Reserved

AFR

Court No. - 4

Case :- APPLICATION U/S 482 No. - 35886 of 2017.

Applicant :- Rasheed Khan & Another

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Syed Ahmed Faizan,Syed Farman Ahmad Naqvi

Counsel for Opposite Party :- G.A.

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Hon'ble Bala Krishna Narayana, J.

By means of this application under Section 482 Cr. P. C. the applicants Rasheed Khan and Syed Waqar Alam have invoked the inherent jurisdiction of this Court with a prayer to quash the impugned order dated 28.1.2017 passed by the Additional. Sessions Judge / Special Judge (Prevention of Corruption Act), Court No. 2, Gorakhpur in Criminal Revision No. 558 of 2014; Mahesh Khemka Versus State of U. P., arising out of Case Crime No. 43 of 2007, under Sections-147, 295, 297, 436, 506 and 153 A I. P. C., P. S.-Kotwali, district-Gorakhpur (filed as Annexure 1 to the affidavit accompanying this application).

Heard Sri S. F. A. Naqvi, assisted by Sri F. Husain, learned counsel for the applicants, Sri Raghvendra Singh, learned Advocate General, State of U. P. assisted by Sri Abhishek Singh, Advocate, Sri Manish Goyal, Sri Vinod Kant, learned Additional Advocates General and Sri A. K. Sand, learned A. G. A.-I for the State of U. P.

As the facts of the case are not in dispute, Sri Raghvendra Singh, learned Advocate General appearing for the State of U. P. has very candidly stated at the Bar that he does not propose to file any counter

affidavit and hence with the consent of learned counsel for the parties, this case is being decided finally at the admission stage itself.

Briefly stated the facts of this case are that the applicant no. 1 Rasheed Khan gave a written report at P. S.-Kotwali, district-Gorakhpur on 27.1.2007 at about 20.45 hrs. alleging therein that on 27.1.2007 at about 5.00 A. M. on the occasion of (Satvi Moharram) in response to a call given by co-accused Aditya Nath, members of a Hindu Organization, Hindu Wahini, traders and businessmen started assembling in front of the shop of Shyam Traders and within no time thousands of persons gathered there and started raising slogans exhorting the members of majority community to plunder the properties and houses of the members of minority community and kill them and in response to the aforesaid slogans, the huge crowd entered into Karam locality at about 10.00 A. M. and when an announcement was made that Baba was arriving soon, members of Hindu Organization became so excited that they started shouting slogans, which panicked the residents of the Muslim localities and on the arrival of Yogi Ji, Mahesh Khemka, Bhagauti Jalan, Ram Autar Jalan and Daya Shankar Dubey demolished the Aastane, set ablaze and damaged religious books and indulged in destructive activities at Imam Chowk. It was further alleged that in the aforesaid incident Harshwardhan Singh, R/o Khoonipur, Ashok Shukla, R/o Vilandpur and Ram Laxman, R/o Bans Gaon had played an active role and a sum of about Rs. 5000/- which was kept in Chand Golak at Chara Chandi Panch at Imam Chowk was looted. The incident was witnessed by senior police officers who had fired about hundred rounds in the air. As a result of the aforesaid incident, terror and panic had gripped the area. People had started running helter skelter. The shop keepers had pulled down the shutters of their shops and an atmosphere of insecurity had engulfed the area shattering the peace and tranquillity of the locality. On the basis of the aforesaid

written report an F. I. R., copy whereof has been annexed as Annexure 2 to the affidavit accompanying this application, was registered as Case Crime No. 43 of 2007, under Sections-147, 295, 297, 436, 506 and 153 A I. P. C. at P. S.-Kotwali, district-Gorakhpur against the opposite party no. 2 and seven other persons. The investigating agency during the investigation found that on the basis of the material collected during investigation, in addition to the other offences, offence under Section 153 A I. P. C. was also made out against the accused. However, upon completion of investigation he filed a chargesheet on 14.6.2007 against all the accused under Sections-147, 295, 297, 436 and 506 I. P. C. with a note that although offence under Section 153 A was also made out, but the chargesheet under the abovenoted section was not being filed by him, due to non-procurement of the mandatory previous sanction of the State Government required for prosecuting the accused under Section 153 A I. P. C. and chargesheet against the accused under the aforesaid section shall be filed by him after receiving the requisite sanction. On the aforesaid chargesheet C. J. M., Gorakhpur took cognizance on the same date. Sanction is said to have been given by the State Government on 30.1.2009 vide letter No. 441/6-Pu-14.908 Abhi/07 (Annexure 11 to the affidavit accompanying this application) issued by the Home Department of the Govt. of U. P., note whereof was made by the I. O. on the parcha of the Case Diary dated 28.11.2008 (Annexure 8 to the affidavit accompanying this application). After receipt of the sanction letter, the I. O. filed a chargesheet against the opposite party no. 2 and the other co-accused under Section 153 A I. P. C. also on 28.11.2009 before the C. J. M., Gorakhpur, who took cognizance of the aforesaid offence against the opposite party no. 2 and the other co-accused on 22.12.2009.

