

(2015) 04 AHC CK 0130

In the Allahabad High Court

Case No : Criminal Misc. W.P. No. 14941 of 2014, Cr. Misc. Application Nos. 4950 of 2004, 2795 of 2006 and 3829 of 2015

Udai Bhan Karwariya

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(2), 173(8), 190, 190(1)

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 2 ACR 1539 : (2016) 1 ALJ 481 : (2015) 89 ALLCC 805

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : U.N. Sharma, Suresh Chandra Dwivedi, Anil Tiwari and P.P.S. Rathore, for the Appellant; Anurag Khanna, Swati Agrawal, Sanjay Kumar Om, V.B. Singh and Yogesh Agarwal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.—Before coming to the factual matrix of the present case, it is necessary to state the circumstances in which the aforesaid matters have come up before this Bench after nomination from Hon"ble The Chief Justice in pursuance of the order of the Apex Court dated 5.1.2015. The aforesaid writ petition No. 14941 of 2014 for the first time come up before this Bench (hereinafter referred to as "the Court") on 6.1.2015 in compliance of an order passed by another Bench of this Court on 23.12.2014.

2. On 6.1.2015, the following order was passed by the Court:--

"Case called out in the revised list.

None appears on behalf of the petitioner to press this writ petition.

Learned AGA for the State is present.

The matter has been sent as unlisted today in the additional cause list.

It has been informed that on the resolution of Bar Association, the lawyers are abstaining from judicial work since 12.12.2014 after recess which still continues.

List on 19.1.2015."

3. On 19.1.2015, the matter was listed in the daily cause list before the Court and the following order was passed:--

"Case Called out in the revised list.

No one appears on behalf of the petitioner to press this writ petition.

Mrs. Swati Agrawal, Special Counsel for the State and Sri Vidya Bhushan Singh, Additional Advocate General are present.

The present writ petition is dismissed for want of prosecution.

After passing of the above order, Sri S.C. Dwivedi, learned Counsel for the petitioner has appeared and stated that the order dismissing the petition for want of prosecution may be restored as he was under the impression that the Counsel Sri Hari Om, Counsel for Union of India has sent an adjournment and the matter may not be taken upon account of which he did not appear.

The said ground does not appear to be reasonable one as it was the duty of learned Counsel for the petitioner to be present to press the petition and not concerned with the Counsel for the respondents.

On the request of Sri S.C. Dwivedi, learned Counsel for the petitioner, list on 29.1.2015.

The present order is being passed in the presence of Sri R.K. Maurya, learned AGA for the State.

Learned Counsel for the petitioner Sri S.C. Dwivedi shall inform about passing of this order in writing to Mrs. Swati Agrawal, Special Counsel for the State and Sri Vidya Bhushan Singh, Additional Advocate General."

4. On 29.1.2015, the present matter came up before the Court and following order was passed:--

"Heard Sri Anil Tewari, learned Counsel for the petitioner, Sri Vidhu Bhushan Singh, learned Additional Advocate General and Mrs. Swati Agrawal, Special Counsel for the State. Sri Yogesh Agrawal, learned Counsel for the respondent No. 4 is not present.

During the course of the arguments by learned Counsel for the parties it has come into light that the co-accused Kallu @ Ram Chandra Tripathi, Surya Bhan Karwariya and Kapil Muni Karwariya have filed a Criminal Misc. 482 Cr.P.C. Application No. 4950 of 2004 in which another Bench of this Court vide order dated 16.8.2005 passed the following order:--

"Hon"ble K.N. Sinha, J.

Heard arguments.

Judgment Reserved.

Till delivery of judgment, further proceedings in Case No. 102/2004 in State v. Kapil Muni Karwariya and others, pending before Spl. Chief Judicial Magistrate, Allahabad shall remain stayed against petitioner Kallu @ Ram Chandra Tripathi, Surya Bhan Karwariya and Kapil Muni Karwariya."

