

A.F.R.**Reserved on 30.11.2022****Delivered on 28.02.2023****1. Case :- APPLICATION U/S 482 No. - 5106 of 2022****Applicant :-** Subesh Kumar Singh**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Govt. Of U.P. Civil Secrett. Lucknow And Others**Counsel for Applicant :-** S M Singh Royekwar, Sumeet Tahilramani**Counsel for Opposite Party :-** G.A., Anurag Kumar Singh, Narendra Kumar Sharma, Romil Sagar**2. Case :- APPLICATION U/S 482 No. - 5127 of 2022****Applicant :-** Vijay Kumar Gupta**Opposite Party :-** State Of U.P. Thru. Superintendent Of Police C.B.I. Special Crime Branch And Another**Counsel for Applicant :-** Purnendu Chakravarty, Pranesh Misra**Counsel for Opposite Party :-** Anurag Kumar Singh, Narendra Kumar Sharma, Romil Sagar**3. Case :- APPLICATION U/S 482 No. - 5157 of 2022****Applicant :-** Bhim Sain Mukund**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Civil Secrett. Lko And Others**Counsel for Applicant :-** Sharad Pathak**Counsel for Opposite Party :-** G.A., Narendra Kumar Sharma, Romil Sagar**4. Case :- APPLICATION U/S 482 No. - 5200 of 2022****Applicant :-** Karamvir Singh**Opposite Party :-** Central Bureau Of Investigation (Cbi), S.C.B., Lucknow And 2 Others**Counsel for Applicant :-** Arun Sinha, Siddhartha Sinha, Umang Agarwal**Counsel for Opposite Party :-** Anurag Kumar Singh, G.A., Narendra Kumar Sharma, Romil Sagar**5. Case :- APPLICATION U/S 482 No. - 5313 of 2022****Applicant :-** Sunil Kumar Singh**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And Others**Counsel for Applicant :-** Dr. Pooja Singh**Counsel for Opposite Party :-** G.A., Anurag Kumar Singh, Narendra Kumar Sharma, Romil Sagar**6. Case :- APPLICATION U/S 482 No. - 6543 of 2022****Applicant :-** Pahind Singh**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Civil Secrett. Lucknow And Others**Counsel for Applicant :-** Shubham Gupta, Amul Mani Tripathi**Counsel for Opposite Party :-** G.A., Narendra Kumar Sharma, Romil Sagar

7.Case :- APPLICATION U/S 482 No. - 6649 of 2022

Applicant :- Babu Ram Dubey

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.
And Others**

Counsel for Applicant :- Amul Mani Tripathi, Shubham Gupta

Counsel for Opposite Party :- G.A., Anurag Kumar Singh

Hon'ble Dinesh Kumar Singh, J.

1. These seven petitioners under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC") have been filed, impugning the summoning order dated 07.07.2022 passed by the learned Special Judicial Magistrate, C.B.I., Lucknow in Complaint Case No. 3845 of 2019.

2. The facts, giving rise to these petitioners briefly stated are that the Government of India launched a scheme, named and styled as 'National Rural Health Mission' (hereinafter referred to as the "NRHM") on 12.04.2003 with a view to provide accessible, adequate and affordable health service to all persons, particularly, to vulnerable section of the society, residing in remote areas. The separate Memorandum of Understandings were entered into between the Central Government and the State Governments for decentralizing the implementation of the scheme and mobilizing the resources for implementing the said scheme. Such a Memorandum of Understanding with the Government of Uttar Pradesh was entered into on 12.11.2006. As per the said Memorandum, 85% funds were to be provided by the Central Government whereas the State Government was to contribute 15% of the total funds for the Mission.

3. The State Health Society (hereinafter referred to as the "SHS") was established under the Chairmanship of Chief Secretary, Government of Uttar Pradesh and the existing State Agencies involved in implementation of tuberculous, blindness and leprosy eradication as well as other State Empowered Committee for RCH etc. were merged with the SHS.

4. On the allegation of large scale bungling, misappropriation and cheating of public funds, while implementing the NRHM by the

government officials, in active connivance and conspiracy with private persons, Public Interest Litigation Petition Nos. 3611 (M/B) of 2011, 3301 (M/B) of 2011 and 2647 (M/B) of 2011 came to be filed. This Court vide order 15th November, 2011 directed as under:-

".....We are prima facie convinced that gross irregularities financial and administrative appear to have been committed in the execution and implementation of NRHM including the matter of award of contracts, procurement of goods, article and etc. at various levels.

.....The facts and circumstances, aforesaid make out a case for reference to CBI for making a preliminary enquiry in the affairs of NRHM in the entire State of U.P. right from the very inception of the NRHM.

We, therefore, direct the Director, CBI to conduct a preliminary enquiry in the matter of execution and implementation of the NRHM and utilization of funds at various levels during such implementation in the entire State of U.P. and register regular case in respect of persons against whom prima facie cognizable offence is made out and proceed in accordance with law. The preliminary enquiry shall be conducted from the period commencing year 2005-06 till date....."

