

**Neutral Citation No. - 2024:AHC-LKO:43062**  
**Reserved on 02.05.2024**  
**Delivered on 14.06.2024**  
**A.F.R.**

**Court No. - 13**

**Case :-** APPLICATION U/S 482 No. - 2784 of 2024

**Applicant :-** Ashish Kumar Tiwari @ Rahul And 27 Others

**Opposite Party :-** State Of U.P. Thru. A.C.S/Prin. Secy. Deptt. Home Govt.  
Lko. And Another

**Counsel for Applicant :-** Manuvendra Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Shamim Ahmed,J.**

1. Heard Shri Manuvendra Singh, learned counsel for the applicants, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite parties and perused the material placed on record.

2. The instant application under Section 482 Cr.P.C. has been filed on behalf of the applicant, namely- Ashish Kumar Tiwari @ Rahul and 27 others with a prayer to stay the cognizance and summoning order dated 13.09.2022 passed by the court of Civil Judge (Senior Division) / F. T. C. IInd Pratapgarh, which has been taken on the charge sheet dated 06.08.2022, arising out of the Case Crime No.0106 of 2021, under section 143, 147, 281, 283, 188, 269, I.P.C. & 51(b) Disaster Management Act, 2005, Police Station Kohandaur, District-Pratapgarh with a further prayer seeking any other order or direction this Court may kindly pass.

3. Learned Counsel for the applicants submitted that a First Information Report (FIR) was lodged at the police station Kohandaur Pratapgarh by opposite party no.2, on 30.05.2021 at 23:31 and as per Prosecution Story information was received through an informer that some people are going to take out a candle march from Shivpur Khurd and block the road of Kohandaur, Kandharpur in front of Shivpur village regarding the arrest of the accused related to the murder of Arvind Dubey in village Shivpur Khurd. On

the information, the opposite party No.2 left from Kandharpur with his associates and reached village Shivpur Tiraha and saw that the accused persons alongwith 50-60 persons (name and address unknown) from village Shivpur Khurd were violating the Covid-19 guidelines without following social distancing and without permission people were coming carrying placards with anti-police and anti-police slogans in their hands and raising anti-police slogans. When they saw police coming to Shivpur intersection they sat on the road going to Kohdaur Near Khushhali Baba Temple and blocked the Kandharpur Road.

4. Learned Counsel for the applicants further submitted that the statement of the complainant was recorded by the investigation officer under section 161 Cr.P.C. in which the complainant reiterated the same version of the FIR dated 30.05.2021.

5. Learned Counsel for the applicants further submitted that the statement of the witnesses namely Constable Amit Kumar PNO 192612874, Cons. Vivek Pratap Kushwaha, PNO 192612630, Sub Inspector Virendra Kumar Tripathi PNO- 880897817, & Sub Inspector Vijay Kumar PNO-0902340147, have been recorded by the Investigating Officer under section 161 Cr.P.C. their statements were also similar to the version of the FIR dated 30.05.2021.

6. Learned Counsel for the applicants further submitted that the statements of the independent witnesses, namely-Manoj Kumar Dubey Son of Indramani, Satish Dubey Son of Indramani Dubey, have been recorded by the Investigating Officer under section 161 Cr.P.C. wherein they stated that Shanu Dubey son of Nandu Dubey was not present on the spot at the time of incident and on basis of their statements name of the accused Shanu dubey was removed.

7. Learned Counsel for the applicants further submitted that the applicants were violating the Covid-19 Guidelines which were promulgated by District Magistrate, Pratapgrh, thus, the District Magistrate, Pratapgarh was duty bound to make a complaint to the learned Area Judicial Magistrate concerned either under his own signature or through any authorized official subordinate

to him, but in this case a police has been lodged FIR dated 30.05.2021 and also submitted Police Report dated 06.08.2022 against the present applicants and it is very surprising that concerning Trial Court without applying its own mind, issued summoning dated 13.09.2022 in absence of a separate complaint under section 195(1)(a)(i) Cr.P.C. which is inevitable for the purpose of taking cognizance and putting the accused to trial.