The orders dated 14.6.2007 and 22.12.2009 were challenged by the opposite party no. 2 by filing a criminal revision before the Sessions

Judge, Gorakhpur along with an application for condonation of delay in filing the revision against the aforesaid orders. The delay condonation application was allowed vide order dated 15.11.2014. Thereafter the aforesaid criminal revision was allotted regular number 558 of 2014 and transferred for disposal before the Additional Sessions Judge / Special Judge, Prevention of Corruption. Act, Gorakhpur.

The impugned orders, apart from the other grounds, were also challenged by the opposite party no. 2 before the revisional court specifically on the ground that the order by which sanction was granted by the State Government for the prosecution of the accused, was not signed by the authority, who was authorized by His Excellency the Governor to sign the order granting sanction and hence the cognizance taken by the C. J. M., Gorakhpur of the offence under Section 153A I. P. C. was bad in law and without jurisdiction.

It appears that during the pendency of Criminal Revision No. 558 of 2014 before Special Judge, (Prevention of Corruption Act), an application 16 kha was moved under Section 91 Cr. P. C. on behalf of opposite party no. 2 on 4.4.2015 for summoning the U. P. Government Rules of Business for ascertaining the designation of the officer authorized to sign the order of sanction on behalf of the Governor of U. P.

Application 16 kha was allowed by the revisional court by order dated 10.4.2015 by which the Chief Secretary, Government of U. P. was directed to produce the U. P. Government Rules of Business (hereinafter referred to as the “Rules”) before the Court with the clarification that upon being produced before the Court the Rules shall be returned after perusal. The order also indicated that it would suffice for the purpose of Court, if the photostat copy of the Rules was produced before the Court. When the order dated 10.4.2015 remained un-complied, application 18 kha was moved by the opposite party no. 2

before the revisional Court on 14.7.2015 with the prayer to direct the State Government to comply with the order passed by it on 10.4.2015. However, when the State Government instead of producing the U. P. Rules of Business before the revisional court, filed a document which was wholly unconnected with the matter, another application 24 kha was moved by the opposite party no. 2 before the reivisonal court on 14.7.2015 bringing the aforesaid fact to the knowledge of the court with a prayer to direct the State Government to comply with it's order dated 10.4.2015. Applications 18 kha and 24 kha were disposed by the revisional court by order dated 17.3.2016 holding that the prayer made by the opposite party no. 2 in his application 18 kha was misconceived.

Eventually, the revisional court by the impugned order dated 28.1.2017 allowed Criminal Revision No. 558 of 2014 and after setting aside the orders dated 14.6.2007 and 22.12.2009 passed by the C. J. M., Gorakhpur in Case Crime No. 43 of 2007; State Versus Yogi Aditya Nath and others remitted the matter back to the C. J. M., Gorakhpur with a direction to him to pass a fresh order in accordance with law on the issue of taking conginznce.

Sri S. F. A. Naqvi, learned counsel for the applicants has challenged the impugned order interalia on the grounds that the same has been passed by the revisional court in gross violation of the principles of natural justice as before passing the impugned order neither any notice was issued to the applicants nor they were afforded any opportunity of hearing as required by Section 401 (2) Cr. P C; that the revisional court having adjudged by its order dated 17.3.2016 that the sanction granted for prosecution of the opposite party no. 2 and the other co-accused under Section 153A I. P. C. was valid and the said order having attained finality, it was not open to the revisional court to take a view contrary to that taken by it in it's order dated 17.3.2016 holding the order granting sanction for the prosecution of the opposite

party no. 2 and the other accused to be invalid and the revisional court in doing so has exercised its jurisdiction with material irregularity; and that the overwhelming observations made by the revisional court on the merits of the case in the impugned order have not left the C. J. M. with any option to decide the matter afresh in the exercise of his independent discretion and to take a view contrary to that taken by the revisional court in the impugned order.