It was further pointed out by learned Counsel for the parties that as the trial was stayed by this Court in the said application under section 482 Cr.P.C. it appears that one of the aggrieved person from the family of one of the deceased namely Bijama Yadav had filed a Writ Petition (Criminal) No. 148 of 2014 before the Apex Court which was disposed of by the Apex Court vide order dated 5.1.2015 which is as under:--

"In the course of hearing, we have been informed that although the arguments have already been heard in Criminal Miscellaneous Application No. 4950 of 2004 on 16th August, 2005, but till date judgment has not been pronounced.

On these facts, we request the Chief Justice of the Allahabad High Court to look into the matter and seek reason why the case has not yet been disposed of. In the event, the matter is still pending, we request the High Court of Allahabad to dispose of the case within three months. The writ petition is, accordingly, disposed of."

The certified copy of the order of Hon''ble Apex Court has been filed by Special Counsel for the State which is taken on record.

It is desirable that the present case also be connected with the Criminal Misc. 482, Cr.P.C. Application No. 4950 of 2004 and place before Hon''ble The Chief Justice for nomination of a Bench for early disposal of both the petitions as three persons have lost their lives and matter pertains to August, 1996.

List in the next cause list before the appropriate Bench after obtaining nomination from Hon''ble The Chief Justice.

Sri Vidhu Bhushan Singh, learned Additional Advocate General is directed to serve a copy of this order to Sri Yogesh Agrawal, learned Counsel for the respondent No. 4.

5. It appears from the record that on 24.2.2015, Hon''ble The Chief Justice passed the order nominating this Bench for final disposal of all the aforesaid cases in compliance of the order of the Apex Court dated 5.1.2015. The order of nomination dated 24.2.2015 of Hon''ble The Chief Justice is quoted hereinbelow:--

"List the Criminal Misc. Writ Petition No. 14941 of 2014, Udaibhan Karwariya v. State of U.P. and others, along with the Criminal Misc. Application under section 482 Cr.P.C. No. 4950 of 2004, Kallu @ Ram Chandra Tripathi and others v. State

of U.P. and another, Criminal Misc. Application under sections 482 Cr.P.C. No. 2795 of 2006 Udaibhan Karwariya v. State of U.P. and Criminal Misc. Application under section 482 Cr.P.C. No. 3829 of 2015, Sulaki Yadav v. State of U.P. and others, before Hon"ble Mr. Justice Ramesh Sinha for final disposal within three months as desired by Hon"ble Apex Court in Criminal Writ Petition No. 148 of 2014 dated 5.1.2015."

6. On 11.3.2015, the aforesaid matters were listed before the Court in the daily cause list and the following order was passed by the Court:--

"Dr. C.P. Upadhyay, Secretary of Bar Association, High Court Allahabad along with some of the Members of Bar Association has appeared in the Court at about 2.45 P.M. He states that there has been some untoward incident in the District Court, Allahabad, on account of which the lawyers have decided to abstain from judicial work today for rest of the day.

Learned Counsel for the parties are present.

The present case along with the connected matters has been nominated to this Bench by Hon"ble the Chief Justice vide order dated 24.2.2015 in pursuance of the order of the Apex Court dated 5.1.2015.

Put up tomorrow, i.e., 12.3.2015 in the additional cause list.

7. Since 12.3.2015 till 18.3.2015, the matters could not be heard by the Court due to on going lawyers" strike and the matters were directed to be listed in the additional cause list on 19.3.2015 on which date following order was passed by the Court:--

"Sri Suresh Chandra Dwivedi, learned Counsel for the petitioner and Sri Vidhu Bhushan Singh, learned Additional Advocate General, Mrs. Swati Agarwal, Special Counsel for the State, Sri Yogesh Agrawal, learned Counsel for the respondent No. 4 and Sri Vimlandu Tripathi, learned A.G.A. are present.

Learned Counsel for the petitioner states that the matter be adjourned for today to enable him to engage a Senior Counsel and prepare the case and be fixed for Monday, i.e., 23.3.2015.

The present matter along with connected matters has been nominated to this Bench by Hon"ble The Chief Justice vide order dated 24.2.2015 in pursuance of the order passed by the Apex Court on 5.1.2015 for deciding the same within three months.

