

(2008) 07 AHC CK 0188
In the Allahabad High Court

Smt. Leena Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Constitution of India, 1950 — Article 13, 166, 228
Criminal Procedure Code, 1973 (CrPC) — Section 173, 24
Penal Code, 1860 (IPC) — Section 173, 201, 302, 364, 364A

Citation : (2008) 07 AHC CK 0188

Hon'ble Judges : Vinod Prasad, J;Ajai Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Petitioner informant Leena Katiyar through Writ Petition No. 7318 of 2007, has prayed for quashing of recommendation dated 15.5.2007 for further investigation made by Uttar Pradesh Commission For The Scheduled castes and Scheduled Tribes under Uttar Pradesh Commission for The Scheduled Castes and Scheduled Tribes Act 1&95. (hereinafter referred to as Commission) of Crime No. 467 of 2007, under Sections 354-A, 302, 201 IPC, P.S. Kotwali, district Fatehgarh vide S.S.T. No. 40 of 2007, State v. Happy @ Shivam and Ors., pending before Special Judge (D.A.A.) Farrukhabad, Annexure No. 1, to the writ petition and she has also prayed to quash the subsequent and consequential order dated 21.5.2007, Annexure No. 11 passed by Superintendent of Police, Special Enquiry Cell, U.P., Lucknow for the said purpose. The ancillary prayer in the writ petition is for issuance of writ of mandamus for not giving effect to the aforementioned two impugned orders.

2. In Criminal Revision No. 1737 of 2007, the same informant petitioner has questioned the legality of the impugned order dated 30.5 2007 passed by Special Judge (D.A.A.) Farrukhabad in aforesaid S.S T. No. 40 of 2007, State v. Happy @ Shivam @ Harsh and Ors. for the offences mentioned above, in relation to the same Crime Number 467 of 2007, P.S. Kotwali, district Farrukhabad, by which

Special Judge(D.A.A) Farrukhabad has granted permission for further investigation in furtherance of Annexure Nos. 1 and 11 to the connected writ petition.

3. Since the factual matrix of both the cases are interconnectedly woven into a conglomerated whole and are inextricably mixed up, hence, both, the writ petition and the criminal revision are being disposed of by us by this common order.

The synopsis facts are that Madhusudhan @ Madhu @ Mikku, a class XII student aged about 20 years was the son of the petitioner revisionist Smt Leena Kahyar, who was the Manager (Retail Credit), Allahabad Bank, Barhpur Branch in district Farrukhabad Her husband, a Class-I Officer, was Deputy Director(Engineering), Directorate General of Doordarshan, New Delhi. Petitioner revisionist was living along with her son and mother-in-law in Fatehgarh.

4. Om Prakash Katheria (respondent No. 8), father of accused Happy Katheria @ Shivam @ Harsh, a sub registrar in Stamp And Registration, committed fiscal bungling and also fraud for which he was dismissed from service. To overcome his financial crunch, Om Prakash Katheria had approached the petitioner revisionist for advancing a loan to him but the petitioner refused to oblige him. Precipitated by the rebuff, it is alleged, that the son of Om Prakash Katheria Happy @ Shivam @ Harsh hatched up a conspiracy and in execution thereof he firstly developed friendship with Madhusudhan @ Madhu @ Mikku son of the petitioner revisionist and then on 11.4.2007 between 2.30 to 2.45 p.m. got him abducted.

5. Initially vide G.D. entry No. 43 dated 12.4.2007 at 5.00 p.m., a report regarding elopement of Madhusudan was lodged by the petitioner at the police station Kotwali, district Farrukhabad but subsequently, a formal FIR as crime number 467 of 2007, u/s 364 IPC was registered which FIR, after the arrest of other accused and discovery of the dead body of the abductee, was converted into offences under Sections 364A, 302, 201 IPC.

6. Investigating Officer after investigation, including electronic surveillances etc., came to the conclusion that the deceased was abducted and murdered for ransom, charge sheeted the arrested accused persons including Happy @ Shivam for the aforesaid offences.

