



2026:AHC:161089

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 237 of 2026

Randhir and 2 others

.....Appellant(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Appellant(s)	: A.z. Khan, Ashfaq Ahmed Ansari
Counsel for Respondent(s)	: G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Ms. Pooja, learned Amicus Curiae appearing on behalf of appellants and learned AGA for the State.

2. This appeal has been filed by the accused, Randhir son of Bishan Singh, Smt. Sonia wife of Randhir, and Sagar son of Randhir ("the appellants"), against the order dated 04.06.2025 passed by the Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Saharanpur ("the trial court"), whereby the trial court (i) accepted application paper no. 9-Ka dated 27.05.2025 moved by the learned Special Public Prosecutor, Sri Rajpoot, for addition of Section 307 I.P.C.; (ii) took cognizance of the offences under Sections 323/34, 324/34, 452, 504, 506, 307/34 I.P.C. and Sections 3(1)(r), 3(1)(s) and 3(2)(v)/3(2)(va) of the S.C./S.T. (Prevention of

Atrocities) Act against the appellants; (iii) recorded adverse observations concerning the manner in which the injury report of the injured, Naresh son of Somma, had been prepared by Dr. Sachin Bansal, Medical Officer, C.H.C. Gangoh; and (iv) directed the Chief Medical Officer, Saharanpur, to institute departmental proceedings against Dr. Sachin Bansal and submit a report within one month. Dr. Sachin Bansal is not a party to this appeal; he was, and remains, a prosecution witness in the trial.

3. Here, the appellants' grievance is not merely that they have been summoned, but that the trial court, before taking cognizance, admittedly stepped outside the record submitted by the Investigating Officer under Section 173(2) Cr.P.C. and examined a witness to generate fresh material on which a graver charge under Section 307 I.P.C., carrying a possible sentence of imprisonment for life, came to be added. Where the very jurisdiction of the court to act as it did, and not merely the correctness of its discretion, is in question, the inherent jurisdiction of this Court (Section 482 Cr.P.C., now Section 528 B.N.S.S.,) is available, consistently with the categories recognized in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**. This Court accordingly treats the present proceeding, the nomenclature "appeal" notwithstanding, as one invoking that jurisdiction, substance and not form being determinative of the nature of the remedy.

4. The prosecution case, briefly, is that on 03.09.2023 an altercation took place between the informant's family and the accused Randhir, his wife Sonia and their sons, arising out of an alleged dispute concerning agricultural land, in the course of which the informant's husband, Naresh, is alleged to have been assaulted with lathi-danda and a sharp-edged weapon, and to have been abused with caste-based epithets and threatened with death. Naresh was medically examined. The injury report recorded five injuries on the head, one of which, as per the case diary and the doctor's statement recorded under Section 161 Cr.P.C., was attributed to a sharp weapon and the remaining four to a blunt weapon ("kundala"). A charge-sheet dated 21.09.2023 was submitted under Sections 323, 324, 452, 504, 506 I.P.C. and Sections 3(1)(r)(s) and 3(2)(va) of the S.C./S.T. Act.

5. The grounds of the appeal in brief is that the impugned judgment and order dated 04.06.2025 is illegal, arbitrary and against the weight of evidence available on record as well as the settled provisions of law. The learned Trial Court has acted without jurisdiction in directing the recording of the statement of the prosecution witness, namely the doctor, after submission of the charge-sheet and before framing of charge, although there is no provision under law authorising the Court to record the statement of any prosecution witness at that stage. It is well settled that after submission of the charge-sheet, the Court is only empowered to

take cognizance and proceed in accordance with law, and has no power or jurisdiction to record prosecution evidence before framing of charge. Therefore, the impugned judgment and order dated 04.06.2025, having been passed in violation of the settled legal position and without jurisdiction, is liable to be set aside/quashed by this Hon'ble Court.

6. Before the trial court took cognizance on the charge-sheet, the learned Special Public Prosecutor moved application paper no. 9-Ka dated 27.05.2025 seeking addition of Section 307 I.P.C., relying upon a statement recorded from Dr. Sachin Bansal before the trial court on 27.05.2025. In that statement the doctor clarified that all five head injuries, and not merely one, as recorded in his written injury report were, in his opinion, caused by a sharp-edged weapon, that four of the five had erroneously been attributed in the written report to a blunt weapon, and that head injuries of that description, occurring at varied angles, were of a serious and potentially fatal nature, with reference to a standard treatise on forensic medicine. On the strength of this statement the trial court, by the impugned order dated 04.06.2025, accepted the application, took cognizance of the offence under Section 307/34 I.P.C. in addition to the other offences reflected in the charge-sheet, observed that the injury report had been prepared in a faulty manner prejudicial to the prosecution, and directed departmental action against Dr. Bansal.