After the said nomination, the present matter along with connected matters was listed before this Bench in the Daily Cause List on 11.3.2015 on which date, the following order was passed by the Court.

"Dr. C.P. Upadhyay, Secretary of Bar Association, High Court Allahabad along with some of the Members of Bar Association has appeared in the Court at about 2.45 P.M. He states that there has been some untoward incident in the District Court,

Allahabad, on account of which the lawyers have decided to abstain from judicial work today for rest of the day.

Learned Counsel for the parties are present.

The present case along with the connected matters has been nominated to this Bench by Hon''ble the Chief Justice vide order dated 24.2.2015 in pursuance of the order of the Apex Court dated 5.1.2015.

Put up tomorrow, i.e., 12.3.2015 in the additional cause list"

Thereafter, the matter could not be taken up since 12.3.2015 due to continuance of lawyers' strike till 18.3.2015 though it was directed to be listed regularly in the additional cause list and has come up today along with connected matters in the additional cause list.

The Joint Registrar (Listing) is directed to place the present matter along with connected matters again before Hon''ble The Chief Justice within four days from today for fresh nomination whether this matter be heard along with connected matters by this Bench in pursuance of the earlier order of nomination dated 24.2.2015 or by another Bench as per the new roster which is coming w.e.f. 23.3.2015.

List the matters in the next cause list before appropriate Bench.

8. It transpired from the record that in compliance of the order dated 19.3.2015 of the Court, the matter was again placed before Hon''ble The Chief Justice for fresh nomination, who vide order dated 23.3.2015 again nominated the aforesaid matters to this Bench. The order of nomination dated 23.3.2015 which is on the order-sheet of the present case is quoted hereinbelow:--

"Lay/list all the connected cases before Hon''ble Ramesh Sinha, J. for final hearing and till disposal."

9. It further transpires from the record that on 24.3.2015, Crl. Misc. Application No. 97068 of 2015 was moved along with affidavit on behalf of the petitioner Udai Bhan Karwariya in Crl. Misc. Writ Petition No. 14941 of 2014 through his Counsel Sri S.C. Dwivedi, learned Counsel for the petitioner praying for nominating any other Bench except Hon''ble Ramesh Sinha, J. on the ground that Senior Advocate Sri Gopal S. Chaturvedi had appeared in Crl. Misc. Bail Application No. 9457 of 2014 Udai Bhan Karwariya v. State of U.P. in which an order was passed by another Bench of this Court on 29.4.2014 rejecting the bail application of the petitioner. It was further stated in the said application that cases of Sri Gopal S. Chaturvedi are not heard by Hon''ble Ramesh Sinha, J., hence Sri Gopal S. Chaturvedi could not appear to argue the aforesaid case on behalf of the petitioner and there is change in the roster w.e.f. 23.3.2015 so that Sri Gopal S. Chaturvedi, learned Senior Advocate may appear and argue the case on behalf of the petitioner on which on 24.3.2015 following order was passed by Hon''ble The Chief Justice:--

"Application is rejected. Hon"ble Ramesh Sinha, J. has already been assigned the work in pursuance of the directions of the Supreme Court. If a particular Senior Counsel does not appear before the Court, he/she has to return the brief and not accept the case. A Bench which has been assigned by the Chief Justice has to hear the case and any attempt to avoid the Bench will not be countenanced at the behest any litigant."

10. Thus, the aforesaid matters were listed before this Bench in the daily cause list on 27.3.2015 and following order was passed:--

"Sri U.N. Sharma, learned Senior Counsel assisted by Sri S.C. Dwivedi, learned Counsel for the petitioner, Sri Vidhu Bhushan Singh, learned Additional Advocate General, Mrs. Swati Agarwal, Special Counsel for the State, Sri Yogesh Agrawal, learned Counsel for the respondent No. 4 and Sri Vimlandu Tripathi, learned AGA are present.

