HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Revision Petition No. 1054/2019

1. Babu Shekh S/o Roshan Shekh.
2. Noor Shekh S/o Babu Shekh,
3. Karim S/o Babu Shekh,
4. Rahim S/o Babu Shekh,
5. Chand S/o Babu Shekh,
6. Mohammad Shekh S/o Roshan Shekh,
7. Noshad S/o Mohammad Shekh,
8. Siraj S/o Bandu,
9. Peeru Shekh S/o Abdul Karim Shekh,

----Petitioners

Versus

1. State Of Rajasthan, Through PP
2. Abdul Salam @ Kalu S/o Gafoor,

----Respondents

For Petitioner(s)	:	Mr. Dinesh Pareek
For Respondent(s)	:	Mr. Mahendra Meena, PP Ms. Vaishnavi for Mr. Ashvin Garg

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HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on	:	09/04/2024
Pronounced on	:	18/04/2024

Reportable

1. This petition challenges the impugned order dated 30.08.2018 passed by the Additional Sessions Judge No.1 Sambhar Lake, District Jaipur in Sessions Case No.12/2013 by which the application filed by the complainant respondent under Section 193 Cr.P.C. for taking cognizance against the accused petitioners has been allowed and accordingly cognizance has been taken against them for the offences punishable under Sections 147, 148, 341, 323, 325, 308 and 149 IPC.

2. Learned counsel for the petitioner submits that in the instant matter, the FIR was lodged against several accused persons and after investigation chargesheet was submitted only against the accused Gulab, Gafoor, Ramzan, Shahjad, Gafar Sayeed and after submission of chargesheet cognizance was taken against them by the Additional Chief Judicial Magistrate, Sambharlake, District Jaipur vide order dated 25.02.2023. Counsel submits that since the offences were triable by the Sessions, the case was committed to the Court of Additional Sessions Judge, Sambhar Lake. Counsel submits that after committal of the case, the learned Additional Sessions Judge took cognizance against those accused persons for the same offences on 13.03.2013 and thereafter the case was posted for framing of charge. Counsel submits that at this stage, the complainant respondent submitted an application under Section 193 Cr.P.C. on 27.01.2014 for taking cognizance against rest of the accused i.e. the petitioners. Counsel submits that overlooking the settled proposition of law, cognizance has been taken against the petitioners for the offences as stated above. Counsel submits that it is the settled proposition of law that

cognizance of an offence is taken and not of the offender. Counsel submits that in the instant matter, thrice cognizance has been taken, once by the Judicial Magistrate and twice by the Court of Additional Sessions Judge. Counsel submits that when the case was committed to the Court of Additional Sessions Judge and cognizance was taken against rest of the accused persons who were chargesheeted there was an occasion available with the complainant and the State for moving appropriate application for taking cognizance, but at that stage, no such application was submitted. Counsel submits that the application was submitted at later stage which has been erroneously allowed by the learned Additional Sessions Judge i.e. trial Judge. Counsel submits that under these circumstances, the impugned order passed by the learned trial Judge is not legally sustainable in the eye of law. In support of his contentions, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Dharam Pal and Ors. vs. State of Haryana and Ors.** reported in **2014 (3) SCC 306** and this Court in the case of **Shodan Singh and Anr. vs. State of Rajasthan (S.B. Criminal Misc. Petition No.2281/2016).** Counsel submits that in view of the submissions made herein above, interference of this Court is warranted and the impugned order dated 30.08.2018 is liable to be quashed and set aside.

3. Per contra, learned Public Prosecutor as well as the counsel for the complainant opposed the arguments raised by the counsel for the petitioner and submitted that as per Section 193 Cr.P.C., cognizance can be taken by the Court of Sessions against those

accused persons, who have not been chargesheeted by the Investigating Agency. Counsel submits that when clear and specific evidence was there against the petitioners, even then they were left by the police, hence under these circumstances, the complainant was left with no other option except to submit an application under Section 193 Cr.P.C. for taking cognizance against them. Counsel submits that Section 193 Cr.P.C. empowers the learned Sessions Judge to take cognizance against the accused who have not been chargesheeted. In support of her contention, she has placed reliance upon the following judgments:

1. **Dharam Pal and Ors. vs. State of Haryana and Ors.** reported in **2014 (3) SCC 306.**

2. **Balveer Singh and Anr. vs. State of Rajasthan and Anr. (Criminal Appeal No.263/2016)**.

3. **Hardeep Singh vs. State of Punjab and Ors.** reported in **2014 Cr.L.R. (SC) 310.**

4. **Sarita Kumari and Anr. vs. State of Rajasthan and Anr. (S.B. Criminal Revision No.309/2016).**

4. Heard and considered the submission made by the respective counsel for the parties and perused the material available on the record.