7. Learned counsel for the appellants submits that the very examination of Dr. Sachin Bansal by the trial court, before cognizance, to elicit material going beyond his written injury report was without jurisdiction, and that the order taking cognizance, in particular the addition of Section 307 I.P.C. founded on that examination, is vitiated in consequence and deserves to be set aside along with the summoning of the appellants.

8. Learned A.G.A., per contra, submits that even independently of Dr. Bansal's court statement, the record disclosed sufficient material to sustain cognizance of all the offences including Section 307 I.P.C., and that the trial court's discretion in the matter is not open to interference at this stage.

9. In addition, this Court, on perusing the impugned order as a whole, has noticed that the same order also directs departmental action against Dr. Sachin Bansal, a non-party witness, which calls for scrutiny, though neither side has specifically addressed submissions on that limb. The following points therefore arise for determination:

(i) Whether the trial court, at the pre-cognizance stage, was competent to examine the doctor in open court and to found its order of cognizance, in part, upon a fresh statement so recorded, as opposed to the material forwarded by the Investigating Officer

under Section 173(2) Cr.P.C., and, if not, whether that irregularity vitiates the order under appeal;

(ii) Whether the addition of Section 307 I.P.C. and the taking of cognizance of the offences reflected in the charge-sheet, together with Section 307/34 I.P.C. and the S.C./S.T. Act provisions, suffers from any illegality warranting interference at the instance of the appellants; and

(iii) Whether, on this Court's own examination of the record, the trial court had the jurisdiction to direct the Chief Medical Officer, Saharanpur, to institute departmental proceedings against Dr. Sachin Bansal, a witness who is not a party to this appeal.

10. It is well settled that on receipt of a police report under Section 173(2) Cr.P.C., a Magistrate or Court of Session (through committal, or directly where it is designated as a Special Court) has, broadly, three courses open to it: to accept the report and take cognizance under Section 190(1)(b), disagreeing if necessary with the conclusion recorded by the police but not with the facts placed on record; to disagree and direct further investigation under Section 173(8). What is not among these options, at the stage anterior to cognizance, is for the Court itself to summon and orally examine a witness named in the charge-sheet in order to supplement or improve upon the material the Investigating Officer has placed on record. The three-Judge Bench decision in **India Carat (P) Ltd. v.**

State of Karnataka, (1989) 2 SCC 132, makes clear that on a police report the Magistrate has the benefit of the case diary, the statements recorded under Section 161 Cr.P.C., and the other material collected during investigation, and it is on the basis of that material, not fresh testimony taken by the court itself, that the question of cognizance and issuance of process is to be decided.

The relevant paragraphs are extracted below for ready reference:

*“14. Since in the present case the Second Additional Chief Metro-politan Magistrate has taken cognizance of offences alleged to have been committed by the second respondent and ordered issue of process without first examining the appellant and his witnesses, the question for consideration would be whether the Magistrate is entitled under the Code to have acted in that manner. The question need not detain us for long because the power of a Magistrate to take cognisance of an offence under Section 190(1) (b) of the Code even when the police report was to the effect that the investigation has not made out any offence against an accused has already been examined and set out by this Court in *Abhinandan Jha v. Dinesh Mishra*, (1967) 3 SCR 668 and *H. S. Bains v. State*, (1980) 4 SCC 631. In *Abhinandan Jha v. Dinesh Mishra* the question arose whether a Magistrate to whom a report under Section 173(2) had been submitted to the effect that no case had been made out against the accused, could direct the police to file a charge-sheet, on his disagreeing with the report submitted by the police. This Court held that the Magistrate had no jurisdiction to direct the police to submit a charge-sheet but it was open to the Magistrate to agree or disagree with the police report. If he agreed with the report that there was no case made out for issuing process to the accused, he might accept the report and close the proceedings. If he came to the conclusion that further investigation was necessary he might make an order to that effect under Section 156(3) and if ultimately the Magistrate was of the opinion that the facts set out in the police report constituted an offence he could take cognizance of the offence, notwithstanding the contrary opinion of the police*

expressed in the report. While expressing the opinion that the Magistrate could take cognizance of the offence notwithstanding the contrary opinion of the police, the court observed that the Magistrate could take cognizance under Section '190(1) (c)'. The reference to Section 190(1) (c) was a mistake for Section 190(1) (b) and this has been pointed out in H. S. Bains.