5. In compliance of the directions issued by this Court, the CBI, after making preliminary inquiries, registered FIR bearing RC No.01(A)/2012 dated 02.01.2012 in the matter of irregularities in utilization of funds allocated to the UP Small Scale Industries Corporation for supply/procurement of various items under the NRHM during the year 2009-2010.

6. In May, 2010, the State Government of U.P. vide Government Order No.1570/Sec-2-5-10-7(109) dated 05.05.2010 bifurcated the post of Chief Medical Officer (hereinafter referred to as the "CMO") into District Project Officer (Family Welfare) and CMO (Health). Considerable funds under NRHM Scheme were placed at the disposal of the CMO (Family Welfare) of various districts of U.P. for procurement of medicines and equipments, hiring contractual manpower and ambulances, expenditure on information, education and communication which included publicity through wall-writings, banners, posters and advertisements etc.

7. Dr. Y.S. Sachan had remained posted as Deputy Chief Medical Officer in the office of CMO, Lucknow from 26.07.2007 to 08.09.2010 when Dr. Anil Kumar Shukla was working as CMO, Lucknow. After bifurcation, Dr. A.K. Shukla was posted as CMO (Health), Lucknow, whereas on 15.05.2010 Dr. Rajendra Prasad Kushwaha was posted as District Project Officer (Family Welfare), Lucknow. On 24.07.2010, Dr. Vinod Kumar Arya (hereinafter referred to as "V.K. Arya") was posted as successor of Dr. Rajendra Prasad Kushwaha. Dr. Y.S. Sachan was transferred from office of the CMO (Health), Lucknow to the office of District Project Officer (Family Welfare), Lucknow vide Order No.1529/5-9-2010-09(221/10) dated 09.09.2010. In the month of October, 2010, the post of District Project Officer (Family Welfare) was re-designated as CMO (Family Welfare).

8. Dr. V.K. Arya was shot dead in the morning of 27.10.2010, while he was taking morning walk near his house at Vikas Nagar, Lucknow by some unidentified motorcycle borne assailants. First Information Report (hereinafter referred to as the "FIR") vide Case Crime No.0322 of 2010 was registered at Police Station Vikas Nagar, Lucknow under Section 302 IPC on the complaint of Dr. (Smt) Shashi Kumari, wife of Dr. V.K. Arya. In this case, local police initially arrested Vijay Dubey, Abhay Singh, Anshu Dixit, Amit Kumar Dixit and Ajay Mishra. After murder, the charge of CMO (Family Welfare), Lucknow was given to Dr. Y.S. Sachan on 22.11.2010, who worked as In-charge CMO (Family Welfare), Lucknow till 25.02.2011 in the absence of regular CMO. During the Financial Year 2010-2011, a total amount of Rs. 32.49 Crores were received by the Lucknow District under different heads of NRHM Schemes from State Health Society, out of which a total amount of Rs.19.35 Crores were spent. Dr. Y.S. Sachan, during his tenure as In-charge CMO (Family Welfare), Lucknow, spent an amount of Rs. 8 Crores 21 Lac under different heads.

9. After murder of Dr. V.K. Arya, Dr. B.P. Singh was posted as CMO (Family Welfare), Lucknow on 25.02.2011 and Dr. Y.S. Sachan continued to work as his Deputy CMO. In the morning of 02.04.2011, Dr. B.P. Singh was also shot dead by motorcycle borne unidentified assailants near his house, while he was taking morning walk in similar fashion as was the case in committing murder of Dr. V.K. Arya. In this regard, FIR vide Case Crime No.0269 of 2011 dated 02.04.2011, under Section 302 IPC was registered at Police Station Gomti Nagar, Lucknow. Investigation was taken up by Sub-Inspector, Mr. Abhimanyu Dhar Dwivedi, Station Officer. On 04.04.2011, Mr. Abhimanyu Dhar Dwivedi, Station Officer of Police Station Gomti Nagar and I.O of the case examined Dr. Y.S. Sachan and recorded his statement in order to get some clue in murder case of Dr. B.P. Singh, but without any success.

10. After murder of Dr. B.P. Singh on 02.04.2011, an FIR vide Case Crime No.0112 of 2011 was registered at Police Station Wazirganj, Lucknow on 05.04.2011, under Sections 409, 419, 420, 467, 468 and 471 IPC against Dr. Y.S. Sachan and two others for bungling, misappropriation, cheating and forgery etc of NRHM funds during the Financial Year 2010-2011. On 05.04.2011, Dr. Y.S. Sachan was summoned in Crime Branch, Hazratganj, Lucknow. Dr. Y.S. Sachan was arrested on the same day in relation to Case Crime No.0112 of 2011 and sent to District Jail, Lucknow on 06.04.2011.