In support of his submissions learned counsel for the applicants has placed reliance on **(2001) 3 SACC 462; J. K. International Versus State (Govt. of NCT of Delhi) and others and (2009) 2 SCC 363; Ragu Raj Singh Rousha Versus Shivam Sundaram Promoters Private Limited and another**.

Per Contra, Sri Raghvendra Singh, learned Advocate General appearing for the State of U. P. made his submissions in support of the impugned order. He vehemently submitted that neither the informant-applicant no. 1 nor applicant who claims to have received injuries in the incident, were required to be afforded any opportunity in view of Section 401 (2) Cr. P. C. and the impugned order cannot be said to be vitiated on account of failure of the revisional court to afford them `any opportunity. The issue is no longer resintegra and stands settled by a catena of decisions of this Court as well as of the Apex Court.

Advancing his submissions in this regard further, he invited our attention to Section 401 (2) Cr. P. C. and on the basis of this provision urged that there is no provision in Cr. P. C. which requires that a notice ought to have been given to the complainant in a revision. He further submitted that the words “other person” used in Section 401 (2) Cr. P. C. should be someone similarly placed like the accused and there can be no question of informant putting up a defence in case initiated by him and the Rule of *ejusdem generis* which means “of same kind or nature” applies with full force to the present case. In support of his

aforesaid contention he has placed reliance upon **1980 All. L. J. 554; Ranvir Singh (complainant), AIR 1989 SC 1019; M/s Siddeshwari Cotton Mills (P) Ltd. Versus Union of India and another and (1987) 4 SCC 557; A. K. Subbaiah and others Versus State of Karnataka and others, SS. Magnild (Owners) v. Macintyre Bros. & Co., [1920] 3 KB 321; Tribhuban Parkash Nayyar v. Union of India, [1970] 2 SCR 732 and U.P.S.E. Board v. Hari Shanker, AIR 1979 SC 65.**

He has next submitted that the revisional court in its order dated 17.3.2016 has not recorded any finding upholding the validity of the sanction and hence it cannot be said that the revisional court committed any illegality or legal infirmity in coming to the conclusion that the issue pertaining to the validity or otherwise of the sanction granted by the State Government for the prosecution of the opposite party no. 2 and the other co-accused required reconsideration by the C. J. M., Gorakhpur. He has lastly submitted that the revisional court has not made any observation in the impugned order which has any bearing on the merits of the case or which has the effect of thwarting the discretion of the C. J. M. to decide the issue in the independent exercise of his judicial discretion. The impugned order does not warrant any interference by this Court.

I have very carefully heard learned counsel for the parties present and perused the impugned orders as well as the other material brought on record and the law reports cited by learned counsel for the parties before me in support of their respective contentions.

In order to appreciate the first ground on which learned counsel for the applicants has assailed the order of the revsional court, it would be useful to reproduce Section 401 (2) Cr. P. C. as hereunder :

> "***401. High Court's powers of revision. –***
> *(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity*

of being heard either personally or by pleader in his own defence."

Learned counsel for the applicants has argued that the use of words "any other person" in sub-section (2) of Section 401 Cr. P. C. after the word "accused" necessarily includes the complainant or the informant and thus, it was incumbent upon the reivisonal court to have afforded an opportunity of hearing to the applicants before passing the impugned order.

I, now, proceed to examine whether the principle of ***ejusdem generis*** is attracted while ascertaining the scope of the words "any other person" mentioned in sub-section (2) of Section 401 Cr. P. C. as urged by Sri Raghvendra Singh, Advocate General and to test the sustainability of contention of learned counsel for the applicants.

Before scrutinizing the aforesaid aspect of the matter it would be useful to refer to the observations made by Fancis Bennion in his Statutory Construction and the settled law on the issue:

"*Francis Bennion in his Statutory Construction observed:*

> *"For the ejus dem generis principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it .... "*
>
> *[p 830]*
>
> *"It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. 'Unless you can find a category', said Farwell L J, 'there is no room for the*

application of the ejus dem generis doctrine'."
[p. 831]

In ***SS. Magnild (Owners) v. Macintyre Bros. & Co., [1920] 3 KB 321*** *Mc Cardie J said:*

"So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature."