5. A perusal to the First Information Report (for short 'FIR') indicates that it was registered against more than 13 named accused persons including the petitioners. The FIR was lodged by Abdul Salam, who is son of the injured Gafoor Ahmed. As per the

statements of the injured Gafoor Ahmed, around 15 persons including the petitioners assaulted him and inflicted injuries on various parts of his body. All the petitioners were named in the statements of the injured and the complainant/informant. But after investigation only 6 persons namely, Gulab, Gafoor, Gaffar, Ramzan, Shahjad and Sayeed were sent up for trial vide charge-sheet dated 21.02.2013 before the Court of Additional Chief Judicial Magistrate, Sambhar Lake, District Jaipur, who took cognizance against them for the offence under Sections 147, 148, 149, 323, 325, 341 and 308 IPC vide order dated 25.02.2013 and committed the matter to the Court of Additional Sessions Judge, Sambhar Lake for trial.

6. After committal of case, the learned Additional Sessions Judge took cognizance against the same accused persons charge-sheeted by the police for the same offences vide order dated 13.03.2013 and posted the case for framing of charges but the arguments on charge were not heard on the posted dates and the case was deferred from one date to another for hearing charge-arguments as per request of the accused persons charge-sheeted by the police.

7. Thereafter, an application was submitted by the complainant/respondent No.2-Abdul Salam under Section 193 CrPC for taking cognizance against the rest of the accused persons i.e. the petitioners who were not charge-sheeted by the police.

8. After hearing the arguments, the learned Additional Sessions Judge allowed the application vide judgment/order dated

30.08.2018 and took cognizance against the petitioners for the offences under Sections 147, 148, 341, 323, 325, 308 and 149 IPC and summoned them.

9. Feeling aggrieved and dissatisfied by the above order dated 30.08.2018, the petitioners have assailed the same before this Court by way of invoking the revisional jurisdiction of this Court.

10. The bone of contention of the arguments of the petitioners is that once the Magistrate has already taken cognizance of the offence vide order dated 25.02.2013 and committed the matter to the Court of Sessions, where again cognizance was taken against the accused persons charge-sheeted on 13.03.2013, then there was no reason to take cognizance against the present petitioners without waiting the stage of Section 319 CrPC. The other contention of the counsel is that cognizance of the offence is taken not of the offenders and when cognizance of the offence has already been taken twice on 25.02.2013 and 13.03.2013, then the subsequent impugned order dated 30.08.2018 taking cognizance against the petitioners is not sustainable in the eye of law.

11. There were conflicting views about the stage and power of taking cognizance under Section 193 CrPC by the Court of Sessions in different judgments of Hon'ble Apex Court in the case of **Ranjit Singh Vs. State of Punjab** reported in **(1998) 7 SCC 149**, **M/s Swil Ltd. Vs. State of Delhi and Anr.** reported in **(2001) 6 SCC 670, Rajindra Prasad Vs. Bashir & Ors.** reported in **(2001) 8 SCC 522, Kishun Singh Vs. State of Bihar** reported in **(1993) 2 SCC 16** and **Kishori Singh Vs.**

State of Bihar reported in **(2004) 13 SCC 11**. The conflicting view was that whether cognizance can be taken by the Court of Sessions against the left out accused under Section 193 CrPC or the Court should wait till the stage of Section 319 CrPC. In order to get clearity of the point, the matter was referred to the Constitutional Bench of Five Judges of Hon'ble Supreme Court in the case of **Dharampal** (supra), where the following six questions came for consideration, as follows:-

> "(i) Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?
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> ii) If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?
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> iii) Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?
>
> iv) Can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction?
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> v) Upon the case being committed to the Court of Session, could the Session Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?
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> vi) Was Ranjit Singh's case (supra), which set aside the decision in Kishun Singh's case(supra), rightly decided or not?"

12. Question Nos.4, 5 and 6 are relevant in deciding the controversy involved in this petition and the same was answered by the Constitutional Bench of the Hon'ble Apex Court in para 37 to 42 of the judgment passed in the case of **Dharam Pal** (supra) and the same is reproduced as under:-

> "37. Questions 4, 5 and 6 are more or less interlinked. The answer to question 4 must be in the affirmative, namely, that the Session Judge was entitled to issue summons under Section 193 Cr.P.C. upon the case being committed to him by the learned Magistrate.
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> 38. Section 193 of the Code speaks of cognizance of offences by Court of Session and provides as follows :-
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> > "**193. Cognizance of offences by Courts of Session.** - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."
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> The key words in the Section are that "no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code." The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr. Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said Section.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there by any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

41. We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.

> 42. The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate."