11. In view of murders of the two CMOs, both the Ministers for Health and Family Welfare resigned on 07.04.2011 and Mr. Pradeep Shukla, Principal Secretary (Health) was also transferred on the same day. Another FIR vide Case Crime No.0115 of 2011 was also registered at Police Station Wazirganj, Lucknow under Sections 409, 419, 420, 467, 468 and 471 IPC on 07.04.2011 against Dr. Y.S. Sachan and Dr. A.K. Shukla for misappropriation, bungling, cheating of NRHM funds in CMO Office, Lucknow during the Financial Year 2009-2010. Dr. Y.S. Sachan remained in judicial custody from

05.04.2011 to 06.04.2011. On account of high blood pressure and diabetes, Dr. Y.S. Sachan was admitted in District Jail Hospital, Lucknow on 06.04.2011. On 08.04.2011, Dr. Y.S. Sachan was taken on police custody remand for 48 hours in Case Crime No.0112 of 2011 lodged at Police Station Wajirganj, Lucknow, but again he got hospitalized in Balrampur District Hospital at 5.30 p.m. Dr. Y.S. Sachan was discharged from Balrampur District Hospital on 10.04.2011 and sent to District Jail, Lucknow where he was admitted in District Jail Hospital and discharged on 11.04.2011. Dr. Y.S. Sachan was again taken on police custody remand for one day on 13.04.2011 in Case Crime No.0112 of 2011. The Jail Doctor, however, opined that his police custody was subject to clearance from the expert of Balrampur District Hospital. Dr. Y.S. Sachan was admitted in Balrampur District Hospital and discharged on the next day i.e. 14.04.2011 and again sent back to District Jail, Lucknow. Dr. Y.S. Sachan remained hospitalized in District Jail Hospital, Lucknow from 10.04.2011 to 11.04.2011, from 16.04.2011 to 07.06.2011 and from 11.06.2011 to 22.06.2011 (till his death).

12. It would be relevant to take note that after two months from initial arrest on 05.04.2011, when Dr. Y.S. Sachan was again taken in police custody remand for 24 hours on 10.06.2011 in relation to Case Crime No.0115 of 2011 lodged at Police Station Wazirganj his statement was recorded for the second time by the Investigating Officer, Mr. Abhimanyu Dhar Dwivedi on 15.06.2011 in relation to Case Crime No.0269 of 2011 lodged at Police Station Gomti Nagar (Dr. B.P. Singh murder case) after taking permission from the Court. On 17.06.2011, Special Task Force (hereinafter referred to as the "STF"), Lucknow of U.P. Police arrested Anand Prakash Tiwari, Ram Krishan Verma and Vinod Sharma for murder of Dr. B.P. Singh and during interrogation, they had disclosed complicity of Dr. Y.S. Sachan in the said case. On the same day i.e. 17.06.2011, in the evening, the then Cabinet Secretary of Government of U.P. convened a press conference and claimed that the two CMOs were murdered at the instance of Dr.

Y.S. Sachan. On 18.06.2011, Sub-Inspector, Mr. Abhimanyu Dhar Dwivedi filed an application in the Court of Chief Judicial Magistrate, Lucknow for production of Dr. Y.S. Sachan before the Court so that he might be remanded in judicial custody in relation to Case Crime No.0269 of 2011. Accordingly, Dr. Y.S. Sachan was produced in the Court of Chief Judicial Magistrate, Lucknow on 20.06.2011. Sub-Inspector, Mr. Abhimanyu Dhar Dwivedi recorded further statement of Dr. Y.S. Sachan on 21.06.2011 in District Jail, Lucknow after permission from the Court. On 22.06.2011, dead-body of Dr. Y.S. Sachan was found on 1st Floor of unused toilet of Jail Hospital, Lucknow. On 23.06.2011, Dr. Malti Sachan, wife of Dr. Y.S. Sachan, sent a complaint to the Station Officer, Police Station Gosainganj, Lucknow, alleging therein murder of her husband on 22.06.2011 in Jail Hospital, Lucknow. On the basis of the complaint sent by Dr. Malti Sachan, wife of Dr. Y.S. Sachan, FIR vide Case Crime No.0276 of 2011 dated 26.06.2011 was lodged against unknown person(s) under Sections 120-B and 302 IPC.

13. Dr. Malti Sachan, in her complaint, alleged that on 05.04.2011 her husband was summoned by the Wazirganj Police, Lucknow for interrogation in the case relating to large scale financial irregularities in Family Welfare Department and that there appeared to be involvement of high ranking officers. Earlier two CMOs were also murdered. Her husband was sent to prison pursuant to a well-designed criminal conspiracy hatched by the responsible officers of the State Government on the allegations of bungling of Crores of rupees in Family Welfare Department. Initially, there were allegations of financial irregularities against him but later on, he was also linked to the murders of Dr. V.K. Arya and Dr. B.P. Singh, both were the then CMOs (Family Welfare), Lucknow. On 23.06.2011, her husband was to appear in the Court and he could have disclosed involvement of high influential persons in the Government. Her husband was done to death in a planned manner by inflicting grievous injuries in order to shield the high influential persons.