8. Learned counsel for the applicants further submitted that the F.I.R. was registered under Sections 188 I.P.C., which is without jurisdiction as Section 188 of I.P.C. is described as non cognizable offence in the penal code and Section 195(1) Cr.P.C. specifically provides that no court shall take cognizance of any offence under Sections 172 to 188 except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Thus, taking cognizance under Section 188 I.P.C. is also without jurisdiction.

9. Learned counsel for the applicants further submitted that as per Section 2(d) Cr.P.C., the opposite party no.2 had no right to lodge the FIR for offences as mentioned above rather he had to file the complaint only before the concerned court. He further submitted that not only the FIR was registered but also the investigation was carried out and charge sheet was submitted without any jurisdiction.

10. Learned counsel for the applicants further submitted that even if the entire story of the prosecution is accepted as true (only for the sake of argument though not admitted), Section 188 of I.P.C. is not made out against the applicants.

11. Learned counsel for the applicants further submitted that as per Section 190 Cr.P.C., it is evident that the concerned Magistrate can take cognizance of any offence on three conditions i.e. (i) Upon receiving a complaint of facts, (ii) Upon a police report, and (iii) Suo-moto.

12. Learned counsel for the applicants further submitted that the impugned order dated 13.09.2022 passed by the court of Civil Judge (Senior Division) / F. T. C. IInd Pratapgarh, by which the applicants were summoned, is also non

speaking as the Magistrate has not considered any material available before him while summoning the applicants to face the trial. As such, the impugned order dated 13.09.2022 on the face of record appears to be unjustified, arbitrary, illegal and is passed without application of judicial mind, therefore, the same is liable to be set aside by this Court and the present application under Section 482 Cr.P.C. is liable to be allowed.

13. On the other hand, learned A.G.A-I. for the State opposed the argument advanced by learned counsel for the applicants and submits that the impugned cognizance and summoning order dated 13.09.2022 is rightly passed and no interference by this Court is required in the instant matter, therefore, the instant application is liable to be dismissed at this stage only.

14. On careful perusal of the averments made in this application under Section 482 Cr.P.C. as well as after hearing the learned counsel for the parties, the factual matrix disclose that a First Information Report (FIR) was lodged at the police station Kohandaur Pratapgarh by opposite party no.2, on 30.05.2021 at 23:31 and as per Prosecution Story information was received through an informer that some people are going to take out a candle march from Shivpur Khurd and block the road of Kohandaur, Kandharpur in front of Shivpur village regarding the arrest of the accused related to the murder of Arvind Dubey in village Shivpur Khurd. On the information, the opposite party No.2 left from Kandharpur with his associates and reached village Shivpur Tiraha and saw that the accused persons alongwith 50-60 persons (name and address unknown) from village Shivpur Khurd were violating the Covid-19 guidelines without following social distancing and without permission people were coming carrying placards with anti-police and anti-police slogans in their hands and raising anti-police slogans. When they saw police coming to Shivpur intersection they sat on the road going to Kohdaur Near Khushhali Baba Temple and blocked the Kandharpur Road..

15. First of all, it would be relevant to quote Section 195(1) Cr.P.C., which is being reproduced hereunder:-

***“195(1) Cr.P.C. :- No Court shall take cognizance -***

(a)

*(I) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*

*(ii) of any abetment of, or attempt to commit, such offence, or*

*(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;*

(b)

*(I) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*

*(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*

*(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),*

*[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]*  
*[Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).]*

16. From perusal of the aforesaid Section 195 (1) Cr.P.C., it is clear that the F.I.R. was registered without jurisdiction as Section 188 of I.P.C. is described as a non-cognizable offence in the penal code whereas it is specifically mentioned that no Court shall take cognizance of any offence under Sections 172 to 188 I.P.C. except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively

subordinate. Thus, taking cognizance under Section 188 I.P.C. is also without jurisdiction.