7. Om Prakash Katheria respondent No. 8, father of accused Shivam @ Happy, @ Harsh, who rued false implication of his son by the police at the behest of the petitioner revisionist, approached the Commission, respondent No. 2, through an application dated 15.5.2007, annexure No. 9, to the writ petition, as he was a member of a scheduled tribe. Commission, vide his impugned order dated 15.5.2007, Annexure No. 1 to the writ petition, observed that Om Prakash Katheria has appeared before it on 15.5.2007 and has moved an application requesting that investigation of the aforesaid Crime be got conducted by Special Enquiry Cell. Commission further observed that it considered the case of the

applicant and in it's view a doubt is raised on the investigation conducted by the police of district Farrukhabad. Hence the Commission requested Director General of Police, U.P. Lucknow, respondent No. 3, to get the aforesaid crime further investigated from his end by Special Enquiry Cell, U.P., Lucknow and the outcome be informed to the Commission through a nominated officer. Commission issued summons with the aforesaid direction.

8. In pursuance of the said recommendation, Annexure No. 1, Deputy Superintendent of Police, Special Cell, passed an order on 21.5.2007 Annexure No. 11 handing over the investigation of the aforesaid crime to Sri Ram Dy. S.P., Special Enquiry Cell, U.P., Lucknow. The aforementioned two orders one by the Commission, dated 15.5.2007 Annexure No. 1, and the subsequent resultant order by Superintendent of Police, Special Enquiry Cell, dated 21.5.2007. Annexure No. 11, have been prayed to be quashed through Writs of Certiorari in the above writ petition by the petitioner informant.

9. In pursuance of the Annexure Nos. 1 and 11 of the writ petition, Sri Ram, Dy. S.P. Special Enquiry Cell moved an application u/s 173(8) Cr.P.C. before Special Judge (D.A.A.), Farrukhabad seeking his permission for further investigation and directing handing over the case diary submitted by the local police. Vide his impugned order dated 30 5 2007 in the above criminal revision, Special Judge (DAA) accorded the said permission for further investigation and also ordered the photo copy of the case diary to be handed over to the Dy. S.P. Special Enquiry Cell. Hence the above noted criminal revision questioning the legality of the said order.

10. In the Criminal Writ Petition counter affidavits have been filed by the Commission, (respondent No. 2), Superintendent of Police, Special Inquiry Cell, U.P., Lucknow (respondent No. 5), Deputy Superintendent of Police, Special Inquiry Cell, U.P., Lucknow, (respondent No. 6), Station House officer, P.S. Kotwali, Fatehgarh (respondent no 7) and Om Prakash Katheria (respondent No. 8) How ever no rejoinder affidavit was filed by the petitioner even after lapse of suitable time. The order sheet dated 29.11.2007 of the writ petition reveals that the earlier Division Bench of this Court, at the joint request of both the parties, had ordered the writ petition to be listed for hearing in week commencing 10th December 2007 and directed that meanwhile parties may exchange their affidavits. The order sheet dated 4.1.2008 further records that Counsel for the petitioner had sent illness slip and meanwhile the above two case and all other connected matters were nominated by The Hon''ble The Chief Justice, to the Bench dealing with fresh criminal writ petitions. After looking into the order passed by Hon''ble The Chief Justice, the earlier Division Bench on 4.1.2008 released the writ petition and directed it to be placed before us as we were assigned the work of fresh Criminal Writ Petitions and further directed that the case be listed peremptorily. The record further reveals that on the application filed by the petitioner, all the four cases emanating from the said crime number including a bail application on behalf of Happy @ Shivam were ordered to be

clubbed by Hon'ble The Chief Justice and hence we are disposing off all the cases to day by passing separate orders in other two connected matters. Learned Counsel for the petitioner, Sri A.N. Srivastava filed his power on 16.1.2008, the date on which the case was listed before us peremptorily, and started arguing all the cases starting his argument in Criminal Misc. Writ Petition No. 7318 of 2007. The argument could not be concluded and at his request the case was taken up on 17.1.2008. On both the dates learned Counsel for the petitioner proposed to argue all the cases related with the said crime number and did not propose to file any rejoinder affidavit in any of the matters. We also note here that in the connected Bail Application of Happy @ Shivam Sri Murlidhar, learned Senior Counsel has also addressed us on behalf of the complainant.