The present case along with connected matters were nominated to this Bench by Hon"ble the Chief Justice vide order dated 24.2.2014 in pursuance of the order of Apex Court dated 5.1.2015 which was listed on 11.3.2015 but due to lawyers strike the matters could not be taken up though the cases were directed to listed in the additional cause list regularly on day to day basis. On 19.3.2015 when the matters were came up before the Court after the lawyers strike was call off, it was sent for fresh nomination by this Bench before Hon"ble the Chief Justice, who vide order dated 23.3.2015 has re-nominated the present matter along with all connected cases to this Bench for final hearing and till disposal, hence the same are listed in the daily cause list today at Serial No. 1.

Sri U.N. Sharma, learned Senior Advocate has stated at Bar that he is arguing N.H.R.M. matters which are being taken by another Bench of this Court after lunch which is the Special Bench for hearing in N.H.R.M. matters and the present case be adjourned today. He further prayed to the Court that the matters be taken up on Wednesday i.e. 1.4.2015 as he is not available in next week and is going to Lucknow to argue a case. He undertakes that he will argue the matters on Wednesday i.e. on 1.4.2015.

Sri S.C. Dwivedi, learned Counsel for the petitioner states that he has filed Supplementary affidavit in connected matter i.e. Criminal Misc. 482 Cr.P.C. Application No. 4950 of 2004 in the Registry of this Court on 26.3.2015. Office is directed to trace the same and place it on record.

Mrs. Swati Agarwal, learned Special Counsel prays for and is allowed two days time to file supplementary counter affidavit. She states that she would serve the supplementary counter affidavit by Monday i.e. on 30.3.2015 to Sri S.C. Dwivedi, learned Counsel for the petitioner, who may file supplementary rejoinder affidavit, if any, by the next date.

Sri Yogesh Agrawal, learned Counsel for the respondent No. 4 states that a copy of the supplementary affidavit has not been served by learned Counsel for the

petitioner on him. Sri Dwivedi states that he would also serve the copy of the same to Sri Yogesh Agrawal, who may also file supplementary counter affidavit, if any, and a supplementary rejoinder affidavit may be filed by the petitioner, if any, by the next date.

Put up the present case along with connected matters in the additional cause list on Wednesday i.e. on 1.4.2015 for final hearing and its disposal.

It is made clear that as the matters have been expedited by Hon''ble Apex Court, hence day to day hearing shall go on, no unnecessary adjournment will be granted to either parties by the Court."

11. On 1.4.2015, the matter was again taken up and the learned Counsel for the parties were heard. Thereafter the hearing of the aforesaid cases proceeded on day to day basis.

12. As all the above mentioned cases have been connected together and arises out of the proceedings of Case Crime No. 515 of 1996 under sections 147, 148, 149, 302, 307, 34 I.P.C. and 7 CrL. Law Amendment Act, police station Civil Lines, District Allahabad, hence the same are being decided by this common judgment.

13. The prayer made in the aforesaid writ petition is quoted hereinbelow:--

"1. Issue a writ, order or direction in the nature of certiorari calling for the records and quash the impugned orders dated 19.7.2014 passed by Special Chief Judicial Magistrate, Allahabad and the order dated 21.8.2014 passed by the Special Judge (E.C. Act)/Additional Session Judge, Allahabad.

2. Issue a writ, order or direction in the nature of mandamus directing the respondent-C.B.I. to conduct the impartial further investigation of Case Crime No. 515 of 1996 under sections 147, 148, 149, 302, 307/34 I.P.C. read with 7 CrL. Law Amendment Act, police station Civil Lines, District Allahabad.

3. Issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the circumstance of the case."

14. The prayer made in CrL. Misc. 482 Cr.P.C. Application No. 4950 of 2004 and 2795 of 2006 is quoted hereinbelow:--

"By means of this 482 Cr.P.C. application the applicant has prayed for quashing the charge-sheet No. 6 of 2004 dated 20.1.2004 in Case No. 102 of 2004 arising out of Case Crime No. 515 of 1996 under sections 147, 148, 149, 302, 307 and 34 I.P.C. and 7 CrL. Amendment Act, police station Civil Lines, District Allahabad pending before Special Chief Judicial Magistrate, Allahabad."