17. It would further be relevant to quote Section 2(d) Cr.P.C. which is being reproduced hereunder:-

*“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”*

18. From perusal of the aforesaid Section 2(d) Cr.P.C., it is clear that the opposite party no.2 had no right to lodge the F.I.R. for offences as mentioned above rather he had to file the complaint only before the concerned Magistrate.

19. It would also be relevant to quote Section 188 of I.P.C., which is being reproduced hereunder:-

**“Section 188 I.P.C.-Disobedience to order duly promulgated by public servant.**

*Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;*

*And if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”*

20. From perusal of the aforesaid Section 188 I.P.C. read with Section 195(1)(a)(i) Cr.P.C. which mandates that no court shall take cognizance of an offence under section 188 IPC except on a written complaint by the concerned public servant. In this case, the absence of such a complaint invalidates the cognizance of the offence under this section. As provided by section 195(1)(a)(i) Cr.P.C., a court cannot take cognizance of an offence under section 188 IPC without a written complaint from the concerned public servant. The absence of such a complaint in the current case makes the cognizance and summoning order dated 13.09.2022 legally unsustainable.

21. Hon'ble the Supreme Court in the case of ***Sachida Nand Singh and Another Vs. State of Bihar and Another; (1998) 2 SCC 493*** was pleased to observe para 7 as under:-

*“Even if the clause is capable of two interpretation we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers “any magistrate of the first class” to take cognizance of “any offence” upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the Court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.”*

22. Further, Hon'ble the Supreme Court in the case of ***Daulat Ram Vs. State of Punjab; AIR 1962 SC 1206*** was pleased to observe para 4 as under:-

*“Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other*

*hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that s. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of s. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."*

23. Further, Hon'ble the Supreme Court in the case of ***M.S. Ahlawat Vs. State of Haryana and Another; AIR 2000 SC 168*** was pleased to observe para 5 as under:-

*"Chapter XI of IPC deals with false evidence and offences against public justice' and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice."*



24. Now coming to the provision of first schedule of Cr.P.C., Section 188 of Indian Penal Code is covered under the said provision which is declared as non-cognizable and bailable offence, and triable by the Magistrate of the First Class. Like wise classification of offence against other laws in Cr.P.C., it also describes, if any offence under any other law, if punishable for less than three years or with fine which shall be considered as non- cognizable, bailable and triable by the Magistrate of First Class.

25. On perusal of the above said provisions, it is abundantly clear that the offence registered against the applicant under Section 188 of IPC is non-cognizable in nature. Now, coming to Section 155(2) of Cr.P.C. which reads as follows:

*"No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial"*

26. Particularly, Section 155(2) mandates the police concerned that such police officer shall investigate the non-cognizable offence with the permission of the Magistrate only. This Section describes that no Police Officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such case for trial.

27. The provision in sub Section (2) of Section 155 of Cr.P.C., for asking permission of the Court to investigate a non-cognizable offence is mandatory in nature. Therefore, the investigation of non-cognizable offence by the police without prior permission of the competent Magistrate is illegal. Even mere accepting the charge sheet by the Magistrate and taking the cognizance of the offence does not validate the proceeding. Even subsequent permission by the Magistrate also cannot cure the illegality. As could be seen from Section 460 of Cr.P.C. these defects of non- taking permission before investigating a non-cognizable offence is also not curable. Though the charge sheet is filed after due investigation without prior permission of the Court and that the Magistrate has accepted the charge sheet and taken the cognizance, it does not mean to show permission is granted by the Magistrate to investigate such non- cognizable offence. Therefore, investigation into the non-cognizable

offence without written order of the Magistrate is strictly contrary to the provision of this Section.