11. On the above facts we have heard Sri A.N. Srivastava in support of the above writ petition and the criminal revision.

12. Sri A.N. Srivastava, learned Counsel for the petitioner revisionist contended that after the charge sheet was submitted there was no reason for the Commission to order for further investigation on the same day on which it was approached by respondent No. 8 who is the father of Happy @ Shivam, one of the accused in the said crime. He further submitted that the power of the police cannot be usurped by the Commission. He further submitted that no order was obtained from Special Judge (D.A.A.) Farrukhabad before making further investigation into the crime and hence further investigation, which is being conducted by Special Enquiry Cell is against the law laid down by the Supreme Court in Ram Lal Narang Vs. State (Delhi Administration), . He further contended that the impugned order, Annexure No. 11, which is a consequential order by the Superintendent of Police, Special Enquiry Cell, in pursuance of the impugned order Annexure No. 1 passed by the Commission is also illegal as the same has been passed at the dictates of the Chairman of the Commission. Learned Counsel further contended that the impugned order, Annexure No. 1, to the writ petition dated 15.5.2007. has been passed "whimsically upon extraneous consideration by giving a go-bye to the procedure prescribed by law". He further submitted that the said order has been passed in the individual capacity by the Chairman of the Commission. Further submission of learned Counsel for the petitioner revisionist is that the Commission has got no right to give directions to the Director General of Police, respondent No. 3. It is further asserted that since the charge sheet was already submitted, the aggrieved person could have obtained an order for further investigation from the competent court. He relied upon the decision of Kashmiri Devi v. Delhi Admn AIR SC 1323 (pr 7) for his said submission. Accused cannot have any say in the matter of investigation nor he can choose investigating agency of his choice and since the application of the accused was to get the matter investigated by Special Enquiry Cell, therefore, both the impugned orders Annexure Nos. 1 and 11 to the writ petition, are de hors the law and deserves to be set aside conclusively contended Sri A.N. Srivastava, learned Counsel for the petitioner.

13. In Criminal Revision, Sri Srivastava learned Counsel for the revisionist, submitted that the permission for further investigation dated 30.5.2007 was granted by the Special Judge (D.A.A) Farrukhabad on the concession given by Additional District Government Counsel (ADGC). According to his submission Clause 5 of paragraph 7.22 of U.P Legal Remembrance's Manual provide that Public Prosecutor can only conduct prosecution and he has to act at the dictates of the District Magistrate or Superintendent of Police. He has to seek instructions of the aforesaid authorities before arguing a case Learned Counsel also referred to Rule 19 and 24 of Chapter II (Standards of Professional Conduct and Etiquette) Rules framed by the Bar Council of India u/s 49-C of the Advocate Act to criticize concession alleged to have been given by A.D.G.C. Learned Counsel for the revisionist further submitted that the Commission cannot "abridge or abrogates" the power exercisable by the Police Officer under the Police Act or under Criminal Procedure Code. Concludingly it is contended that the impugned order passed by Special Judge (DAA) also suffers from the same vices which he has referred to while criticising Annexure Nos. 1 and 11 of the connected writ petition and therefore, the said order be also set aside

14. Sri V.P. Srivastava, learned senior Counsel for respondent No. 8 as well as learned AGA contrarily contended that there is nothing wrong in the impugned orders passed by the Commission as well as by the Special Judge (D.A.A.) and both writ petition and the revision are merit less and deserves to be dismissed Sri V.P. Srivastava submitted that shifting stand of the petitioner revisionist Smt Leena Katiyar and the haste with which the police implicated Happy Kathena @ Shivam @ Harsh, who was a minor boy on a charge of abduction and murder was deplorable and therefore, the father of the minor boy had lost faith in the police force and justice by it and after the police had submitted the charge sheet he had no option left but to approach the Commission to undo injustice done to his son who is admittedly a person belonging to the Scheduled tribe He further submitted that Annexure No. 1 to the writ petition does not indicate that the order was passed by the Chairman of the commission alone and, on the contrary, it indicates that the Commission was not satisfied with the investigation conducted by the police and therefore, it only recommended to the Director General of Police, respondent No. 3, to get the matter investigated by Special Inquiry Cell so that no injustice may be done to a person belonging to Scheduled tribe. He further submitted that the Commission had left it at the discretion of Director General of Police, respondent No. 3, to get the matter investigated through his aegis. The Commission further requested him that a report of the inquiry be placed before it. Learned Counsel submitted that the Commission in view of Section 11 and 12 of U.P. Commission for Scheduled Castes and Scheduled Tribes Act is fully empowered to call for a report of the investigation conducted by Special Inquiry Cell Learned Counsel contended that the Commission has not ordered for further investigation at all but it only made a recommendation, as it was not satisfied with the investigation conducted by the police. He further submitted that there was no eye witness account and the case