13. The above view taken by the Constitutional Bench was reiterated by the Hon'ble Apex Court in the case of **Balveer Singh Vs. State of Rajasthan** reported in **(2016) 6 SCC 680** and para 24 and 25 are quite relevant for decision of the instant matter:-

> "24. Keeping in view the aforesaid legal position, we may now discuss the circumstances under which the cognizance was taken by the Session Judge. Here is a case where the Police report which was submitted to the Magistrate, the IO had not included the appellants as accused persons. The complainant had filed application before the learned Magistrate with prayer to take cognizance against the appellants as well. This application was duly considered and rejected by the learned Magistrate. The situation in this case is, thus, not where the investigation report/chargesheet filed under Section 173(8) of the Code implicated the appellants and appellants contended that they are wrongly implicated. On the contrary, the Police itself had mentioned in its final report that case against the appellants had not been made out. This was objected to by the complainant who wanted the Magistrate to summon these appellants as well and for this purpose the application was filed by the complainant under Section 190 of the Code. The appellants had replied to the said application and after hearing the arguments, the application was rejected by the Magistrate. This shows that order of the Magistrate was passed with due application of mind whereby he refused to take cognizance of the alleged offence against the appellants and confined

> it only to the son of the appellants. This order was not challenged. Normally, in such a case, it cannot be said that the Magistrate had played 'passive role' while committing the case to the Court of Sessions. He had, thus, taken cognizance after due application of mind and playing an "active role" in the process. The position would have been different if the Magistrate had simply forwarded the application of the complainant to the Court of Sessions while committing the case. In this scenario, we are of the opinion that it would be a case where Magistrate had taken the cognizance of the offence. Notwithstanding the same, the Sessions Court on the similar application made by the complainant before it, took cognizance thereupon. Normally, such a course of action would not be permissible.
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> 25. The next question is as to whether this Court exercise its powers under Article 136 of the Constitution to interdict such an order. We find that the order of the Magistrate refusing to take cognizance against the appellants is revisable. This power of revision can be exercised by the superior Court, which in this case, will be the Court of Sessions itself, either on the revision petition that can be filed by the aggrieved party or even suo moto by the revisional Court itself. The Court of Sessions was, thus, not powerless to pass an order in his revisionary jurisdiction. Things would have been different had he passed the impugned order taking cognizance of the offence against the appellants, without affording any opportunity to them, since with the order that was passed by the learned Magistrate a valuable right had accrued in favour of these appellants. However, in the instant case, we find that a proper opportunity was given to the appellants herein who had filed reply to the application of the complainant and the Sessions Court had also heard their arguments. For this reason, we are not inclined to interfere with the impugned order and dismiss this appeal."

14. The crux of both judgments of Hon'ble Apex Court in the case of **Dharampal** (supra) and **Balveer Singh** (supra) is that

after committal of a case by the Magistrate, the Court of Sessions is conferred with the original jurisdiction under Section 193 CrPC and it is competent to take cognizance against the accused persons not charge-sheeted by the police.

15. The High Court of Allahabad took a different view in Criminal Misc. Application No.38681/2019 and the following view was taken:-

> "In the present matter as the cognizance has already been taken by the learned Sessions Judge and charges were framed against the accused after considering the police papers annexed with the charge-sheet and the trial had started, it would not be proper for the trial court to take further cognizance of the case and to summon the three accused by the impugned order. The summoning of the three accused by the impugned order is not in consonance with the legal provisions of law. The cognizance taken by the trial Sessions Court under Section 193 Cr.P.C. for the second time is not perfectly valid and permissible by law. The impugned order is not legally proper and the impugned order transpires that the trial sessions court has abused the process of law. The impugned order is liable to be quashed."

16. It is note-worthy to mention here that in this matter before Allahabad High Court, the cognizance was taken by the Court of Sessions and charges were framed against the left out accused persons and the trial was started. The newly arrayed accused persons assailed this order before the Allahabad High Court and the Court was of the firm view that for the trial Court it was not proper to take further cognizance and summon the accused persons. It was held that cognizance taken by the Sessions Court under Section 193 CrPC for the second time was not valid and was

not permissible by law and accordingly the order was quashed and set aside.

17. The above view taken by the Allahabad High Court was assailed before the Hon'ble Apex Court in the case of **Rafiusshan Vs. State of U.P. & Ors.** by way of filing **Criminal Appeal No.1347/2021 (arising out of SLP (Crl.) No.1752/2020)** and the judgment passed by the Allahabad High Court was quashed by the Apex Court with the following observations:-

> "The Sessions Judge is entitled to issue summons under Section 193 CrPC upon the case being committed to him by the Magistrate. Section 193 CrPC speaks of cognizance of offences by the Court of Session. The key words in the section are that "no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code".
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> The provision of Section 193 CrPC entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The Second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. The submission that the cognizance indicated in Section 193 CrPC deals not with cognizance of an offence, but of the commitment order passed by the Magistrate, was specifically rejected in view of the clear wordings of Section 193 CrPC that the Court of Session may take cognizance of the offences under the said section.
>
> Cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceeding to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code

very clearly indicates that once the case is committed to the Court of Session by the Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 of the Code will, therefore, have to be understood as the Magistrate playing a passive role in committing the case to the Court of Session on findings from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the Sessions Judge.