28. This Court further finds that the above said two offences are non-cognizable offences. Therefore, as per Section 155(2) of Cr.P.C., the police have no right or jurisdiction to investigate the matter, without prior permission of the Magistrate, who has got jurisdiction to try those offences. Therefore, the entire charge sheet filed by the police is vitiated by serious incurable defects and procedural irregularities.

29. This Court also acknowledges the serious nature of the allegations leveled against the applicants under sections 143, 147, 281, 283 and 269 of the IPC, as well as Section 51(b) of the Disaster Management Act, 2005. However, upon review of the evidence and legal framework surrounding the case, certain critical procedural deficiencies have come to light, thus, this Court deems it appropriate to discuss the relevant sections imposed upon the applicants in the present case.

30. **Section 143 IPC** (Unlawful Assembly): An assembly of five or more persons is designated as unlawful if the common object of the persons composing that assembly is to:

- (a) Commit any mischief or criminal trespass, or other offence;
- (b) Resist the execution of any law, or legal process;
- (c) Commit any mischief or criminal trespass, or other offence.

In the present case, the FIR alleges that the applicants were part of an unlawful assembly violating COVID-19 guidelines. However, the prosecution must establish that the assembly's common object was illegal. Without specific evidence of an illegal common object, merely being present in a group does not constitute an offence under this section.

31. **Section 147 IPC** (Rioting): Rioting involves the use of force or violence by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly.

Thus, to charge someone with rioting under section 147 IPC, it must be proven that the unlawful assembly used force or violence. The FIR and subsequent charge sheet must provide specific instances of such conduct. General allegations of rioting without concrete evidence cannot sustain a charge under this section.

32. **Section 281 IPC** (Danger or Obstruction in Public Way or Line of Navigation):

Definition: Whoever causes any danger, obstruction, or injury to any person in any public way or public line of navigation.

Thus, blocking a road can potentially fall under this section if it causes danger or obstruction. The prosecution must provide evidence showing that the applicants' actions specifically led to such danger or obstruction. In this case, evidence must demonstrate the direct result of the applicants' actions causing danger or obstruction.

33. **Section 283 IPC** (Danger or Obstruction in Public Way): Definition: Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes, or knowingly or negligently causes, obstruction, danger, or injury to any person in any public way or public line of navigation. Similar to section 281, this section emphasizes the injury or obstruction caused in a public way. Concrete evidence of specific obstruction or injury caused by the applicants is necessary to support this charge.

34. **Section 269 IPC** (Negligent Act Likely to Spread Infection of Disease Dangerous to Life): Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life.

Though, violating COVID-19 guidelines could fall under this section if it can be shown that the applicants' actions were likely to spread the infection. The prosecution must establish a direct causal link between the applicants'

conduct and the potential spread of the disease. Mere presence in a gathering without evidence of actual spread or likelihood thereof is insufficient.

35. **Section 51(b) of the Disaster Management Act, 2005:** Punishment for obstruction, refusal to comply with directions of the central government or state government, or national or state authority.

Thus, this section pertains to non-compliance with directives issued under the Disaster Management Act. In this case, the applicants are alleged to have violated COVID-19 curfew guidelines issued by the authorities. The prosecution must demonstrate that the applicants willfully disobeyed such directives and that such disobedience falls within the ambit of this section.

36. The Court notes that the registration of the FIR and subsequent charge sheet by the police, without a separate written complaint by the public servant concerned as mandated by section 195(1)(a)(i) of the Criminal Procedure Code, 1973, raises substantial procedural irregularities. Despite the gravity of the alleged offences, the failure to adhere to procedural safeguards undermines the integrity of the legal process.

37. Furthermore, this Court finds that while the police may have acted in good faith to prevent potential violations of law and order, their actions, including the registration of the FIR and filing of the charge sheet, were not in strict compliance with the legal requirements outlined in relevant judicial precedents.

38. The absence of a written complaint from the concerned public servant for the offence under Section 188 IPC violates the mandatory procedural requirement under Section 195(1)(a)(i) Cr.P.C. Therefore, the cognizance of this offence is legally unsustainable. The allegations under Sections 143, 147, 281, 283, and 269 IPC lack specific and concrete evidence. The FIR and charge sheet do not provide sufficient proof to substantiate the charges.