15. In the case of H. S. Bains one Gurnam Singh submitted a complaint to the Judicial Magistrate First Class, Chandigarh alleging that H. S. Bains trespassed into his house along with two others on August 11, 1979 at about 8 a.m. and threatened to kill him and his son. The Magistrate directed the police under Section 156(3) of the Code to make an investigation. After completing the investigation, the police submitted a report to the Magistrate under Section 173(2) of the Code stating that the case against the accused was not true and that the case may be dropped. The learned Magistrate disagreed with the conclusion of the police and took cognizance of the case under Sections 448 and 506 of the Indian Penal Code and directed the issue of process to the accused. Thereupon, the accused moved the High Court for quashing the proceedings before the Magistrate. As the High Court declined to interfere, the accused approached this Court by way of appeal by special leave. Various contentions were advanced on behalf of the accused and one of them was that the Magistrate was not competent to take cognizance of the case upon the police report since the report was to the effect that no offence had been committed by the accused. It was further urged that if the Magistrate was not satisfied with the police report, there were only two courses open to him, viz. either to order a further investigation of the case by the police or to take cognizance of the case himself as if upon a complaint and record the statements of the complainant and his witnesses under Section 200 of the Code and then issue process if he was satisfied that the case should be proceeded with. Repelling those contentions this Court held as follows: (SCC pp. 635-36, para 7)

The Magistrate is not bound by the conclusions arrived at by the police even as he is not bound by the conclusions arrived at by the complainant in a complaint. If a complainant states the relevant facts

in his complaint and alleges that the accused is guilty of an offence under Section 307, Indian Penal Code the Magistrate is not bound by the conclusion of the complainant. He may think that the facts disclose an offence under Section 324, Indian Penal Code only and he may take cognizance of an offence under Section 324 instead of Section 307. Similarly if a police report mentions that half a dozen persons examined by them claim to be eye-witnesses to a murder but that for various reasons witnesses could not be believed, the Magistrate is not bound to accept the opinion of the police regarding the credibility of the witnesses. He may prefer to ignore the conclusions of the police regarding the credibility of the witnesses and take cognizance of the offence. If he does so, it would be on the basis of the statements of the witnesses as revealed by the police report. He would be taking cognizance upon the facts disclosed by the police report though not on the conclusions arrived at by the police.

16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1) (a) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second

Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.”

(emphasis supplied)

11. This position was reiterated in **S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492**, where cognizance was explained as the judicial application of mind to the material already on record with a view to issuing process for further proceeding.

12. Clarifying an admitted error in a police report, here, the mis-description in the written injury report of the weapon responsible for four of the five head injuries is not, by itself, impermissible, but the proper stage and mode for doing so, once a charge-sheet has been submitted, is either through the Investigating Officer seeking a corrected or supplementary opinion from the Medical Officer under Section 173(8) Cr.P.C. and placing it on the record before cognizance, or, after cognizance and framing of charge, through the doctor's testimony as a prosecution witness under Section 231 Cr.P.C., subject to cross-examination, with the court retaining its power under Section 311 Cr.P.C. to recall or examine any witness at that stage if the interest of justice so requires. What the trial court did instead, examining the doctor itself, before cognizance, outside any of these statutory channels, evidently at the instance of the prosecution's application to strengthen the case for addition of Section 307 I.P.C. was not a course of action available to it in law.

A court that has not yet taken cognizance does not possess a free-standing power to collect additional or corroborative evidence, that function belongs to the investigating agency, and the court's role at that stage is adjudicatory application of mind to the record as it stands, not investigative supplementation of it. To this extent, the procedure adopted by the trial court was irregular and exceeded the jurisdiction properly available to it at the pre-cognizance stage.

13. The test at the stage of taking cognizance and summoning is not proof beyond reasonable doubt, nor even the stricter test applicable at the stage of framing of charge; it is confined to whether the material on record discloses a prima facie case. It is also well established that a court seized of a matter on a police report is not confined in perpetuity to the precise sections invoked in the charge-sheet. It may, on the material lawfully before it, take cognizance of a graver or different offence disclosed by that material, and this power subsists at the stage of taking cognizance itself (*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 [Constitution Bench]). The difficulty in the present case is not with this discretion as such, but with the source of the material on which it came to be exercised.