14. This Court vide order dated 14.07.2011 passed in Writ Petition No.6601 (M/B) of 2011 (PIL) filed by (Sachchidanand Sachchay Vs. State of U.P. and others) directed the CBI to investigate reasons, circumstances and cause of death of Dr. Y.S. Sachan. FIR vide Case Crime No.0276 of 2011, lodged at Police Station Gosaiganj, was re-registered as FIR No.RC0532011S0004 of 2011, under Sections 302 and 120-B IPC, Police Station CBI/SCB/Lucknow on 15.07.2011.

15. The CBI took cognizance pursuant to the said order passed by this Court in respect of death of Dr. Y.S. Sachan.

16. As per statement recorded on 15.06.2011 by the Investigating Officer (hereinafter referred to as the "IO"), Abhimanyu Dhar Dwivedi, Dr. Y.S. Sachan admitted his complicity in the murder case of both the CMOs. In case of Dr.V.K. Arya, he admitted that after issuance of Government Orders dated 14.10.2010 and 18.10.2010 he was not made second signatory to sign cheques by Dr. V.K. Arya due to which he was not getting any monetary benefit. In case of Dr. B.P. Singh, he (Dr. Y.S. Sachan) admitted that Dr. B.P. Singh had humiliated him for various payments made during his tenure as CMO (Family Welfare), Lucknow towards hiring of vehicles, maintenance of official buildings and hiring security guards etc. He was also accused of making fraudulent payment of Rs. 1.05 Lac to his associate, Ram Krishna Verma. Dr. B.P. Singh was bent upon fixing him for the financial irregularities. He also visited house of Dr. B.P. Singh to sort out the matter but in vain. He confined ill-treatment meted out to him at the hands of Dr. B.P. Singh to his associate, Mr. Ram Krishna Verma, who assured him that he would get rid of Dr. B.P. Singh as was done in the case of Dr. V.K. Arya.

17. The STF, Lucknow of UP Police was working in tandem with Lucknow Police to solve the murder cases of the two CMOs. On 17.06.2011, the STF, Lucknow arrested three accused persons, namely, Ram Krishna Verma, Anand Prakash Tiwari and Vinod Sharma for their involvement in the murder of Dr. B.P. Singh. During interrogation, the trio admitted before the STF that both the CMOs

were murdered at the instance of Dr. Y.S. Sachan and thereafter the Cabinet Secretary, Government of U.P., in the evening of 17.06.2011, held a press conference and said that as per the police investigation both the CMOs (Dr. V. K. Arya and Dr. B. P. Singh) were murdered at the instance Dr. Y.S. Sachan. The said conference was given wide coverage by both Electronic and Print Media.

18. It is said that as per police statement of Dr. Y.S. Sachan recorded on 21.06.2011, Ram Krishna Verma, friend of Dr. Y.S. Sachan, introduced him to Anand Prakash Tiwari. Anand Prakash Tiwari was offered Rs. 7 Lac for committing murder of Dr.B.P. Singh. Anand Prakash Tiwari was given Rs.50,000/- as an advance for the job. Dr. Y.S. Sachan took Anand Prakash Tiwari to his office and showed him the target i.e. Dr. B.P. Singh. He also provided residential address to Dr. B.P. Singh to Anand Prakash Tiwari and showed his house to him. Dr. Y.S. Sachan was not talking to his accomplices over phone to chalk out the strategy but would convey the modalities through Ram Krishna Verma or in person. In the morning of 02.04.2011, Anand Prakash Tiwari came to him to collect the remaining amount after committing the murder of Dr. B.P. Singh. Anand Prakash Tiwari handed over him the pistol used in commission of the crime, which Dr. Y.S. Sachan concealed in his office and was ready to get it recovered to the police.

19. The CBI, in its investigation, in respect of death of Dr. Y.S. Sachan, found that on 22.06.2011, while locking the jail in the evening, Dr. Y.S. Sachan was found missing. On being searched, his dead-body was found at about 20.15 hours under mysterious circumstances on 1st floor in an unused toilet of minor operation theater of the jail hospital which was under construction. There were cut-marks on his body, and a leather belt was found tied around his neck. Buckle end of the belt was found entangled in the ventilator of toilet. The dead-body was taken out from the toilet and kept in the corridor at 1st floor for examination by doctor of jail hospital. On examination, Dr. V.V. Tripathi declared him dead at about 20.30 hours.