15. The prayer made in CrL. Misc. 482 Cr.P.C. Application No. 3829 of 2015 which was preferred by the complainant Sulaki Yadav is quoted hereinbelow:--

"By means of this 482 Cr.P.C. application the applicant has prayed for expediting the Session Trial No. 799 of 2014 (State v. Udaibhan Karwariya) under sections

147, 148, 149, 302, 307 and 34 I.P.C. and 7 CrI. Amendment Act pending in the Court of Additional District and Session Judge, Room No. 1, District Allahabad."

16. Brief facts of the case are that an F.I.R. was lodged by the complainant/respondent No. 4 Sulaki Yadav against the petitioner and four other accused persons, namely, Kallu @ Ram Chandra Tripathi, Kapil Muni Karwariya, Suraj Bhan Karwariya and Maula (now dead) which was registered as Case Crime No. 515 of 1996 under sections 147, 148, 149, 302, 307 and 34 I.P.C. and 7 CrI. Law Amendment Act at police station Civil Lines, District Allahabad on 13.8.1996 at 20:45 p.m. with respect to an incident alleged to have taken place on 13.8.1996 at 7 p.m.

17. The prosecution case in the F.I.R. is that informant Sulaki Yadav has alleged that there was enmity between his real brother Jawahar Yadav @ Pandit (Ex. MLA) with Kapil Muni Karwariya and his family members on account of which they were after his brother to kill him, hence his brother demanded security from the administration. The informant used to take care of the security of his brother. On 13.8.1996 at about 6:30 p.m. in the evening his brother was going to house from his office situated at 28/38 Lowther Road in a Maruti Car bearing registration No. UP 70 E 3479 which was being driven by driver Gulab Yadav. His brother was sitting next to the driver and one Kalian Yadav was sitting behind his brother. The informant was behind his brother's car in Tata Sumo vehicle which was being driven by Lochan Yadav. One Abhimanyu was also sitting with him. When the car of his brother reached at 7 p.m. near Palace cinema a jeep came in front of the said car and meanwhile a white Maruti Van bearing registration No. UP 70 8070 overtook the car of his brother and he heard some noise of exhortation on which the driver of the informant's brother, namely Gulab Yadav tried to speed up his car but accused Ram Chandra Tripathi @ Kallu blocked the road by his Jeep due to which the car of his brother could not go forward. Thereafter accused Kallu @ Ram Chandra Tripathi, armed with rifle, Kapil Muni Karwariya, Suraj Bhan Karwariya, Udai Bhan Karwariya and Shyam Narain Karwariya @ Maula all armed by AK-47 rifle and other firearm weapons got down from their respective Jeep and Car and on the exhortation of accused Maula and Kallu @ Ram Chandra Tripathi to kill his brother, all of them started indiscriminate firing with their respective weapons on the Maruti car of his brother due to which his brother Jawahar Yadav @ Pandit, Gulab Yadav, Kalian Yadav and one passer by received gun shot injuries and when the informant and other persons after stopping their car raised an alarm for rescue, the accused persons fled away in their car. On account of the said incident, there was silence and terror in the area, the shop started closing and people ran to save their life. When the informant went near the car of his brother, he found that his brother and driver had died and one passer by also died and one Kalian Yadav received injuries. The incident was witnessed by the informant along with his companions and one Rajendra Kumar son of Shyam Lal and many other persons. It was further alleged that due to terror of Kapil Muni Karwariya and his brothers, no one is ready to speak about the incident and earlier also they made an attempt

on the life of his brother. Kalian Yadav was shifted to the hospital. It was alleged by the informant that mercury light and tube light were on in which he and his companions had witnessed the incident and identified the assailants. The informant after dropping his brother Jawahar Yadav @ Pandit to Swaroop Rani hospital went to police station to lodge the F.I.R.