In the process of coming to the aforesaid conclusions, this Court in Dharam Pal Vs. State of Haryana (supra) accepted the view expressed in the case of Kishun Singh Vs. State of Bihar, reported in (1993) 2 SCC 16 (SCC p.320, para 40) the Sessions Court has jurisdiction in commital of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. It specifically held that upon committal under Section 209 of the Code, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein.

Interestingly, at the same time, the Court in the case of Dharam Pal Vs. State of Haryana (supra) also held that it would not be correct to hold that on receipt of a police report and seeing that the case is triable by a Court of Session, the Magistrate has no other function but to commit the case for trial to the Court of Session and the Sessions Judge has to wait till the stage under Section 319 of the Code is reached before proceeding against the persons against whom a prima facie case is made out from the material contained in the case papers sent by the Magistrate while committing the case to the Court of Session.

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The instant matter is completely covered by the question posed in paragraph 7.4 of the decision in Dharam Pal. As stated by this Court, once the case is committed to the Court of Sessions, the Court of

> Sessions assumes original jurisdiction and that it would be within its power to pass appropriate directions under Section 193 of the Code. The decision of the High Court in the instant case, is not consistent with the law laid down by this Court. We, therefore, allow this appeal, set aside the order passed by the High Court and restore the order passed by the Trial Court."

18. Again the same issue came before the Hon'ble Apex Court that whether cognizance can be taken against the accused under Section 190 CrPC by the Magistrate and under Section 193 CrPC by the Sessions Judge without waiting till the stage of Section 319 CrPC. If the material available before the Court reveals that there is prima facie involvement of the accused not charge-sheeted, then cognizance can be taken against such person. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Sessions in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report. In the case of **Nahar Singh Vs. The State of Uttar Pradesh and Anr. (Criminal Appeal No.443/2022)** decided on 16.03.2022, it has been held by the Hon'ble Supreme Court in para 20, as under:-

> "20. In the cases of **Raghubans Dubey** (supra), **SWIL Ltd.** (supra) and **Dharam Pal** (supra), the power or jurisdiction of the Court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait

> till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the F.I.R. or police report."

19. Hence, it is clear from the authoritative judgments of Hon'ble Apex Court in the case of **Dharampal** (supra), **Balveer Singh** (supra), **Rafiusshan** (supra) and **Nahar Singh** (supra) that the Court of Sessions is empowered to take cognizance against those accused persons under Section 193 CrPC who have been left by the police and who have not been arrayed as an accused by Investigating Agency with the charge-sheet.

20. Now this Court proceeds further to decide the next issue raised by the accused that twice cognizance cannot be taken by the Court of Sessions after committal of the case by the Court of Magistrate. This fact is not in dispute that charge-sheet was submitted against 6 accused persons by the police and the petitioners were left by the police and the learned Magistrate took cognizance against those 6 accused persons vide order dated 25.02.2013 and committed the case to the Court of Additional Sessions Judge where again cognizance was taken against the very 6 accused persons for the very same offences vide order

dated 13.03.2013 and the case was posted for hearing of arguments on charges. Therefore, an application under Section 193 CrPC was submitted by the complainant for taking cognizance against the left out accused persons i.e. the petitioners, who were not arrayed as accused with the charge-sheet and the application was allowed and cognizance was taken against the petitioners on 30.08.2018.

21. There was no reason or occasion for taking cognizance again by the Court of Additional Sessions Judge after committal of the case by the learned Magistrate after taking cognizance against the accused charge-sheeted by the police. Such an act of the Additional Sessions Judge is an irregularity, but not an illegality which vitiates the proceedings against the petitioners under Section 461 CrPC. Hence, under these circumstances, there is no force in the arguments raised by the counsel for the petitioners.

22. Finding prima facie case against the petitioners to proceed against them, the learned Additional Sessions Judge, while acting as a Court of Original Jurisdiction has correctly taken cognizance against the petitioners in exercise of its powers contained under Section 193 CrPC without waiting the stage carved out under Section 319 CrPC.

23. In view of the discussions made hereinabove, the Court below has not committed any jurisdictional error in passing the impugned order and has not committed any error in taking cognizance against the petitioners.

24. Consequently, this criminal revision petition fails as the same is found to be devoid of merits and the same is liable to be and hereby dismissed.

25. Interim order, if any, stands vacated. Stay application and all application(s) (pending, if any) also stand rejected.

(ANOOP KUMAR DHAND),J

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