The information was given to the Station Officer, Police Station Gosaiganj, Lucknow about death of Dr. Y.S. Sachan and the inquest proceedings were conducted by Mr. Jitendra Srivastava, Tehsildar, Mohanlalganj on the same day. The inquest proceedings were conducted from 23:15 hours of 22.06.2011 to 01:30 hours of 23.06.2011. After inquest proceedings got concluded FSL Team, comprising of the experts from biology, serology, physics, ballistics, photography and their supporting staff reached at the spot and sniffer dogs were also pressed into service. The place of occurrence and dead-body were photographed and video recorded by the experts of the FSL, Lucknow in the night of 22/23.06.2011.

20. A panel of doctors was constitute for conducting autopsy. As per postmortem report, there were 8 antemortem incised wounds and one postmortem ligature mark on neck of body of Dr. Y.S. Sachan. Cause of death was opined to be shock and hemorrhage.

21. The FSL submitted its report dated 18.07.2011 regarding inspection of scene of occurrence on 22.06.2011 and 23.06.2011 and as per the FSL report a leather belt was found tied around the neck of the deceased with a slipping knot, blood was spread all over the floor of the toilet and clotted. One plastic bottle, half filled with water like liquid, was also found on the door of the toilet, blood was detected on the iron rod of the ventilator and also recovered one half shaving blade under questionable circumstances.

22. Dr. B.S. Arora, Additional Director and Dr. S.C. Mittal, Joint Director, State Forensic Medicine Experts, Government of U.P. vide their report dated 22.07.2011 opined that the death of Dr. Y.S. Sachan did not appear to be a case of suicide.

23. The CBI, during the course of investigation, requisitioned the services of experts of CFSL, CBI, New Delhi, along with Dr. T.D. Dogra, Professor & Head, Department of Forensic Medicine and Toxicology, AIIMS, New-Delhi. The experts collected certain samples from the scene of occurrence and the place was also photographed. During inspection, jail hospital premises was also searched to trace

any physical clue/chance, however, nothing incriminating was found. Dr. M.S. Dahiya, Deputy Director, FSL, Gandhinagar, Gujarat also inspected the place of occurrence. CCTV footage of cameras installed in District Jail, Lucknow were scanned/scrutinized for movement of any person and vehicle.

24. The CBI sought constitution of a medical board of experts at AIIMS, New-Delhi for opinion on the nature of injuries and cause of death. Expert opinion of the hand-writing experts of documents seized/recovered during investigation was also sought. Polygraph examination of suspected persons was conducted.

25. The Medical Board of AIIMS, New-Delhi was of the opinion that the deceased could have first attempted to kill himself by inflicting incised wounds on the known suicidal sites where arteries and veins were situated i.e. wrists, elbow, neck and inguinal region. The injuries inflicted did not cut any artery or vein instead of superficial veins were cut from which there was bleeding, but it was very slow. Hence, after sometime, when the deceased realized that the injuries were not killing him fast, he could have attempted to hang himself with the help of belt in which he had succeeded and, therefore, the immediate cause of death in this case was asphyxia as a result of hanging associated with the bleeding from the injuries inflicted. This observation was made by the Board of Doctors of AIIMS, New-Delhi after perusing/examining postmortem report, video recording of postmortem examination and photographs of dead-body and place of occurrence taken on 22/23.06.2011-. The Board answered the questions framed by the CBI in detail which is part of the investigation report of the CBI.

26. As many as seven jail officials and one Ajmat Ullah Beg, convict, who was working in Jail Hospital, were subjected to polygraph examination and they denied their involvement in any foul play relating to murder of Dr. Y.S. Sachan, and the CBI did not find their involvement on any of the material issues. The CBI, after analyzing

its evidence and opinion of the experts, was of the view that the deceased had committed suicide.

27. The final/closure report submitted under Section 173(2) CrPC by the CBI had included the detailed scientific investigation with the help of experts carried out by the CBI which runs into several pages and on the basis of the said detailed scientific investigation, the CBI had concluded that Dr. Y.S. Sachan had committed suicide, and it was not a case of homicidal death. The closure report would also disclose that the experts, who conducted serological autopsy in respect of death of Dr. Y.S. Sachan had found that Dr. Y.S. Sachan was under tremendous pressure/stress after seeing newspaper reports dated 18.06.2011 wherein his involvement in murder of two CMOs was widely reported. He was highly disturbed and shown less interest in eating food after 18.06.2011. His blood pressure was very high. He had written typical suicide note, which was recovered among his belongings on the date of incident, suggests that it was in his handwriting. The injuries would suggest self-inflicted one, specially in absence of definite wounds.

28. The CBI also investigated the procedure/practice for locking and unlocking jail and counting of inmates and jail staff in District Jail, Lucknow and actual events in this regard on 22.06.2011.

