

**Reserved**

**Court No. - 12**

**Case :-** APPLICATION U/S 482 No. - 7810 of 2023

**Applicant :-** Pawan Khera

**Opposite Party :-** The State Of U.P., Thru. Addl. Chief Secy. Home/Prin. Secy. Home, Lko. And Another

**Counsel for Applicant :-** Sudhanshu S. Tripathi, Anjani Kumar Mishra, Praveen Kumar Yadav

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

**Hon'ble Rajeev Singh, J.**

1. Heard S.G. Husnain, learned Senior Advocate assisted by Shri Sudhanshu Shekhar Tripathi, Shri Syed Mohd. Fazal, Shri Praveen Kumar Yadav, Shri Anjani Kumar Mishra and Shri Rohit Kaliyar, learned counsel for the applicant and Dr. V.K. Singh, learned Government Advocate assisted by Shri Shiv Nath Tilhari, learned A.G.A. for the State.

Supplementary affidavit and the better affidavit filed by the learned counsel for the applicant duly sworn by the applicant-Pawan Khera in support of the application are already taken on record.

2. This application has been filed for quashing the charge sheet dated 08.04.2023 as well as summoning order dated 11.04.2023 passed by Chief Judicial Magistrate, Lucknow in Criminal Case No. 34136 of 2023, (State of U.P. Vs. Pawan Khera) arising out of Case Crime No. 65 of 2023, under Sections 153A, 500, 504, 505(2), 153B(1), 505, 505(1)(b) I.P.C., P.S. Hazratganj, District Lucknow and its entire proceedings.

3. On 9<sup>th</sup> August, 2023, following order was passed.

"1. Heard Mohd. Salman Khurshid, learned Senior Advocate assisted by Sri Sudhanshu S. Tripathi, learned counsel for the applicant as well as Sri Shiv Nath Tilhari, learned A.G.A. for the State.

2. Sri Shiv Nath Tilhari, learned A.G.A. raises preliminary objection on the affidavit filed in support of application, as the present application is filed by Sri Pawan Khera, who is aged about 54 years s/o Sri H.L. Khera r/o House No.D-12, Nizamuddin East, New Delhi- 110013, but the affidavit filed in support of the application has been sworn by one Sri Shiv Prakash Pandey aged about 47 years s/o Sri R.N. Pandey r/o 448/239/671, Near J.B. Icecream Factory, Thakurgani, Chowk, Lucknow, U.P.- 226003, Aadhar No.311647643256, which is not permissible as in criminal matters, affidavit should be filed by the applicant except he is in

jail.

3. Mohd. Salman Khurshid, learned Senior Advocate requests that the matter may be posted day after tomorrow for filing affidavit of the applicant. He also submits that, in the meantime, applicant will also file affidavit tendering unconditional apology for the alleged incident.

4. As requested, list this case on 11.08.2023 at 11:30 a.m.”

4. Learned counsel for the applicant submitted that the applicant, who is presently working as the Chairman of Media and Publicity Department of the Indian National Congress Party, is having full respect for the country as well as constitutional dignitaries, including the Hon'ble Prime Minister of India. It has further been submitted that on 17<sup>th</sup> February, 2023, the applicant conducted a press conference in Mumbai, Maharashtra, in which, some words were uttered by him regarding the name of Prime Minister. However, there was no intention to insult either the Hon'ble Prime Minister of India or his family members and the words uttered by the applicant were mere a slip of tongue.

However, on the basis of written complaint of respondent no. 2-Mukesh Sharma s/o Shanker Lal Sharma, F.I.R. No. 65 of 2023 (supra) was lodged on 20.02.2023 at P.S. Hazratganj, District Lucknow. On the same day, another F.I.R. No. 86 of 2023 was registered for the offence under Sections 153A, 295A and 505 I.P.C., P.S. Cantt., District Varansi. For the same offence, one F.I.R. No. 19 of 2023 under Sections 153A, 153B(1), 500, 504, 505(1)(b), 505(2) and 120B I.P.C., P.S. Haflong, District Dima Hasao, Assam was also lodged on 22.02.2023.