is based on circumstantial evidence of dicey nature of only last seen evidence and nothing was recovered at the pointing out of the accused Happy Kathena @ Shivam @ Harsh and there was absolutely no evidence against him at all. He further submitted that the electronic surveillances also did not brought about any connection of the accused Happy Kathena @ Shivam @ Harsh with the crime No conversation between Happy Kathena @ Shivam @ Harsh with any member of the informant's family or the other accused had been brought forth and without there being any evidence against Happy Kathena @ Shivam @ Harsh he has been charge sheeted by the civil police who has falsely implicated him in this case. He further submitted that respondent No. 2, the Commission went through the application of Om Prakash Katheria, respondent No. 8, father of Happy Katheria @ Shivam @ Harsh and to avert any atrocities being committed on him that it recommended to the D.G.P. U.P., Lucknow, respondent No. 3, to get the matter further investigated and hence the Commission acted within the purview of it's authority and therefore it's act was a damnum and no exception can be carved out of it.

15. Countenancing the aforesaid submissions by the learned Counsel for respondent No. 8 learned AGA, appearing on behalf of rest of the respondents further contended that under Sections 11 and 12 of U.P. Commission for the Scheduled Caste and Scheduled Tribes Act, 1995 (as has been amended in the year 2002) commission has every right to know the result of investigation and inquiry, which has been recommended by it. He submitted that the counter affidavit filed by Sri Shambhu Nath on behalf of Commission respondent No. 2, vide paragraph 8. remains uncontroverted and therefore, has to be accepted as correct. Further, inviting the attention on the counter affidavit filed by Sri Satya Prakash on behalf of respondent No. 5, learned AGA pointed out that further investigation was ordered by Director General of Police and Additional Director General. Special Inquiry Cell, U.P., Lucknow vide order dated 21.5.2007. In pursuance of the said order Dy. S.P. had handed over the investigation to Sri Ram who had field an application before Special Judge (D.A.A.) Farrukhabad seeking his permission for further investigation, which permission was ultimately accorded by the court on 30.5.2007. Presently, the investigation is being conducted by the deponent Sri Satya Prakash, Dy. S.P. Special Inquiry Cell, Lucknow. He further argued that order for further investigation was not passed by the Commission but by the Additional Director General, Special Inquiry Cell. He further submitted that since now the permission has been accorded by the Special Judge, (D.A.A.) Farrukhabad for further investigation the writ petition as well as the revision deserves to be dismissed. Learned AGA pointed out that while filing the above writ petition the petitioner has suppressed the material fact regarding the order passed by Special Judge (D.A.A). Farrukhabad granting permission for further investigation and since the writ petition filed by the petitioner is based on concealment of fact the writ petition be dismissed on that ground alone and consequently the revision filed by the petitioner revisionist be also dismissed. He has vehemently pointed out to paragraph 8 of the counter

affidavit dated 10th July 2007 filed by Satya Prakash, sworn on the same day 10th July 2007. Concludingly both the counsels for the respondents submitted that writ petition as well as revision be dismissed.

16. We have considered the contentions raised by both the sides. A perusal of Criminal Miscellaneous Writ Petition No. 7318 of 2007 indicates that the same was filed in this Court on 1.6.2007 and prior to it, on 30th May 2007, Special Judge (D.A.A). Farrukhabad had already accorded permission for further investigation which order has been challenged in the connected Criminal Revision. The writ petition came up for hearing on 5.6.2007 four days after the permission for further investigation was accorded by Special Judge, (D.A.A.), Farrukhabad, but it seems that the said order was not brought to the notice of this Court at the time of hearing of the writ petition, even though it was pleaded as a ground that further investigation was being carried out without prior approval of the Special Judge (DAA).