29. It is mentioned in the report that Dr. Y.S. Sachan was present in Ward No. 2 at the time of unlocking of jail at 6 hours on 22.06.2011. He used to wake up early in morning for morning walk. On the date of incident, he was seen in the ward in the morning by co-inmates, namely, Furkan, Ramkpal Verma and Kailash. Inmate Shripal Verma had seen Dr. Y.S. Sachan going out of Ward No. 2 with water bottle in his hand. Inmate, Ram Pal Verma who was allotted Bed No. 14 in Ward No. 2 had seen Dr. Y.S. Sachan washing/cleaning his face. He collected water in the bottle at about 7.30 hours in morning of 22.06.2011. Dr. Y.S. Sachan was wearing pant and shirt.

30. During evening counting and locking of the jail hospital, when strength of inmates was communicated by the Head Warder, Mr. Babu

Ram Dubey to the Control Room, Chief Head Warder on duty detected discrepancy of shortage of one inmate of Jail Hospital. Control Room informed the same to Mr. Babu Ram Dubey and called him in Control Room. When Mr. Babu Ram Dubey pointed out about Dr. Y.S. Sachan went on remand, he was asked about the slip issued by the office of Deputy Jailer, Under Trial Section, for sending Dr. Y.S. Sachan on remand. On search, the said slip was not found available. When this fact was cross-checked from office of Deputy Jailer (Under Trial) and main gate, it was confirmed that Dr. Y.S. Sachan was not sent on remand on 22.06.2011. Thereafter, search was started for tracing Dr. Y.S. Sachan out.

31. While searching Dr. Y.S. Sachan in this jail hospital premises, the Head Warder, Mr. Babu Ram Dubey went to 1st floor of jail hospital and he found door of the unused toilet attached with the operation theater partly opened. He pushed the door and found a person in sitting posture above the commode of the toilet. The 1st floor of the jail hospital had no electricity supply, but there was visibility due to percolation of lights through glass window panes of the operation theater and toilet ventilator. Head Warder Babu Ram Dubey shouted from 1st floor that Dr. Y.S. Sachan had been found in toilet. On hearing shouts of Mr. Dubey, Mr. Bhimsen Mukund along with Warder Dan Singh and others rushed to 1st floor of the jail hospital.

32. On reaching 1st floor, Mr. Bhimsen Mukund checked inside the toilet. Dr. Y.S. Sachan was taken out from toilet and his body was kept in corridor. Dr. V.V. Tripathi, after examination, declared him dead. The information was given over phone to Mr. V.K. Gupta, IGP (Jail Administration & Reform Services); Mr. Anil Sagar, District Magistrate, Lucknow; Mr. D.K. Thakur, DIG, Lucknow; FSL, Lucknow and to the Station Officer of Police Station Gosaiganj by Mr. S.H.M. Rizvi, Senior Jail Superintendent. Sniffer dogs reached to the spot.

33. On receiving information, Mr. V.K. Gupta, IGP (Jail Administration & Reform Services); Mr. Anil Sagar, District

Magistrate, Lucknow; Mr. D.K. Thakur, DIG, Lucknow; experts of FSL and others reached to the spot and inspected the site. Inquest proceedings were conducted by Mr. Jitendra Srivastava, Tehsildar, Mohanlalganj. Mr. V.K. Gupta made inquiries from inmates of Ward No. 2. Thereafter, he searched personal belongings of Dr. Y.S. Sachan lying on the side steel rack of his bed. He took out a note/paper from the belongings of Dr. Y.S. Sachan and after perusing it kept the same in his pocket. Thereafter, Mr. V.K. Gupta again went to 1st floor and read out contents of the said note to someone over phone. Some contents of the note were also overheard by Mr. J.P. Srivastava. During examination, Mr. J.P. Srivastava stated that he overheard that *“mujhe apne parivar se koi shikayat nahi hai, na hi karagar ke adhikariyo se”*

34. Mr. V.K. Gupta, in the intervening night of 22/23.06.2011 gave a brief interview to electronic media regarding death of Dr. Y.S. Sachan, and he told that note/paper which could be said to be suicide note was found. Something written by hand had been found but till handwriting was examined and other things were not verified, nothing definite could be said about it.

35. The Lucknow Police was under tremendous pressure to solve the murder case of Dr. B.P. Singh, therefore, various teams were formed and assigned the task of working out the cases. One team, comprising of Inspectors, Mr. Anil Singh and D.K. Shahi and Sub-Inspector, K.N. Singh was also formed under supervision of the then IGP, Lucknow Zone, Lucknow for the said purpose. Dr. Y.S. Sachan was taken on remand for 24 hours by Sub-Inspector, Mr. Shajaur Rahim in 2nd NRHM Scam (Case Crime No.115 of 2011, lodged at Police Station Wazirganj) in the morning of 10.06.2011. In the intervening night of 10/11/06/2011, he was taken to Police Station Chinhat where he was interrogated by team of Inspector, Mr. Anil Singh and others. In the morning of 11.06.2011, he was lodged back at District Jail, Lucknow where he was again interrogated by Inspector, Mr. Anil Singh and Sub-Inspector, Mr. K.N. Singh.