Referring to para 7 of the application, learned counsel for the applicant submitted that on being genuinely got confused and being extremely regretful over his inadvertent mistake, the applicant, in order to correct the said inadvertent error, had promptly and specifically apologised for the same on his official Twitter handle vide Tweet dated 17<sup>th</sup> February, 2023.

5. It has been submitted by the learned counsel for the applicant that the applicant was travelling from Delhi to Raipur on 23.02.2023, but he was de-boarded from Indigo flight on the ground that he was to be arrested by the Assam police in relation to F.I.R. No. 19 of 2023 (supra). The applicant preferred Writ Petition (Criminal) No. 74 of 2023 (Diary No. 8222 of 2023) before the Hon'ble Supreme Court on the same day, i.e., on 23.02.2023 and the Hon'ble Apex Court was pleased to entertain the petition and after hearing, issued a direction that the petitioner-applicant be released on interim bail by the court of competent Magistrate at Delhi, where the petitioner-applicant was to be produced on the said evening. It has also been submitted that the notice of the said petition was also

received by the counsel appearing before the Hon'ble Supreme Court for the State of Assam. The liberty to serve the notice to the learned Standing Counsel appearing for the State of U.P., in addition was also given vide said order. The matter was posted for 27.02.2023 on the issue of clubbing and transferring of all F.I.R.s to one jurisdiction, which have been registered in respect of press conference in question. Learned counsel for the applicant submitted that thereafter, on 20.03.2023, the aforesaid writ petition was disposed by the Hon'ble Supreme Court with the direction that all the F.I.R.s be clubbed and transferred to P.S. Hazratganj, District Lucknow. Vide said order, the interim order granted on 23.02.2023, which was extended by the orders dated 27.02.2023 and 03.03.2023, was also extended upto 10.04.2023. Hon'ble Apex Court vide order dated 20.03.2023 also directed that. Learned counsel for the applicant also submitted that as the alleged offences are punishable less than seven years, the applicant was not taken into custody.

6. Further submission of the learned counsel for the applicant is that the investigation was conducted by the Investigating Officer in the present case and filed the impugned charge sheet on 08.04.2023. It has been informed that Criminal Misc. Writ Petition No. 2565 of 2023 was also filed by the applicant before this Court for quashing of the F.I.R. of the case in question, in which, counter affidavit was invited by a Division Bench of this Court vide order dated 06.04.2023. However, since the charge sheet had already been filed in the case in question on 08.04.2023, the aforesaid petition lost its efficacy.

7. Thereafter, the present application has been preferred for indulgence of this Court. It has been submitted by learned counsel for the applicant that the learned court below committed error in passing the impugned summoning order in cryptic manner. Relying on the decision of the Hon'ble Apex Court in the case of **Pepsi Food Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., (1998) 5 SCC 749**, learned counsel for the applicant submitted that summoning order passed by the Magistrate must reflect that he has applied his mind to the facts of the case and law, and he is under an obligation to examine the nature of allegation made in the complaint and also the evidence, oral as well as documentary, which must be reflected from the summoning order. It has further been submitted that the Magistrate also committed error in summoning the applicant for the offence under Sections 153A, 500, 504, 505(2), 153B(1), 505, 505(1)(b) I.P.C. as no such offences are made out against the applicant. Further, for the offence of Section 500 I.P.C., only complaint has to be filed, but in the present case, the F.I.R. has

been filed, in which, the charge sheet has also been submitted. It has next been submitted by the learned counsel for the applicant that as per Section 199(2) Cr.P.C., the complaint was to be filed by the Public Prosecutor before the learned Sessions Judge.

Drawing the attention of the Court towards Section 320 Cr.P.C., learned counsel for the applicant submitted that the main allegation is of defamation, which is compoundable with the person, who has been defamed. However, in the present case, the aggrieved person has not come forward and he has no grievance.