14. Section 465 Cr.P.C. embodies the settled principle that an irregularity in procedure does not, by itself, vitiate an order unless it has occasioned a failure of justice. On the record of this case, application 9-Ka dated 27.05.2025 seeking addition of Section 307

I.P.C. was moved by the learned Special Public Prosecutor expressly on the strength of Dr. Bansal's examination recorded that very day, and the trial court's order dated 04.06.2025 itself recites that the addition of Section 307 I.P.C. was found justified. The order does not anywhere indicate that the trial court independently applied its mind to the original injury report, the case-diary entries, and the Section 161 Cr.P.C. statements, and reached the same conclusion on that material alone. It is not for this Court, sitting in appeal, to now undertake that exercise for the first time and to say what the trial court would or would not have concluded had it confined itself to the lawful record; that satisfaction, under Section 190(1)(b) Cr.P.C., is one which the trial court alone is required to record, in the first instance, on its own application of mind. Since the order does not disclose an independent, untainted basis for the addition of Section 307 I.P.C., and since it is a single, composite order dealing with cognizance of all the offences together without severing the basis for each, the appellants are right in their submission that the entire order dated 04.06.2025 is vitiated by the illegality.

15. This limb of the impugned order is not the subject-matter of any grievance raised by the appellants, who are the accused and have no personal stake in whether departmental proceedings are directed against a prosecution witness. However, it forms part of the very order under challenge, and a patent excess of jurisdiction

appearing on the face of that order cannot be left uncorrected merely because it was not the appellants who suffered it. A criminal court trying, or about to try, a case is not a disciplinary authority over persons who appear before it as witnesses. Dr. Sachin Bansal appeared before the trial court in the discharge of his official duty as a witness who had prepared the injury report and who was called upon to clarify an error in it. Whatever view the trial court took of the manner in which that report had originally been prepared, the consequence of directing an inquiry with a view to disciplinary action against him is a civil consequence visited upon a public servant, and could not be imposed, nor even recommended in mandatory terms, without affording him an opportunity of explanation. The requirement that no adverse or punitive observation be recorded against a person, whether a party or not, without giving that person an opportunity of being heard, and without such observation being necessary for the decision of the case, is a settled principle of this Court's supervisory jurisdiction over subordinate courts. Dr. Bansal was not noticed, was not called upon to show cause why departmental action should not be recommended against him, and the trial court's direction proceeded directly from an error found in the discharge of his official duties on a matter, attribution of a wound to a sharp or blunt weapon that was itself the very subject of the clarification he had just furnished to the court's satisfaction. In these circumstances, the direction to the

Chief Medical Officer, Saharanpur, to institute departmental proceedings against Dr. Sachin Bansal was made in excess of the jurisdiction vested in the trial court and cannot be sustained. It is likely to be set aside.

16. Upon a perusal of the impugned order taking cognizance, this Court finds that the learned Trial Court has committed a manifest illegality and procedural omission by failing to record any reasons, let alone independent satisfaction, as to whether a prima facie case under Sections 3(1)(r), 3(1)(s), 3(2)(v), and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act') is made out from the material available on record. Taking cognizance is not a mere mechanical rubber-stamping exercise; it mandates due application of judicial mind to the case diary and the police report. The Trial Court was legally bound to evaluate the collected material specifically in the context of the strict statutory ingredients governing each invoked provision. As authoritatively enunciated by the Hon'ble Supreme Court in *Masumsha Hasanasha Musalman v. State of Maharashtra* [(2000) 3 SCC 557], *Swarna Singh & Ors. v. State* [(2008) 8 SCC 435], *Gorige Pentaiah v. State of A.P. & Ors.* [2015], *Hitesh Verma v. State of Uttarakhand* [(2020) 10 SCC 710], and *Prabhat Kumar Mishra @ Prabhat Mishra v. State of U.P.* [2024 INSC 172], the invocation of special penal provisions under the SC/ST Act requires distinct foundational facts, specifically, that the

alleged acts or underlying offences must be committed against a member of a Scheduled Caste or Scheduled Tribe on the basis of their caste identity, and in respect of Sections 3(1)(r) and 3(1)(s), that the intentional insult or intimidation must occur within 'public view'. The Trial Court has abdicated its primary legal duty by failing to test the veracity and sufficiency of the material against these well-settled legal benchmarks, rendering the order of cognizance legally unsustainable in the eyes of law.