36. During interrogation, Dr. Y.S. Sachan gave a hand-written note/letter meant to be given to Dr. A.K. Shukla, to Inspector, Mr. Anil Singh, who in turn handed over the said letter to Mr. Subesh Kumar Singh, the then IGP, Lucknow Zone, Lucknow. During investigation, the said letter was produced by Mr. Subesh Kumar Singh before the CBI. The letter dated 11.06.2011 written by Dr. Y.S. Sachan addressed to Dr. A.K. Shukla would read as “*CMO Dr. A.K. Shukla mai jail me bahut pareshan ho gaya hon. Mere parivar ki halat kharab hai. Ap ne meri kuchh madad nihi kiya. Agar aap ne madad nahi ki to agli remand ki tarikh par police va media to bata donga ki dono CMO ki hatya apne karwaya hai. Mere parivar ki suraksha ka dhyan rakhiyega. Apka*”.

37. The said note would indicate that both Dr. Y.S. Sachan and Dr. A.K. Shukla were privy to murder of both the CMOs.

38. The CBI concluded after thorough, detailed and scientific investigation from all angles, including the opinion of the experts, that no evidence had come on record indicating death of Dr. Y.S. Sachan in jail hospital on 22.06.2011 to be a homicide and no evidence could come, pointing out presence of second person on 1st floor of the toilet of jail hospital. The evidence collected during investigation, included statements of witnesses, expert opinion of Board of Directors of AIIMS, New-Delhi, the reports of CFSL experts including biological reports, physics, fingerprint, hand-writing experts, chemical examiner & forensic psychologist all of which indicated that Dr. Y.S. Sachan had committed suicide.

39. The evidence included circumstantial evidence which emerged during investigation revealed that Dr. Y.S. Sachan was extremely disturbed and stressed after disclosure of his complicity in the murder cases of CMOs and he even stopped taking meals. The opinion of the Board of Doctors of AIIMS, New-Delhi that the cause of death in case of Dr. Y.S. Sachan was antemortem hanging associated with multiple suicidal wounds was also fully got corroborated by the oral as well as documentary evidence which came on record during

investigation. There was some omissions and commissions on the part of Pahender Singh the then warder and Babu Ram Dubey the then head warder for failing to do actual head count of inmates and maintain correct entries as well as failure on the part of Mr. V.K. Gupta then then IGP (Jail Administration and Reform Services) for bringing on record the note written by Dr. Y.S. Sachan and causing disappearance of the same in view of which matter was taken up by the CBI with the Government of Uttar Pradesh for taking an appropriate departmental action against them.

40. The closure report dated 27.09.2012 was filed by CBI under Section 173 (2) CrPC after reaching to the conclusion that death of Dr. Y.S. Sachan was not homicide, but suicide. The complainant filed a protest petition alleging therein various gaps in the investigation and prayed for further investigation.

41. The CBI filed reply to the protest petition, however, the learned Magistrate vide order dated 22.02.2013 directed the CBI for further investigation of the offence.

42. The CBI undertook the further investigation and filed a supplementary closure report after investigating all the aspects highlighted in the order of learned Magistrate as well as on each of the allegations made by the complainant in the said protest petition; viz. (i) the injuries were not self-inflicted (ii) recovery of blade doubtful (iii) difference of opinion between panel of Board of Forensic Medicine Experts, AIIMS and panel of Doctors who conducted postmortem examination (iv) no proper investigation on belt (v) no report on the surgical knife taken by the police from the pharmacist (vi) statements under Section 161 CrPC of Anil Kumar Singh and petitioner, Subesh Kumar Singh, which were recorded for the note in question (vii) CBI's approach had been *abinitio* towards the conclusion as a case of suicide (viii) CJM inquiry report; and (ix) second opinion from Board of Experts (AIIMS).

43. The complainant was not satisfied even with the supplementary closure report and again filed a protest petition for summoning of

seven accused persons (the petitioners) for trial of murder of Dr. Y.S. Sachan and for causing disappearance of evidence.

44. The CBI filed reply to the protest petition.

45. The learned Magistrate vide order dated 19.11.2019 had rejected the second final report, treating the protest petition as a complaint case. The statement of complainant, Malti Sachan got recorded under Section 200 CrPC and statement of six witnesses got recorded under Section 202 CrPC. Thereafter, the impugned order was passed, summoning the petitioners to face trial under Section 302 read with Section 120-B IPC.

46. The petitioners are Ex-serving government servants. There is no prior sanction under Section 197 CrPC. Absence of sanction, as mandated under Section 197 CrPC, would otherwise vitiate the impugned order. In sum & substance, the allegation is for disappearance of evidence.

47. In the case reported in **(2020) 7 SCC 695 (D. Devaraja Vs. Owais Sabeer Hussain)**, in respect of police officer (accused of offence), while discharging duties, has held in paragraphs 65 to 75, which read as under:-

“65. The law relating to the requirement of sanction to entertain and/or take cognizance of an offence, allegedly committed by a police officer under Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act, is well settled by this Court, inter alia by its decisions referred to above.