18. After registration of the F.I.R., the police started investigation and carried out for 15 days from 14.8.1996 to 29.8.1996. Thereafter the investigation was transferred to C.B.C.I.D. Allahabad on 7.9.1996 in pursuance of the letter dated 20.8.1996 sent by Dr. Murli Manohar Joshi, a BJP leader and the then Member of Parliament on the application of the petitioner. C.B.C.I.D. Allahabad conducted the investigation from 7.9.1996 to 27.9.1997 running in Parcha No. 1 to Parcha No. 76 being C.B. No. 712 of 1996. Thereafter on 12.2.1999, the investigation was again transferred to C.B.C.I.D. Varanasi at the instance of the petitioner, which carried out the investigation from 17.3.1999 to 28.4.2002 bearing C.B. No. 374 of 1999. The investigation was again on 22.6.2002 transferred to C.B.C.I.D. Lucknow which investigated the case from 22.6.2002 upto 20.1.2004 and filed charge-sheet against the petitioner and other four accused persons in the Court of Special Judicial Magistrate Allahabad, who took cognizance of the offence on 27.1.2004 and directed the case to be registered on which the case was registered as Case No. 102 of 2004 State v. Kapil Muni Karwariya and others, under sections 147, 148, 149, 302, 307 and 34 I.P.C. and 7 CrL. Law Amendment Act. Thereafter on the applications filed by co-accused Kapil Muni Karwariya dated 26.7.2008 and 18.10.2008 praying for further investigation, the State Government again on 19.11.2008 ordered for further investigation by C.B.C.I.D. Allahabad, which has done the investigation from 1.12.2008 to 28.10.2009 and completed the investigation and submitted its report, i.e., C.B. No. 563 of 2008 on 28.10.2009 before the Court concerned.

19. Co-accused Kallu @ Ram Chandra Tripathi and three others have filed 482 Cr.P.C. Application No. 4950 of 2004 challenging the said charge-sheet in which following order was passed by another Bench of this Court on 16.8.2005:

"Judgment reserved.

Till delivery of the judgment further proceedings of Case No. 201 of 2004 State v. Kapil Muni Karwariya and others, pending before Special Chief Judicial Magistrate, Allahabad shall remain stayed against applicants Kallu @ Ram Chandra Tripathi, Suraj Bhan Karwariya and Kapil Muni Karwariya only shall remain stayed."

20. The petitioner also filed CrL. Revision No. 821 of 2004 and got the proceedings of Case No. 102 of 2004 stayed and subsequently the said revision was dismissed as not pressed on 9.1.2006 but the interim/stay order passed in CrL. Misc. Application No. 4950 of 2005 is operative till date and the said application is connected with the present case. Thereafter, the petitioner filed another application, i.e., CrL. Misc. 482 Cr.P.C. Application No. 2795 of 2006 with

a prayer to quash the entire proceedings, the said application is also connected with the present case.

21. As the committal proceedings were being delayed at the instance of the petitioner, the informant Sulaki Yadav has also filed an application, i.e., Crl. Misc. 482 Cr.P.C. Application No. 6175 of 2012 praying for issuance of a direction to the Special C.J.M. Allahabad to commit the case to the Court of Sessions on which this Court vide order dated 19.4.2012 directed the C.J.M. Allahabad to pass appropriate order in accordance with law for committing the case to the Court of Sessions, if there is no legal impediment, as there was no stay operating in favour of the petitioner.

22. The Special Chief Judicial Magistrate Allahabad issued process against the petitioner Udai Bhan Karwariya and has committed the case to the Court of Session but the accused did not appear before the Court concerned, hence repeatedly bailable and non bailable warrants have been issued against him at as many as 30 dates for securing his presence.

23. The petitioner Udai Bhan Karwariya then preferred Crl. Misc. 482 Cr.P.C. Application No. 45631 of 2013 before this Court praying for quashing the non bailable warrant issued in the case and this Court vide order dated 16.12.2013 disposed of the said application with a direction to the petitioner to surrender within ten days from the date of said order and apply for bail in accordance with law and for a period of ten days or till surrender the non bailable warrant issued against him was kept in abeyance.

24. In pursuance of the order of this Court dated 16.12.2013, the petitioner surrendered before the Court concerned on 1.1.2014.