8. It has been submitted that apparently, as per the prosecution case, it is a case of defamation against the Hon'ble Prime Minister of India and, therefore, the learned Magistrate has no jurisdiction for the same. He also relied on the decisions of the Hon'ble Apex Court in the cases of **Amish Devgan Vs. Union of India & Ors.**, (2021) 1 SCC 1, **Arnab Ranjan Goswami Vs. Union of India & Ors.**, (2020) 14 SCC 12, **K.K. Mishra Vs. State of Madhya Pradesh & Anr.**, (2018) 6 SCC 676, **S. Khushboo Vs. Kanniammal & Anr.** AIR 2010 SCC 3196, **B.C. Chaturvedi Vs. Union of India & Ors.**, AIR 1996 SC 484, **Pravasi Bhalai Sangathan Vs. Union of India & Ors.**, (2014) 11 SCC 477, **Fiona Shrikhande Vs. State of Maharashtra & Anr.**, (2013) 14 SCC 44, **Balwant Singh & Anr. Vs. State of Punjab**, (1995) 3 SCC 214. Further, relying on the decision of the Hon'ble Apex Court in the case of **Mahmood Ali & Ors. Vs. State of U.P. & Ors. (Criminal Appeal No. 2341 of 2023)** decided on 08.08.2023, learned counsel for the applicant prayed that the charge sheet may be quashed. Lastly, learned counsel for the applicant placed reliance on the decision of this Court passed in Application u/s 482 No. 38523 of 2019 (**Salman Khurshid Vs. State of U.P. & Anr.**) and submitted that in the identical matter, the applicant of the said case regretted for his comments, on which, the entire proceedings were quashed.

It has, thus, been submitted that as in the present case, the applicant also tendered unconditional apology before the Hon'ble Supreme Court, therefore, the entire proceedings are liable to be quashed.

9. Learned Government Advocate, on the other hand, vehemently opposed the prayer of the applicant and submitted that, in case, for one of the offences, there is a statutory remedy of filing of complaint, but in case, other offences of Indian Penal Code are made out, then undoubtedly, the investigation can also be conducted and there is no illegality in the investigation conducted by the Investigating Officer. Learned Government Advocate further submitted that F.I.R.

of the case in question was also challenged before the Hon'ble Apex Court in Writ Petition (Criminal) No. 74 of 2023 (Pawan Khera Vs. State of Assam & Ors.), in which, interim bail was granted on 23.02.2023. Thereafter, the said petition was disposed of by the Hon'ble Apex Court vide order dated 20.03.2023 with the direction for clubbing of all the F.I.R.s and to transfer the same to Police Station Hazratganj, District Lucknow and extended the interim bail upto 10.04.2023. Learned Government Advocate also submitted that the liberty was also given by the Hon'ble Apex Court to the petitioner-applicant to apply for regular bail before the jurisdictional court leaving it open to the parties to raise the rest of the contentions before the jurisdictional court.

Learned Government Advocate vehemently submitted that in place of applying for regular bail before the jurisdictional court, as directed by the Hon'ble Supreme Court vide order dated 20.03.2023, the applicant filed CrI. Misc. Writ Petition No. 2565 of 2023 before this Court for quashing of the F.I.R., in which, counter affidavit was invited vide order dated 06.04.2023 from the State Government. However, the charge sheet was prepared on 08.04.2023 and was submitted to the court below, on which, cognizance was also taken on 11.04.2023.

10. Refuting the argument advanced by the learned counsel for the applicant that it is obligatory on the court below to discuss all the fact in the summoning order, learned Government Advocate submitted that it is well settled by the Hon'ble Apex Court that in the case of police report, no detail order is needed at the time of passing of the summoning order. It has also been submitted that all these arguments can very well be placed by the applicant before the court below and mini trial of the case is not permissible by this Court in the present proceedings u/s 482 Cr.P.C. Moreover, the evidences collected by the Investigating Officer cannot be evaluated in the present proceedings.