In ***Tribhuban Parkash Nayyar v. Union of India, [1970] 2 SCR 732*** *the Court said:*

" ..... This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous .... "
[p. 740]

In ***U.P.S.E. Board v. Hari Shanker, AIR 1979 SC 65*** *it was observed:*

" ..... The true scope of the rule of "ejus dem generis" is that words of a general nature (following specific and particular words should be construed as limited to things which are of

> *the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far" ..... " [p 73]*

The same view was taken by the Hon'ble Apex Court in M/s Siddeshwari Cotton Mills (P) Ltd. (supra).

In view of the foregoing discussion and the perusal of the settled law on the issue it follows that the expression ***ejusdem generis*** signifies the principle of construction whereby the words in statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus preceding them. If a list or string or family of genus describing terms are followed by wider or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words preceding words or Expressions of restricted meaning, must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words “may admit” will be favoured. The principle underlying this approach to statutory construction is that the subsequent general words are only intended to guard against some accidental omission in the objects of the kind mentioned earlier and are not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication.

A bare reading of sub-section (2) of Section 401 Cr. P. C. indicates that the words “any other person” appearing in sub-section (2) of Section 401 Cr. P. C. are preceded by the word “accused”. The preceding word “accused” represents a specific class, i. e. “the accused” and thus, the presumption arises that the subsequent general words “any other person” would include persons belonging to the

category of only accused and it cannot be said that no class can be found in the specific word “accused” used in sub-section (2) of Section 401 Cr. P. C. and the specific word exhausts the class, hence the principle of ejusdem generis will apply with full force and it can safely be held that it was not the intention of the legislature to include the informant and the complainant in the general words “or any other person” mentioned in sub-section (2) of Section 401 Cr. P. C. which are preceded by the specific word “accused”.

The question whether an informant is a necessary party to a criminal revision filed under Section 401 (1) Cr. P. C. and scope of the words “other person” used in Section 401 (2) Cr. P. C. were also examined and interpreted by a learned Single Judge of this Court in the matter of **Application Under Section 482 Cr. P. C. ; Ranvir Singh, Applicant (Complainant)**. The learned Single Judge in the aforesaid case had allowed the revision preferred by the accused against the judgement and order passed by the trial court by which they were convicted under Section 397 I. P. C. and sentenced to three months R. I. Thereafter an application was moved by the informant under Section 482 Cr. P. C. with the prayer to recall the order dated 8.5.1979 passed in criminal revision on 8.5.1979 on the ground that no opportunity of hearing was given to him in revision and as such the order stood vitiated. The learned Single Judge after examining the entire law on the subject and the provisions of Section 401 (2) Cr. P. C. rejected the recall application holding that a complainant was not a necessary party to the revision. Paras 5 and 6 of the aforesaid judgement which are relevant for the purpose, are being reproduced hereinbelow:

> *5. The learned counsel contended that the words “other person” used in the above sub-*

clause should include the complainant also, and therefore, it was incumbent on the part of this Court to have given an opportunity to the applicant of being heard. I have given my anxious consideration to this submission of the learned counsel and my view is that the words "other person" should not include the complainant. The "other person" should be someone similarly placed like the accused. I say so because it is only an accused or a person placed like him, who can put up a 'defence'. This 'defence' he can put up either personally or through a pleader. There can be no question of a complainant putting up a defence in a case started by him.

The learned counsel for the applicant next relied on sub-clause (1) of Section 401 Cr. P. C. and contended that as the power of the High Court in hearing a revision is more or less analogous to its power in hearing an appeal, it was necessary that it should have given a notice of the hearing of the revision to the applicant in the same way as a notice is given to the complainant while hearing an appeal arising out of a case instituted upon a complaint. The power of the High Court in hearing a revision may be analogous to its power in hearing an appeal, but the procedure prescribed for hearing a revision is quite

different from the procedure prescribed for hearing an appeal. The Code of Criminal Procedure has prescribed one procedure for hearing an appeal and another for hearing a revision. The procedure prescribed for one cannot be mixed up with the procedure prescribed for the other. In regard to the hearing of an appeal arising out of a case instituted upon a complaint, sending of notice to the complainant is a must and, therefore, a notice has to go to him before the appeal can be heard. Such a provision does not exist in regard to the hearing of a revision and, therefore, it is not at all necessary that a notice of hearing should be given to the complainant."