25. The petitioner again filed Crl. Misc. 482 Cr.P.C. Application No. 14733 of 2014 on 28.4.2014 praying for quashing the order of the Special Chief Judicial Magistrate dated 4.3.2014 and 7.3.2014 for separating the file of the petitioner from other co-accused persons in Crl. Case No. 102 of 2004, the said application is pending before this Court though it appears to have become infructuous as the case of the petitioner Udai Bhan Karwariya admittedly has been committed to the Court of Session and the trial is pending before Additional Session Judge, Court No. 1, Allahabad being S.T. No. 799 of 2014 State v. Udai Bhan Karwariya.

26. The petitioner Udai Bhan Karwariya again moved an application, i.e., Paper No. 27 Kha before the Court of Special Chief Judicial Magistrate for issuance of a direction for further investigation of the case through Central Bureau of Investigation (hereinafter referred to as the C.B.I.) which was rejected by the Special C.J.M. vide order dated 19.7.2013 against which the petitioner filed Crl. Revision No. 249 of 2014 before the Lower Revisional Court which was rejected by the Special Judge (E.C. Act)/Additional Session Judge, Allahabad on 21.4.2014 against which the petitioner filed the present writ petition.

27. Heard Sri U.N. Sharma, learned Senior Advocate assisted by Sri Anil Tiwari,

Sri S.C. Dwivedi, Sri P.P.S. Rathore, learned Counsel for the petitioner in the aforesaid writ petition and aforesaid two 482 Cr.P.C. applications filed by the accused applicants, Sri Vidhu Bhushan Singh, learned Additional Advocate General assisted by Sri Vimlendu Tripathi, learned A.G.A. for the State, Mrs. Swati Agarwal, learned Special Counsel for the State and Sri Yogesh Agarwal, learned Counsel for the complainant/respondent No. 4.

28. Learned Counsel for the petitioner vehemently argued that fair and impartial trial is fundamental right of an accused which includes fair investigation. He submitted that the investigation of the present case is unfair, tainted, mala fide and biased on account of political consideration and as such is violative of Article 21 of the Constitution of India. He vehemently argued that the purpose of the investigation is to bring out the truth of the case. In this regard he has tried to demonstrate various infirmities, illegalities and mala fide intention of the Investigating Agency from the following facts.

"(a) The materials collected by the Investigating Agencies clearly indicate that F.I.R. was ante-time and was not lodged at 8:45 P.M. rather was lodged at 1:00 A.M. in the night but all the Investigating Agencies have not investigated this fact rather charge-sheet has been filed ignoring the records already part of the case dairy.

(b) The actual F.I.R. was by the injured witness Pankaj and by the Forest Officials but was not recorded by the police intentionally and afterwards under political influence of Samajwadi Party Leaders, the present F.I.R. was lodged implicating the entire family out of admitted enmity with the petitioner's family.

(c) Issue, that the Forest Department Officials were the first person to report was never investigated.

(d) From the very beginning the evidence collected by the Investigating Agencies were indicating the angle of Gang-war of Liquor Mafia of Varanasi, in which business, the deceased was the partner. The Investigating Agencies have found the evidence of such angle but this part was dropped with mala fide intention and the issue was left and was never investigated.

(e) The Investigating Agencies have also found that the deceased was having a criminal history of more than 12 cases and as such the murder by any other person was a possibility but this aspect was not at all examined.

(f) The Investigating Agencies have ignored the statement of injured witness Kalian Yadav, who has specifically stated that he is being pressurized and threatened to implicate the petitioner and his family. This statement itself indicates involvement of some other persons but no investigation was made by the police to find out the actual culprits.

(g) The Investigating Agencies were under the influence of the political connection of deceased family with ruling Samajwadi Party from very beginning and on account of this political pressure they could not record the statement of

injured witnesses including Kalian Yadav immediately. This fact is clear from Parcha No. 8 dated 20.8.1996, Parcha No. 11 dated 24.8.1996, Parcha No. 13 dated 26.8.1996 and Parcha No. 15 dated 28.8.1996. On account of political pressure the entire investigation was carried in a way as directed by complainant Sulaki Yadav. Witnesses were not produced for their statement on their free will.