It has, thus, been submitted that the present application is misconceived and is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for the applicant, learned Government Advocate and gone through the contents of the application, impugned order as well as other relevant documents.

12. Admittedly, in relation to some statement given by the applicant in a press conference dated 17.02.2023 in Mumbai, following 3 F.I.R.s were lodged :

(i) F.I.R. No. 65 of 2023 under Sections 153A, 500, 504, 505(2) I.P.C., P.S. Hazratganj, District Lucknow dated 20<sup>th</sup> February, 2023.

(ii) F.I.R. No. 86 of 2023 under Sections 153A, 295A and 505 I.P.C., P.S. Cantt., District Varansi dated 20.02.2023.

(iii) F.I.R. No. 19 of 2023 under Sections 153A, 153B (1), 500, 504, 505(1)(b), 505(2) and 120B I.P.C., P.S. Haflong, District Dima Hasao, Assam dated 22.02.2023.

13. It is also evident that the applicant was taken into custody by the Assam police on 23.02.2023 at Delhi in relation to the F.I.R. No. 19 of 2023 (supra). A petition bearing Writ Petition (Criminal) No. 74 of 2023 was filed by the applicant-petitioner on the same day, i.e., on 23.02.2023 before the Hon'ble Supreme Court with a prayer for quashing of the complaint; and in the alternative, transfer and clubbing of all the F.I.R.s at one jurisdiction; and to restrain all coercive steps; and also to provide security to the petitioner-applicant and his family members. The said petition was entertained by the Hon'ble Apex Court and vide order dated 23.02.2023 directed that the petitioner-applicant be released on interim bail by the court of competent Magistrate at Delhi, where he was to be produced. While issuing notices to State of U.P. as well as State of Assam, Hon'ble Apex Court fixed the matter for 27.02.2023.

Order dated 23.02.2023 reads as under :

"1 The petitioner is the Chairperson of the Media and Publicity Department of the Indian National Congress. He held a press conference on 17 February 2023 in Mumbai. On 20 February 2023, a complaint was lodged at the Hazratganj Police Station in Lucknow, which was converted into an FIR bearing No 65/2023 for offences punishable under Sections 153A, 500, 504 and 505(2) of the Indian Penal Code 1860. On 20 February 2023, another FIR bearing No 86/2023 was registered at Varanasi for offences punishable under Sections 153A, 25A and 505 of IPC. Today (23 February 2023), the petitioner was deboarded from an Indigo flight travelling from Delhi to Raipur on the ground that he was to be arrested by the Assam Police.

2 A communication has been addressed by SI Lakhindra Saikia of Haflong Police Station, Dima Hasao, Assam to the SHO, Police Station, Domestic Airport, New Delhi stating that the petitioner is required to be apprehended in connection with Haflong PS Case No 19 of 2023 for offences punishable under Sections 153A/153B(1)/500/504/505(1)(b)/505(2) and 120B of IPC.

3 The jurisdiction of this Court under Article 32 of the Constitution has been invoked for diverse reliefs, including:

- (i) quashing of the complaints;
- (ii) in the alternative, transfer and clubbing of the FIRs at one jurisdiction; and
- (iii) restraint on all coercive steps and to provide security to the petitioner and his family.

4 We have heard Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the petitioner, in support of the application for urgent interim reliefs. Ms Aishwarya Bhati, Additional Solicitor General, appears for the State of Assam with Mr Shuvodeep Roy.

5 Since the proceedings were mentioned for urgent orders, this Bench has been constituted.

6 At the outset, we have indicated to counsel for the petitioner that a petition under Article 32 cannot be entertained for quashing the FIRs since the petitioner has an alternate remedy under Section 482 of the Code of Criminal Procedure 1973 before the jurisdictional High Court. Moreover, the petitioner will have to seek regular bail before the competent court.