The Apex Court in paras 12 and 13 of its judgement rendered in A. K. Subbaiah and others (supra) while examining the same issue has held as hereunder:

"12. It is not in dispute that these two respondents Nos. 2 and 3 were not parties before the court below. Learned counsel for the appellants contended that the proceedings have been launched by the State Govt. on behalf of respond- ent No. 2 and therefore indirectly respondent No. 2 being the complainant is a party to the proceedings. That is too tall a proposition. The prosecution is launched by the State

Government and before the court below i.e. the trial court the only parties are the petitioners who are accused persons and the State Govt. which stands in the place of a complainant. There are prosecution witnesses and there may even be defence witnesses. But the witnesses are not parties to the proceedings and admittedly these two respondents who have been deleted by the impugned order of the High Court were not parties before the court below.

13. Learned counsel laid much emphasis on the provisions contained in sub-clause 2 of Sec. 401. Section 401 reads:

"401. High Court's powers of revision. –

(1) in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in, the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of

being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

Sub-section (2) of this Sec. talks of a situation where an order is being passed against any person and it was contended by the learned counsel that the section not only talks of accused persons but also of "or other person unless he has had an opportunity of being heard." Apparently this sub- clause contemplates a situation where a person may not be an accused person before the court below but one who might have been

discharged and therefore if the revisional court after exercising jurisdiction under Sec. 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party. Learned counsel for the appellants was not in a position to contend that even if any contention of the appellants is accepted and the High Court accepts the revision petition as it is, there will be any situation where an order may be passed against these two respondents or they may be joined as parties to the proceedings. Reference to Section 401 (2) is of no consequence so far as these two respondents are concerned."

Now coming to the two authorities relied upon by learned counsel for the applicants in support of his contention that the applicant no. 1 who was the informant and the applicant no. 2 who had ceived injury in the incident were necessary parties to the revision and hence they were required to be heard before passing the impugned order, I find that both the decisions relied upon by learned counsel for the applicant are clearly distinguishable on facts and cannot be said to be binding precedents on the issue.

The case of J. K. International (supra) relied upon by learned counsel for the applicants was a case in which the petition was filed by

the accused for quashing the criminal proceedings instituted against him before the High Court in the writ petition. The informant was not made a party and therefore an application was moved by him in the High Court for impleading him as a party urging that the criminal proceedings were initiated at his behest and hence he too may be heard before the criminal proceedings were to be quashed. A Single Judge of the High Court rejected the impleadment application filed by the informant taking a view that the right of the informant to be heard ceases once cognizance is taken and he cannot thereafter continue to participate in the proceedings as if he was the aggrieved party who must have his say in the proceedings. The Apex Court while allowing the appeal preferred by the informant against the order of the High Court held as hereunder:

> *"The Single Judge has done wrong to the appellant when he closed the door of the High Court before him by saying that the High Court is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the complainant would not be heard at all even if he wants to be heard."*

I am afraid that the proposition of law propounded by the Apex Court in the aforesaid case is of no help to the applicant as the Apex Court has nowhere held in the aforesaid judgement that the informant or the complainant is a necessary party in a revision preferred by the accused. The Apex Court has merely held that the complainant cannot be debarred from being heard at all, even if, he wants to be heard. In the present case, the situation is entirely different. It is not the case of the applicants that they had moved any application before the

revisional court for being impleaded as respondents and the said application was rejected by the revisional court.

The second case on which reliance has been placed by the learned counsel for the applicants, Raghu Raj Singh Rousha (supra), is also of no help to him. In Raghu Raj Singh Rousha (supra) an application was moved under Section 156 (3) Cr. P. C. by the applicant Shivam Sundaram Promoters (P) Ltd. before the magistrate which was rejected by him by his order dated 7.2.2008 which was challenged by the complainant by filing a revision application before the High Court impleading the State alone as a party. The High Court allowed the aforesaid revision on the very first day of hearing by order dated 25.2.2008, which was challenged by Raghu Raj Singh Rousha by filing a criminal appeal before the Apex Court. The Apex Court after very minutely examining the provisions of Section 397 and 401 Cr. P. C. and the gamut of authorities on the issue, allowed the appeal and after setting aside the order of the High Court remitted the matter back to the High Court with the direction to hear the matter after impleading the appellant Raghu Raj Singh Rousha and pass appropriate order. In the case of Raghu Raj Singh Rousha the issue involved before the Apex Court was whether the accused has a right to participate in criminal proceedings unless the process is issued. The Apex Court has held that once learned magistrate while refusing to exercise its jurisdiction under Section 156 (3) Cr. P. C. arrived at a conclusion that the police investigation was not necessary and directed examining of the complainant and witnesses so as to initiate the procedure laid down under Chapter XV of the Code of Criminal Procedure, he had taken cognizance and hence the proposed accused was a necessary party to a revision preferred against any such order. There is nothing in the aforesaid authority as well which may even remotely indicate that the complainant is a necessary party in a revision preferred by the accused