17. Further, on merits, we find that U.P. Commission for Scheduled Caste and Scheduled Tribes Act (Act No. 16 of 95) is constituted for the purposes of obliterating the atrocities being committed on the members of the Scheduled Castes and Scheduled Tribes. Section 11 and 12 of the Act are reproduced below:-

11. Duties and functions of the Commission- (1) It shall be the duty of the Commission-

1. (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under Constitution or under any other law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards;

(b) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;

(c) to participate and advice on the planning process of socioeconomic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development;

(d) to present to the State Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the State Government for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare development and advancement of the Scheduled Castes and Scheduled Tribes as may be referred to it by the State Government.

(2) The State Government shall cause the report of the Commission to be laid

before each House of the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the non-acceptance, if any, of any of such recommendations.

12. Powers of the Commission- The Commission shall, while investigating any matter referred to in Clause (a) or inquiring into any complaint referred to in Clause (b) of Sub-section (1) of Section 11, have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:

- (a) summoning and enforcing attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter that may be prescribed.

18. A bare reading of the aforesaid two Sections unambiguously brings forth that the Commission has been conferred with the powers of the Civil Court for the purposes of enquiry to be conducted by it. Commission has been statutorily conferred with the power to investigate or monitor all matters relating to the safe guards and infringements of rights provided to the members of SC/ST castes either under The Constitution or under any other law where the violation of the said safe guards and rights is alleged and the complaint for the infringement of the same has been lodged before it. Thus the power of the Commission is not circumscribed within any Specified area of activity. It can interfere, investigate or even give suitable directions, where it finds that some safe guard or any right conferred on a member of SC/ST castes has been violated. Thus the two sine qua non requisites for exercise of power by the Commission are that there should be member of SC/ST castes and secondly that his safe guard or the rights under The Constitution or any other law has been infringed. Thus the duty of the Commission is to see that no atrocity is being committed on any member of the Scheduled Castes and Scheduled Tribes. The purpose for which the Commission has been constituted has to be given a meaningful broader interpretation commensurate with the intention of the legislature. If the power of the Commission is restricted or circumscribed within a particular area of activity in respect of violation of safe guards or rights conferred on members of SC/ST castes, the Commission will lose all its efficacy and will be a life less statutory body of a defunct nature. While deliberating on the powers of the Commission, we have to look into the intention of the legislature for constituting it, which in our opinion should be the prime guideline for such an exercise, It is the cardinal principle of law that if a law enjoins an authority to do particular act it also confers on it all the ancillary powers without which the power conferred cannot exist. In this respect we recall the dictum "quando lex aliquid alicui concedit

concederi videtur et id sine qua res ipsae esse non potest" (if a law gives a person to do anything it also gives him that without which that thing cannot exist).

19. Above discussion lead us to conclude that the contention of learned Counsel for the petitioner revisionist that the Commission was not authorized to recommended for further investigation or to call for a report of such an investigation cannot be accepted and therefore is hereby repelled.

20. Further the commission should be left free to exercise it's power in appropriate cases. It will be preposterous and hazardous to substitute writ power of this Court with the power of the Commission. It is for the Commission to decide, on the facts of each case what action has to be taken for obliterating grievance raised before it. We may note here that we eschewed exercise of entering into the realm of critically appreciating the facts of criminal offence in question as any observation by us in this writ petition would have caused prejudice to either side in the trial but simultaneously we find ourselves unable to substitute our discretion with the power of the Commission, which has been exercised by it in accordance with law and purpose.

21. Here we may also dispel the contention of learned Counsel for the petitioner revisionist that the power of the Commission silhouettes and engulf the power of the police to make further investigation as was suggested by the learned Counsel for the petitioner revisionist. The said submission is wholly fallacious. Power of the Commission is in addition to and not in derogation of the power of the police to make further investigation. Section 11 and 12 of the U.P. Commission for " Scheduled Caste and Scheduled Tribes Act (Act No. 16 of 95), referred to above, does not in any way abridge or abrogate the power of the police u/s 173(8) Cr.P.C., which power the police can exercise without any order from any body. Section 173(8) Cr.P.C. is a genus of which Section 11 and 12 of the SC/ST Commission Act is a t species and this distinction is well perceptible and we leave this aspect here with out further volumenising this order.

