left the question of sanction to be answered in an appropriate case. As mentioned above, the only question which was raised by the learned counsel for the petitioner before the Supreme Court was regarding the validity of order, refusing sanction for prosecution under Section 196 CrPC. The Supreme Court, however, taking note of the facts & circumstances, did not answer the

issue and dismissed the appeal and, thus, the judgment of the Division Bench had attained finality. The said issue could not have been decided by the learned trial Court again. I find that the trial Court has rightly refused to go into the said question once it got decided by the Supreme Court. Once the question of sanction got finally settled, the trial Court could not have taken cognizance on the police report or on the protest petition as the accused, being a public servant, no cognizance could be taken without there being sanction by the competent authority for prosecution.

23. The Supreme Court in the case reported in **1972 (2) SCC 466 (Bhagat Ram Vs. State of Rajasthan)** has held that the principle of res judicata is also applicable to criminal proceedings, and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been passed. The provisions of Section 403 CrPC is based upon the same principle of res judicata. Paragraphs 12, 13 and 14 of the said judgment would read as under:-

“12. It would appear from the resume of facts given above that both Bhagat Ram and Ram Swaroop were acquitted by the special judge. On appeal filed by the State of Rajasthan against the acquittal of the two accused, Tyagi and Lodha, JJ. maintained the order relating to the acquittal of Ram Swaroop. As regards Bhagat Ram, though there was a difference between the two judges regarding the correctness of his acquittal for offenses under Section 5(1) (a) of Prevention of Corruption Act and Section 161 of Indian Penal Code, they concurred with regard to the acquittal of Bhagat Ram in respect of the charges under Sections 120-B, 218, 347 and 389 I.P.C. The State appeal against the acquittal of Bhagat Ram was dismissed to that extent. The order which was made by the learned judges of the Division Bench reads as under :

"By the Court. The result is that the appeal of the State against the order of acquittal of respondent Ram Swaroop is dismissed. The appeal of the State so far as it relates to the acquittal of respondent Bhagat Ram under Sections 347, 218, 389 and 120-B Indian Penal Code is also dismissed. In view of the difference of opinion about the acquittal of Bhagat Ram under Section 161 Indian Penal Code and Section 5(1)(a) of the Prevention of Corruption Act, the matter may be laid before Hon'ble

the Chief Justice for referring it to the third Judge."

13. *In view of the fact that the State appeal against the acquittal of Bhagat Ram for offenses under Sections 120B, 218, 347 and 389 I.P.C. had been dismissed by the Division Bench, it was, in our opinion, not permissible for the third judge to reopen the matter and convict Bhagat Ram for offenses under Sections 347, 389 and 120B I.P.C. The matter had been referred under Section 429 of the Code of Criminal Procedure to Jagat Narayan, J. because there was a difference of opinion between Tyagi, J. and Lodha, J. regarding the correctness of the acquittal of Bhagat Ram for offenses under Section 161 I.P.C. And Section 5(1)(a) of Prevention of Corruption Act. Jagat Narayan, J. could go only into this aspect of the matter and arrive at his conclusion. The present was not a case wherein the entire matter relating to the acquittal or conviction of Bhagat Ram had been left open because of a difference of opinion between the two judges. Had that been the position the whole case relating to Bhagat Ram could legitimately be considered by Jagat Narayan, J. and he could have formed his own view of the matter regarding the correctness of the order of acquittal made by the trial judge in respect of Bhagat Ram. On the contrary, as mentioned earlier, an express order had been made by the Division Bench upholding the acquittal of Bhagat Ram for offenses under Sections 120-B, 218,347 and 389 I.P.C. and the State appeal in that respect had been dismissed. The above decision of the Division Bench was binding upon Jagat Narayan, J. and he was in error in convicting Bhagat Ram for offenses under Sections 120-B, 218 and 347 I.P.C. despite the order of the Division Bench. It was, in our opinion, not within the competence of the learned judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench whereby the order of acquittal of Bhagat Ram made by the trial judge in respect of the said three charges had been affirmed. The order of the Division Bench unless set aside in appeal to this Court, was binding and conclusive in all subsequent proceedings between the parties. The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings or in some other subsequent proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autrefois acquit as a bar to prosecution embodied in Section 403 of the Code of Criminal Procedure is based upon the above wholesome principle.*

14. *In the case of Sambasivam v. Public Prosecutor, Federal of Malaya, Lord MacDermott observed:*

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

The maxim 'res judicata pro veritate accipitur' is no less applicable, to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

The above observations were quoted with approval by this Court in the case of Pritam Singh v. State of Punjab. We are, therefore, of the opinion that the judgment of Jagat Narayan, J., in so far as he has convicted Bhagat Ram for offenses under Sections 120-B, 218 and 347 I.P.C. cannot be sustained."

24. In the present case, the question of validity of sanction got decided by the Division Bench of this Court against which the Supreme Court had dismissed the appeal and, therefore, the question of validity of order, refusing sanction for prosecution under Section 196 CrPC of the accused got finally settled, and the said issue is barred by principle of res judicata in subsequent proceedings of the same case. The trial Court has, therefore, correctly held that the said issue could not be re-opened while deciding the protest petition.

25. The Supreme Court in the case reported in **(2013) 10 SCC 705 (Anil Kumar and others Vs. M.K. Aiyappa and another)** has held that on the plea of proper sanction the Magistrate cannot order investigation against the public servant while invoking the power under Section 156 CrPC. Paragraphs 21 and 22 of the said judgment would read as under:-

"21. The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge

has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases..

22. Further, this Court in *Army Headquarters v. CBI* opined as follows: (SCC p. 261, paras 82-83)

“82. Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him.....

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.”

26. Once the sanction for prosecution was refused, the investigation, even otherwise could not have been carried out by an order under Section 156(3) CrPC as in the present case. The petitioner appears to be a busy body who himself is facing several criminal cases, and he has been fighting this case since 2007. The petitioner must have been incurring huge expenses in engaging counsels to contest this case before the trial Court, this Court and the Supreme Court. His resources to fight/contest the litigation should be a matter of investigation. There may be some force in the submission raised by Mr. Manish Goyal, learned Additional Advocate General that the petitioner is an impostor who has been set up by the forces, which are opposing Sri Yogi Adityanath, the present Chief Minister of the State of Uttar Pradesh, and the forces, which do not want progress of the

State of Uttar Pradesh and India. It is for the State to investigate the said aspect, however, this Court does not want to say anything further or give any direction in this regard.

27. With the aforesaid observations, this petition stands **dismissed with an exemplary cost of Rs. 1,00,000/- (Rupees (One Lakh))** to be deposited in the **“Army Welfare Fund Battle Casualties” within four weeks from today**, failing which the same shall be recovered as arrears of land revenue from estates/assets of the petitioner.

[D.K. SINGH, J.]

Order Date:-22.02.2023

MVS/-