against any order of the criminal court.

Thus, the impugned order cannot be said to be vitiated on account of the failure of the revisional court either to afford any opportunity of hearing to the applicants.

Coming to the second ground of challenge to the impugned order, I find that the same is also without any substance. The revisional court while allowing application 16 kha moved by the opposite party no. 2 before him under Section 91 Cr. P. C. had directed the Chief Secretary, Govt. of U. P. to produce before him The U. P. Rules of Business for ascertaining the designation of the officer authorised to grant a sanction order and whether the order granting sanction for the prosecution of the opposite party no. 2 and the other co-accused under Section 153 A was signed by Dr. J. B. Sinha, Secretary who appeared to have been authorized by the Governor to sign the sanction order on his behalf as the revisional court noted that the order granting sanction although was intended to be signed by Dr. J. B. Sinha, but in the order there was a blank space and the order did not bear the signature of any signing authority and after the order and below the heading “Copy forwarded to for necessary compliance and information”, one Ram Hit, Under Secretary had put his signature. The revisional court had clearly observed in it's order dated 10.4.2015 that it was clear that the main order of sanction had not been signed by any authorised signatory, the order of the Governor having not signed by any authorized signatory, it could hardly be termed as sanction for prosecution. There is no dispute about the fact that the order dated 10.4.2015 passed by the Additional Sessions Judge, Gorakhpur, copy whereof has been brought on record as Annexures SA 4 to the supplementary affidavit collectively along with other documents had attained finality as it's legality was not challenged before any superior Court. It is also clear from the material brought on record that the order dated 10.4.2015 was not complied, as

a result opposite party no. 2 was compelled to move two applications 24 kha and 18 kha before the revisional court on 4.4.2015 and 14.7.2015 respectively which were disposed of by the revisional court vide order dated 17.3.2016. Perusal of the order dated 17.3.2016 indicates that the revisional court while rejecting the applications 24 kha and 16 kha had made an observation in the said order to the effect that prior sanction for prosecution was obtained by U. P. Administration from the Governor and copy of the aforesaid sanction order had been forwarded to the concerned police station, which bore the signature of an Under Secretary and on perusal whereof it was clear that the copy of the aforesaid sanction had been forwarded to the D. I. G., Gorakhpur Range and four copies of the sanction order had been brought on record. I however do not find anything in the order dated 17.3.2016 which may indicate that the revisional court had either examined the ground on which opposite party no. 2 had challenged the validity of the order by which sanction for the prosecution of opposite party no. 2 and other co-accused was granted by the Governor or found the same to be baseless and unfounded or that the 'Rules' or photocopy of relevant extract of the 'Rules' were produced before the revisional court by the State Government in compliance of revisional court's earlier order dated 10.4.2015.

The last ground of challenge to the impugned order is also without any merit. The revisional court while allowing the revision and remanding the matter to the C. J. M., Gorakhpur for deciding objection of the opposite party no. 2 to the validity of the order of sanction afresh, the revisional court has merely directed him to decide the matter in the light of the observations made in his order. It cannot be said that the observations made by the revisional court in the impugned order are so overwhelming that they leave no room for the C. J. M., Gorakhpur to decide the matter in the exercise of his unfettered independent

discretion.

In view of the foregoing discussions, no interference with the impugned order is warranted. This application lacks merit and is accordingly dismissed. However, by way of abundant caution, C. J. M, Gorakhpur, is directed to decide the matter afresh pursuant to the impugned order of remand strictly in accordance with law and in the exercise of his unfettered independent discretion, without being influenced by observations, if any, made by the revisional court in the impugned order.

Order Date: 01.02.2018

HR