17. This Court has, for the reasons recorded above, found that the trial court exceeded the jurisdiction available to it in two distinct respects: first, by itself examining a witness to generate fresh evidentiary material before cognizance was taken, a course of action 'wholly' outside the scheme of Sections 190, Cr.P.C.; and second, by directing departmental proceedings against that very witness, a public servant, without notice to him and without any jurisdiction to do so. The consequence of the first illegality has been serious: an entire order of cognizance, against accused persons and the conduct of a trial under a special statute, has had to be set aside and the matter remitted, resulting in avoidable delay in a case that has already been pending since 2023.

18. This Court is constrained to express its 'deep displeasure' against the conduct of the then Presiding Officer of the trial court, Mr. Khan. The learned Presiding Officer gravely erred in law by summoning and examining a medical officer at the pre-cognizance

stage, a procedure entirely alien to the Code of Criminal Procedure, 1973, and without any backing of statutory provisions. Such unwarranted procedural shortcuts not only undermine the sanctity of judicial proceedings but also result in an abuse of the process of law. Consequently, the direction issued by the trial court to the Chief Medical Officer (CMO) to initiate a departmental inquiry against the doctor based on such flawed and is legally unsustainable, wholly without jurisdiction, and is hereby set aside.

19. This Court directs that a copy of this judgment be forwarded and communicated to the concerned Presiding Officer, through District and Sessions Judge, Saharanpur, with a caution that the Presiding Officer shall follow the direction and procedure indicated above in this case and all other proceedings before him and be careful, failing which this Court will not hesitate to consider more formal administrative or disciplinary reference in an appropriate future case.

20. For the foregoing reasons, the appeal is **allowed**. It is ordered as follows:

(i) The order dated 04.06.2025 passed by the Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Saharanpur, in S.T. No. 655 of 2024 (arising out of Case Crime No. 251 of 2023, P.S. Gangoh, District Saharanpur) is **set aside** in its entirety, including the acceptance of application paper no. 9-Ka dated 27.05.2025, the

addition of Section 307 I.P.C., the taking of cognizance of the offences under Sections 323/34, 324/34, 452, 504, 506 and 307/34 I.P.C. and Sections 3(1)(d)(dh) and 3(2)(v)/3(2)(va) of the S.C./S.T. (Prevention of Atrocities) Act, and the direction for institution of departmental proceedings against Dr. Sachin Bansal.

(ii) The matter is remitted to the trial court, with the direction that it shall pass order 'afresh' on the question of cognizance strictly in accordance with law and in light of the observations made in this judgment, on the basis of the charge-sheet, the case diary, and the other material lawfully collected by the Investigating Officer under Section 173(2) Cr.P.C., excluding entirely the statement/evidence of Dr. Sachin Bansal recorded before the trial court on 27.05.2025, which shall not be looked into or relied upon for the purpose of deciding whether cognizance is to be taken, or whether Section 307 I.P.C. or any other section is to be added, in respect of the offences alleged.

21. Let a copy of this judgment be transmitted to the Chief Medical Officer, Saharanpur, with the direction that if any departmental inquiry has been instituted against Dr. Sachin Bansal pursuant to the order dated 04.06.2025, the same shall stand dropped in light of the observations made herein.

22. Let a copy of this judgment be forwarded by the Registrar (Compliance) to the District and Sessions Judge, Saharanpur, for

communication to the presiding officer of the Court of the Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Saharanpur.

23. The Registrar (Compliance) is further directed to forward a copy of this judgment to the Director, Judicial Training and Research Institute, Uttar Pradesh, Lucknow for consideration in judicial training programmes so as to ensure correct application of settled principle of law.

24. The trial court shall pass the fresh order on cognizance within a period of **four weeks** from the date of receipt of a copy of this judgment, after providing opportunity of hearing to the party, and shall thereafter proceed with the trial in accordance with law.

25. Let Ms. Pooja, learned Amicus Curiae be paid her remuneration as fixed by this court vide order dated 27.07.2026 within a period of two weeks from today.

(Santosh Rai,J.)

August 03, 2026

Ankit.