39. Further, the Hon'ble Supreme Court of India in the case **Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and

circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

*"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:*

*(i) to give effect to an order under the Code;*

*(ii) to prevent abuse of the process of court, and*

*(iii) to otherwise secure the ends of justice."*

40. Further, Hon'ble the Supreme Court of India in the case of **Lalankumar Singh and Others vs. State of Maharashtra** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of **Lalankumar Singh and Others (supra)** is being quoted hereunder:-

*"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:*

*"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates*

*to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*

*52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

*53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*

41. Further, Hon'ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

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

*(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*

*(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

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

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

*(6) where 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 continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*

*(7) where a criminal proceeding is manifestly attended with 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."*

42. Further the Hon'ble Supreme Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) R.P. Kapoor Vs.**

**State of Punjab, AIR 1960 S.C. 866, (ii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.**

43. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Supreme Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

44. In view of the above said facts and circumstances of the case, the investigation done by the police in this case is without jurisdiction and based on such invalid investigation report, the cognizance taken by the learned Magistrate is also illegal. Secondly, the entire proceeding before the learned Magistrate is vitiated by serious incurable defects.

45. Thus, in view of the law laid down by the Hon'ble Supreme Court and the facts and circumstances, as narrated above and from the perusal of the record, the impugned cognizance and summoning order dated 13.09.2022 passed by the court of Civil Judge (Senior Division) / F. T. C. IInd Pratapgarh, which has been taken on the charge sheet dated 06.08.2022, arising out of the Case Crime No.0106 of 2021, under section 143, 147, 281, 283, 188, 269, I.P.C. & 51(b) Disaster Management Act, 2005, Police Station Kohandaur, District-Pratapgarh, as well as the entire criminal proceedings in pursuance thereof are against the spirit and directions issued by the Hon'ble Supreme Court and are liable to be quashed.

46. Accordingly, the impugned cognizance and summoning order dated 13.09.2022 passed by the court of Civil Judge (Senior Division) / F. T. C. IInd Pratapgarh, which has been taken on the charge sheet dated 06.08.2022,



arising out of the Case Crime No.0106 of 2021, under section 143, 147, 281, 283, 188, 269, I.P.C. & 51(b) Disaster Management Act, 2005, Police Station Kohandaur, District-Pratapgarh as well as the entire criminal proceedings in pursuance thereof are hereby **quashed** in respect of all the 28 applicants.

47. For the reasons discussed above, the instant application under Section 482 Cr.P.C. filed by the applicant, namely- (1) Ashish Kumar Tiwari @ Rahul, 2. Chandra Prakash Tiwari @ Happy, 3. Prashant Tiwari, 4. Shubham Dubey, 5. Sachin Tiwari, 6. Roopam Dubey, 7. Vivek Dubey, 8. Himanshu Tiwari, 9. Keshav Dubey, 10. Shashank Dubey @ Veeru, 11. Amit Tripathi @ Aparadhi, 12. Prince @ Ashutosh Dubey, 13. Mauni Tiwari @ Navin Kumar, 14. Shekhar Dubey, 15. Avinash Tiwari, 16. Satendra Dubey, 17. Abhimanu Tiwari, 18. Ashish Tiwari 19. Rishikesh Sharma, 20. Jitendra Ojha, 21. Aditya Tiwari, 22. Gangesagar Tiwari, 23. Arun Dubey @ Arun Kumar Dwivedi, 24. Gyan Prakash Dubey @ Subbey, 25. Vivek Ojha, 26. Shani Tiwari, 27. Gulashan Tiwari, 28. Shanu Dubey is **allowed** in respect of the above named applicants.

48. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

**Order Date :-** 14.06.2024  
Piyush/-

**(Shamim Ahmed,J.)**