22. We also negative the submission that the impugned order, annexure No. 1 in the writ petition has been passed by the Chairman of the Commission in his individual capacity, firstly for reason that the order does not indicate so and secondly, the counter affidavit filed by the Commission goes unrebutted wherein it is stated that the order has been passed by the commission and not by the Chairman individually. In this connection we also reject the submission that the order for further investigation was passed by the Chairman on extraneous consideration for the additional reason that time lapse between filing of application, annexure No. 9 and passing of the order by the Commission is negligible and there is total absence of any material on record to allege such a charge. Ipse-dixit on charge of illegal exercise of power, without relevant material and laying foundation for the same cannot be accepted.

23. We also point out here that we are not at all impressed by the arguments of

learned Counsel for the petitioner revisionist that the accused had opted for a special agency to get Crime No. 467 of 2007 further investigated for the following reasons. Firstly the prayer was made by respondent No. 8 who is not an accused in the crime. His grievance before the Commission was that his son has been falsely implicated and the matter be ordered to be investigated fairly by Special Enquiry cell. Secondly that the Commission has got the power to order for further investigation only by Special Enquiry Cell. Thirdly that the application was filed after the charge sheet was already submitted by the local police and further investigation can not obliterate it. We do not find anything wrong in exercise of such a power by the Commission. In our view, the aforesaid contention of learned counsel for the petitioner is unmerited.

24. Adverting to the order passed by the Special Judge (D.A.A.) Farrukhabad which has been challenged in the Criminal Revision, we find that Special Judge (D.A.A.) has passed impugned order dated 30.5.2007 after perusal of the material contained in the case diary. No doubt he has not gone into the detailed discussion of facts of the investigation, and in our view, rightly, as it would have prejudiced further investigation of the crime, but his order clearly indicates his application of mind. It would have been better for him to give some scanty reasons in a sentence or two but that is no ground for us to interfere into the impugned order dated 30.5.2007. Filing of criminal revision to challenge the order passed by Special Judge also surprised us as by filing of an amendment application in the already pending writ petition itself informant could have sought the same relief.

25. We are also not at all impressed by the argument raised by the learned Counsel for the revisionist that under LR Manual 7.22 ADGC has to obtain the permission from the District Magistrate or the Superintendent of Police before agreeing for further investigation. The interpretation which has been put-forward by learned Counsel for the revisionist of the said Clause 7.22 of the LR Manual is not acceptable on the plain reading of the said clause. We refer the said Clause here under:

7. 22. Miscellaneous duties of District Government Counsel (1) The District Government Counsel (Civil), (Criminal) and (Revenue) shall report to the Legal Remembrancer, whenever any question involving a substantial question of law as to the interpretation of the Constitution or invalidity of any Act, statutory rule or bye law is raised in the course of a suit or proceedings and obtain the orders of the Legal Remembrancer as to the best way in which the case should be prosecuted or defended and whether in the circumstances of the case the High Court should be moved to withdraw the case under Article 228 of the Constitution of India.

(2) They shall also report to the Legal Remembrancer any flaws in any enactment or statutory rule or notification and any other matter which they consider or the court desires to be brought to the notice of the Government.

(3) The District Government Counsel (Criminal) being incharge of the entire criminal litigation in the district the Public prosecutors or the Assistant Public Prosecutors allocated to the various magisterial courts in the district shall keep him informed of the developments in all important cases and will seek his guidance for the proper conduct and successful prosecution of the case.

(4) It is desirable that cases in the court of session should, as far as possible, be conducted by the District Government Counsel (Criminal) or by an Additional or Assistant District Government Counsel. Accordingly, in any district where a number of sessions courts are working, the district Government Counsel (Criminal) will request the District Officer to move the Legal Remembrancer for the appointment of one or more Additional/Assistant District Government Counsel as he may consider necessary in the interest of work.