66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the Government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate Government.

67. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a policeman assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However, if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.

72. On the question of the stage at which the trial court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are diverse decisions of this Court.

73. While this Court has, in *D.T. Virupakshappa* [*D.T. Virupakshappa v. C. Subash*, (2015) 12 SCC 231 : (2016) 1 SCC (Cri) 82] held that the High Court had erred [*D.T. Virupakshappa v. C. Subash*, 2013 SCC OnLine Kar 10774] in not setting aside an order of the trial court taking cognizance of a complaint, in exercise of the power under Section 482 of the Criminal Procedure Code, in *Matajog Dobey* [*Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44 : 1956 Cri LJ 140] this Court held that it is not always necessary that the need for sanction under Section 197 is to be considered as soon as the complaint is lodged and on the allegations contained therein. The complainant may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty and/or under colour of duty. However, the facts subsequently coming to light in course of the trial or upon police or judicial enquiry may establish the necessity for sanction. Thus, whether sanction is necessary or not may have to be determined at any stage of the proceedings.

74. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are *ex facie* bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by *mala fides* and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court.

75. There is also no reason to suppose that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complainant can take recourse to law. At the cost of repetition, it is reiterated that the records of the instant case clearly reveal that the complainant alleged of police excesses while the respondent was in custody, in the course of investigation in connection with Crime No. 12/2012. Patently, the complaint pertains to an act under colour of duty.”

48. The learned Magistrate, while issuing summoning order, has failed to record reasons for summoning the petitioners under Sections 302 read with Section 120-B IPC. The impugned order neither reflects an application of mind nor it deals with the investigation reports submitted by the CBI on every aspects and allegations.

49. As mentioned above, the CBI had filed the first closure report, and thereafter, under the direction of learned Magistrate carried out further

investigation other than the points highlighted and had again filed the closure report. However, the learned Magistrate has rejected both the closure reports and treated the protest petition as a 'complaint case'.

50. The learned Magistrate, while taking cognizance on the basis of the complaint, has to be more cautious and careful than taking cognizance on police report as in the latter scenario, the Magistrate had an advantage of police report, which would be filed after collecting evidence and material by the investigating agency. In the case in hand, the Magistrate did not have the benefit of police reports, which are against the theory of the complainant. It was the duty of the learned Magistrate to be more careful inasmuch as he would summon the persons on the allegations of the complaint to face trial for an offence under Section 302 IPC. There must be compelling reasons and overwhelming material to discard conclusion of the investigation reports submitted by the CBI. However, the statement of the complainant and witnesses recorded under Section 200 and 202 CrPC respectively would suggest that those are in respect of same allegations which got investigated thoroughly, impartially, fairly and scientifically by the CBI and found no substance in the theory of the complaint. No new evidence and material has been brought on record. There was nothing new before the learned Magistrate to take cognizance for an offence under Section 302 IPC.

51. The allegations are against the retired/serving public/police officers, who were acting in discharge of their official duty when the police was carrying out investigation. The Magistrate should not have acted on guess of the complainant. The complainant is obsessed with new theory of gaps in the investigation by the CBI. Existence of overwhelming material and compelling reasons is a must before summoning a person. Summoning of a person to face trial for a criminal case is a serious matter. The complaint in the present case would not disclose commission of offence under Sections 302 and 120-B IPC.

52. In the case reported in **(1998) 5 SCC 749 (Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others)** in paragraph-28 it has been held as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

53. In the case report in **(2015) 12 SCC 420 (Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others)** in paragraphs 21, 22 and 23 it has been held as under:-

"21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at

that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate.”

54. The findings of the CBI have been mentioned-herein above in detail to highlight that how detail scientific, meticulous and fair investigation was carried out by the CBI for reaching to the conclusion that it was not a case of homicide, but suicide. There should have been overwhelming material and evidence to

discard/ignore such a report before the learned Magistrate. At the cost of repetition, it is mentioned here that there has been nothing before the learned Magistrate to discard the reports submitted by the CBI.

55. In view of the aforesaid discussion, in absence of order of sanction for prosecution of the petitioners for the offence in question, the order of cognizance is bad in law and is liable to be set-aside. Even otherwise, the impugned order, which would disclose non-application of mind by the learned Magistrate and without there being any overwhelming evidence and material to discard the closure reports filed by the CBI under Section 173 (2) CrPC, summoning the petitioners, who are retired/serving government officers to face trial for such a serious offence under Section 302 read with Section 120-B IPC, is preposterous and to some extent outrageous. The impugned order is, therefore, set-aside.

56. Accordingly, all the petitions are **allowed**.

[D.K. SINGH, J.]

Order Date:-28.02.2023

MVS/-