7 Dr Abhishek Manu Singhvi submits that the petitioner would not press the prayer for quashing of the FIRs since the petitioner would be advised to pursue the remedies which are available to him in accordance with law before the appropriate High Court. However, the petition has been pressed for clubbing of the FIRs in one jurisdiction since it has been urged that the gravamen of all the FIRs (lodged presently at Lucknow, Varanasi and Dima Hasao) is one and the same, namely, the press conference at which certain objectionable words were used. Dr Singhvi has stated that the petitioner has since clarified that the use of the language was inadvertent, though inappropriate, and that he would not stand by the use of such language. However, Dr Singhvi states that the petitioner tenders an unconditional apology.

8 Apart from the above submission, it has been urged that the words taken at their face value, as reflected in the FIRs, do not establish any offence punishable under the Sections of the IPC which have been invoked, including Sections 153A, 153B, 295, 500, 504 and 505 of IPC. Learned senior counsel also urged that recourse to the power of arrest under Section 41A CrPC was not warranted where the offence is punishable for a term not exceeding seven years.

9 Ms Aishwarya Bhati, Additional Solicitor General, on the other hand, submitted, after adverting to the live replay of the offending video, that the expression which was used by the petitioner was not unintentional and, on the contrary, a deliberate attempt to denigrate a constitutional functionary has been made. The Additional Solicitor General has also urged that the petitioner, having been arrested at Delhi Airport, would be produced before the court of the competent jurisdiction for transit bail and the petitioner may seek his remedies before that Court.

10 We are inclined to entertain the petition confined to the issue as to whether the FIRs should be clubbed in one and the same jurisdiction. Such a course of action has been previously adopted by this Court in **Arnab Ranjan Goswami v Union of India**.

11 We have also noticed the submission which has been urged by senior counsel appearing on behalf of the petitioner that the words taken at their face value as reflected in the FIRs do not establish an offence punishable under the provisions which have been invoked in the FIRs.

12 We pass the following ad-interim order:

(i) Issue notice on the prayer of the petitioner for transferring and clubbing of the FIRs which have been registered in respect of the press conference in question in one jurisdiction;

(ii) For that purpose, notice shall issue, at this stage, to the States of Assam and Uttar Pradesh;

(iii) Ms Aishwarya Bhati, Additional Solicitor General, appearing with Mr Shuvodeep Roy, accepts notice on behalf of the State of Assam. Liberty to serve the Standing Counsel for the State of Uttar Pradesh, in addition;

(iv) In order to enable the petitioner to apply for regular bail before the jurisdictional court, upon the FIRs being transferred to one jurisdiction, we direct that the petitioner shall be released on interim bail by the court of the competent Magistrate at Delhi where he is to be produced this evening;

(v) The above order is passed in connection with Haflong PS Case No 19 of 2023; and

(vi) The above order shall remain in operation till 28 February 2023;

13 List the Petition on 27 February 2023."

14. Thereafter, the aforesaid writ petition was finally disposed of by the Hon'ble Apex Court vide order dated 20.03.2023 and directed for clubbing all the F.I.R.s in the present case and also directed that F.I.R. lodged at P.S. Cantt., District Varansi as well as lodged at P.S. Haflong, Assam be transferred to Police Station Hazratganj, District Lucknow. Vide said order, liberty was also given by the Hon'ble Apex Court to the petitioner-applicant to apply for regular bail before the jurisdictional court. It was also directed that all the contentions of the parties are left open to be urged before the jurisdictional court.

Order dated 21.03.2023 reads as under.

"1 The details of the FIRs which have been registered against the petitioner are set out below:

(i) FIR No 65 of 2023 registered at PS Hazratganj, Lucknow on 20 February 2023;

(ii) FIR No 86 of 2023 registered at PS Cantt, Varansi on 20 February 2023; and

(iii) FIR No. 19 of 2023 registered at PS Haflong, Dima Hasao, Assam on 22 February 2023.

2 By the order of this Court dated 23 February 2023, the petition was entertained confined to the issue as to whether the FIRs which were registered against the petitioner should be clubbed in one and the same jurisdiction. Such a course of action has been previously adopted by this Court in **Arnab Ranjan Goswami v Union of India**.