(5) The duties of the District Government Counsel whether civil, criminal or revenue, are ordinarily restricted to the courts of the district for which he is appointed, but he may be required whenever considered necessary, either by the District Officer or by the Legal Remembrancer, to appear in any case in any court outside the district or to proceed to Allahabad or Lucknow to instruct the Government Advocate or the Standing Counsel, as the case may be, and to assist at the hearing or trial of any case in the High Court.

26. Provided that no District Officer shall depute a District Government Counsel to Allahabad or Lucknow unless the Government Advocate or the Standing Counsel, as the case may be, asks for his assistance and the prior approval of the Legal Remembrancer has been obtained:

Provided further that no District Officer shall depute a District Government Counsel to any court outside the District without the prior approval of the Legal Remembrancer.

27. No such condition as is contemplated under the said clause arose in the instant case and more over LR manual is only in the nature of instructions from the government and it does not have any force of law. It (LR manual) is only a compilation of guide lines issued by the concerned government from time to time to the state law officers. In *State of U.P. and Another Vs. Johri Mal*, ; apex court has held as under:

21. The provisions of the Code of Criminal Procedure which are statutory in nature govern the field. The State of Uttar Pradesh, however, for reasons best known to it amended Sub-section (1) of Section 24 of the Code of Criminal Procedure as a result whereof, the State is not required to consult the High Court before appointing a Public Prosecutor for the High Court. Similarly, Sub-sections (4), (5) and (6) of Section 24 have also been deleted purported to be on the ground that similar provisions exist in the Legal Remembrancer Manual. The Legal Remembrancer Manual is merely a compilation of executive orders and is not a "law" within the meaning of Article 13 of the Constitution of India.

Further in para 42 of the same judgment it has further been held as follows:

42. It may be true that the Legal Remembrancer Manual provides for renewal but it contains executive instructions which even do not meet the requirements of Clause (3) of Article 166 of the Constitution. Legal Remembrancer Manual is not a law within the meaning of Article 13 of the Constitution of India. See *Union of India (UOI) Vs. Naveen Jindal and Another*,

28. An Assistant Superintendent of Police being a authority much lower in rank than Director General of Police and Inspector General of Police, who have ordered for further investigation, therefore, in our view, there was no need for the ADGC to have informed Superintendent of police as the said officer could not have turned down the directions given from the top of the hierarchy. Yet another reason for not accepting the contention of learned Counsel for the revisionist is that ADGC did not concede for further investigation. It was not expected of him to bolster up only the prosecution allegations and secure conviction. If ADGC thought it fit, on the facts contained in the case diary, not to object for further investigation, as it would not have obliterated the charge sheet submitted by the police and also for the reason that no body should be falsely implicated in a charge of murder more so when the accused was of a tender age, no fault can be found from his such a conduct. In this connection we approve the argument referred by the apex court in the case of *A.R. Antulay Vs. Ramdas Srinivas Nayak and Another*, ; regarding the duty which is casted upon the ADGC/ public prosecutor which are as follows:

In order to acquaint us with the role, the dignity and the responsibility of a public prosecutor, attention was drawn to *Shwe Pru v. The King* AIR 1941 Rang 209; *Amallesh Chandra and Others Vs. The State*, *Raj Kishore Rabidas Vs. The State*, *In Re In Re: Bhupalli Malliah and Others*, and *Medichetty Ramakistiah and Others Vs. The State of Andhra Pradesh*, These decisions purport to indicate the objectivity and the fairness with which a public prosecutor in charge of the case shall conduct the prosecution and it is no part of his duty to attempt to obtain a conviction at all costs. His duty is to fairly analyse the evidence for and against the accused and that he should not withhold any evidence which has a bearing on the issues before the Court. In other words he must be fair and objective in his approach to the case animated by a desire to vindicate justice and no more.

29. We don't add any thing further but dismiss the contention of the petitioner criticising the conduct of the ADGC.

30. For the above sketched reasons, we do not find any merit either in the above writ petition or in the above criminal revision. Both are dismissed. Interim orders passed in both the cases stand vacated with direction to the Investigating agency to conclude further investigation expeditiously, if not already concluded, and submit its report to the concerned court of Special Judge (DAA), Farrukhabad.