3 Notice was accordingly issued on the prayer of the petitioner for transferring and clubbing of the FIRs which were registered in respect of the press conference in question in one



jurisdiction.

4 On 23 February 2023, this Court issued the following interim directions:

“(iv) in order to enable the petitioner to apply for regular bail before the jurisdictional court, upon the FIRs being transferred to one jurisdiction, we direct that the petitioner shall be released on interim bail by the court of the competent Magistrate at Delhi where he is to be produced this evening;

(v) The above order is passed in connection with Haflong PS Case No 19 of 2023”

5 The above order was directed to remain in operation till 28 February 2023 and has since been extended on 27 February 2023 and 3 March 2023.

6 Mr Muhammad Ali Khan, counsel appears for the petitioner.

7 Pursuant to the notice to the States of Uttar Pradesh and Assam, Mr Tushar Mehta, Solicitor General of India along with Ms Aishwarya Bhati, Additional Solicitor General of India appears on behalf of the States of Uttar Pradesh and Assam. Ms Garima Prasad, Additional Advocate General assisted Mr Tushar Mehta, Solicitor General for the State of Uttar Pradesh.

8 During the course of the hearing, counsel appearing on behalf of the petitioner has reiterated that the petitioner stands by the unconditional apology which was tendered on his behalf by Dr Abhishek Manu Singhvi, senior counsel who appeared on 23 February 2023.

9 The first FIR was registered at PS Hazratganj, Lucknow. We order and direct that the subsequent FIRs registered at PS Cantt, Varansi, Uttar Pradesh and at PS Haflong, Dima Hasao, Assam, shall stand transferred to PS Hazratganj, Lucknow, Uttar Pradesh.

10 The ad-interim order which was passed by this Court on 23 February 2023 (extended by the orders dated 27 February 2023 and 3 March 2023) shall stand extended till 10 April 2023. The petitioner would be at liberty to apply for regular bail before the jurisdictional court. All the contentions of the parties are left open to be urged before the jurisdictional court.

11 The petition is accordingly disposed of.

12 Pending applications, if any, stand disposed of.”

15. It is also evident from the record that thereafter, the applicant filed Crl. Misc. Writ Petition No. 2565 of 2023 before this Court for quashing of the F.I.R. of the case in question, in which, on 6<sup>th</sup> April, 2023, counter affidavit was invited. Order dated 06.04.2023 reads as under:

“(1) Heard Sri J. N. Mathur, learned Senior Advocate assisted by Sri Karan Sharma, Sri S. M. Abid, Sri Rohit Kaliyar, Sri Mohit Siwach and Sri Sheeran M. Alvi, learned counsel for the petitioner and Sri Shiv Nath Tilhari,

learned A.G.A. for the State Respondents.

(2) This petition has been filed with the following main prayers:-

"(A) Quash FIR No. 0065 of 2023 dated 20.02.2023 under Section 153-A, 500, 504 and 505 (2) of the Indian Penal Code, 1860, Police Station - Hajarat Ganj, District Central Lucknow and entire proceedings including investigation and also transferred FIRs bearing numbers FIR No. 86 of 2023 registered at PS Cantt. Varanasi dated 20.02.2023; FIR No. 19 of 2023 registered as PS Haflong, Dima Hasao, Assam on 22.02.2023 and entire proceedings arising out of it;

(B) Stay the entire proceedings of FIR No. 0065 of 2023 dated 20.02.2023 under Sections 153-A, 500, 504 and 505 (2) of Indian Penal Code, 1860, Police Station- Hazrat Ganj, District- Central Lucknow, and also transferred FIRs bearing FIR No. 86 of 2023 registered at PS Cantt. Varanasi dated 20.02.2023; FIR No. 19 of 2023 registered as PS Haflong, Dima Hasao, Assam on 22.02.2023 otherwise the applicant shall suffer irreparable loss and injury."

(3) Issue notice to the respondents No. 4, 5 and 6 returnable at an early date.

(4) The petitioner shall take steps within one week.

(5) Sri J. N. Mathur, learned Senior Advocate has taken this Court through the bare facts of the case and the Orders passed by the Supreme Court on 23.02.2023 in Writ Petition (Criminal) Diary No(s). 8222 of 2023 filed under Article 32 of the Constitution before the Supreme Court and the Order dated 20.03.2023 passed by the Supreme Court finally disposing of such Writ Petition with a direction for clubbing of three F.I.R.s registered at Lucknow, Varanasi and Assam treating the F.I.R. registered on 20.02.2023 as the leading case.

(6) Learned Senior Counsel has informed this Court that although in the F.I.R. registered at Assam there was several other Sections that were invoked by the informant, respondent no. 6. The Investigating Officer has issued a notice to the petitioner under Section 41 (A) of the Cr.P.C. under Sections 153-A, 153-B(1)/ 500/504/505(1)(b)/505(2) I.P.C. and directed him to make his statement in pursuance of such notice dated 30.03.2023. The petitioner has also got his statement recorded at Delhi.

(7) It has been argued by the learned counsel for the petitioner that on removal of Sections 295 and 120-B from the purview of investigation it seems that there is no imminent threat of arrest of the petitioner, but still the petitioner prays that the investigation itself be quashed as it is oppressive and not made out from a bare perusal of the allegations in the F.I.R.

(8) This Court having perused the final order passed by the Supreme Court on 20.03.2023 finds that the Court had already given the petitioner interim protection and also the option for applying of regular bail before the jurisdictional Court. Hence there is no need to grant any interim order as of now.

(9) Let counter affidavits be filed by the State Respondents and the private respondents by the next date of listing.

(10) List this case on 04.05.2023."

16. It is also evident from the record that notice under Section 41A Cr.P.C. was issued to the applicant and charge sheet was prepared by the Investigating Officer and submitted to the court concerned, on which, the cognizance was taken by the

learned Chief Judicial Magistrate, Lucknow on 11.04.2023.

17. Further, reliance placed by the learned counsel for the applicant in the case of **Pepsi Food Ltd.** (supra), as it is not applicable in the present case, as it related to a complaint case. Evidently, the summoning order is well within the knowledge of the applicant and he filed the present application for challenging the cognizance order as well as the charge sheet submitted by the Investigating Officer. It is well settled by the Hon'ble Supreme Court in the case of **State of Gujarat Vs. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539** that at the stage of issuing the summons to the accused based on the police report, the Magistrate is not required to record any reason.

Para 23 (relevant) of the said judgment is quoted hereunder.

"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking it on file."

18. In a recent judgment of **Central Bureau of Investigation Vs. Aryan Singh etc.** in Criminal Appeal No. 1025-1026 of 2023 decided on 10.04.2023, the Hon'ble Apex Court has categorically held that mini trial is not to be conducted while exercising the powers under Section 482 Cr.P.C.

In para 4.1 of the said judgment, Hon'ble Apex Court held as under:

“4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial.”

19. Moreover, the evidences collected by the Investigating Officer cannot be evaluated by this Court in the present proceedings on the basis of pleadings, counter affidavit as well as rejoinder affidavit.

20. Indisputably, Hon'ble Supreme Court vide order dated 20.03.2023, while disposing of the Writ Petition (Criminal) No. 74 of 2023 filed by the applicant-petitioner, has clearly directed the applicant to raise all the contentions before the jurisdictional court, which is the court of learned Chief Judicial Magistrate, Lucknow and in pursuance of the said order, the applicant may appear before the jurisdictional court and raise all his grievances before the court below.

21. In view of the above facts and discussions, the application has no merit and is, accordingly, dismissed.

22. However, it is open to the applicant to appear before the learned court below in pursuance of the directions of the Hon'ble Apex Court dated 20.03.2023 passed in Writ Petition (Criminal) No. 74 of 2023.

**Dated : August 17, 2023**

**VKS**