(h) On the basis of the evidence collected, the Investigating Agencies have recorded that the Jeep mentioned in the F.I.R. was of Forest Department and was not involved in the crime. Despite this material and finding they have contradictory charge-sheet proving the allegations of F.I.R. regarding involvement of Jeep.

(i) On the basis of the evidence collected, the Investigating Agencies have recorded that the Maruti Van mentioned in the FIR was not involved in the crime. Despite this material and finding they have contradictory charge-sheet proving the allegations of F.I.R. regarding involvement of Maruti Van.

(j) None of the independent eyewitnesses supported the F.I.R. version, but the Investigating Agencies have completely ignored those materials.

(k) Filing of the charge-sheet by C.B.C.I.D. Lucknow, was mala fide and in haste under influence of the then Samajwadi Government which came into power in 2003. C.B.C.I.D. Lucknow has filed the charge-sheet making false statement (a) that affidavit of Kalian could not be verified despite the fact that the same was already verified by the earlier I.O. and (b) that the sending of Fax by S.S.P. could not be verified.

Intentionally ignoring two important materials contained in Parcha No. 79 dated 18.8.1999 and parcha No. 100 dated 15.10.2001.

The conduct of Investigating Agency is clear from Parcha No. 16 dated 17.11.2003, Parcha No. 17 dated 20.11.2003, Parcha No. 18 dated 20.1.2004.

(l) The investigation was conducted in the manner as if, duty of police was to prove the contents of F.I.R.

(m) The petitioner has raised these issues time and again but no effort has been made by the investigating agencies to investigate the issues and to find out of the actual culprit.

(n) In further investigation some of these issues were, though investigated, but when evidence proving the innocence of the petitioner and his family members were found then intentionally, the said further investigation was not completed till date."

29. In support of his arguments, he has placed reliance on the various judgments of the Apex Court, i.e., Siddharth Vasisth @ Manu Sharma v. State (NCT of Delhi) 2010 (69) ACC 833 (SC) : 2010 (90) AIC 193 , and drawn the attention of the Court towards paras-198 and 199 of the aforesaid judgment and contended that it is not only the responsibility of Investigating Agency but as well as that of the

Court to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. He further relied upon the judgment of the Apex Court in the case of Sasi Thomas Vs. State and Others, (2007) 1 DMC 383 : (2006) 12 SCALE 507 : (2006) 12 SCC 421 : (2006) 9 SCR 450 Supp and drawn the attention of the Court towards paras 15, 18 and 33 of the aforesaid judgment. He further relied on the judgment of the Apex Court in the case of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, AIR 2010 SC 1476 : (2010) 2 JT 352 : (2010) 2 SCALE 467 : (2010) 3 SCC 571 : (2010) 3 SCR 979 : (2010) 2 UJ 1047 and drawn the attention of the Court towards paras 68(ii) and 68(iv), Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896 and drawn the attention of the Court towards paras-43, 44 and 45 of the aforesaid judgment. He further argued that the Apex Court in catena of decisions has observed that if it is found that the investigation is tainted then it is inevitable responsibility of the Constitutional Court to pass a specific order as to the fate of the investigation already done. He has further relied upon the judgment of the Apex Court in the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 . He then urged that fair investigation cannot be denied on the ground that it will delay the trial. He submitted that the right to fair investigation and right to trial both are fundamental rights of accused. It has been held in Babu Bhai's case (supra) in para-44 that the tainted investigation cannot give right to a valid charge-sheet. Thus in the present case the respondents cannot take this plea that any direction for investigation by C.B.I. or any independent agency will further delay the trial.

30. He next submitted that the petitioner and co-accused persons on the basis of tainted investigation and consequential charge-sheet cannot be compelled to face trial because tainted investigation cannot result in a valid charge-sheet and facing trial on such biased investigation and charge-sheet would be violative of fundamental right of the petitioner as enshrined under Article 21 of the Constitution of India. He further argued that as the investigation of the case is tainted, biased and mala fide, it is a fundamental right of the petitioner to have impartial investigation, hence the charge-sheet which has filed in the present case as well as the entire proceedings on the basis of said charge-sheet is liable to be quashed by this Hon''ble Court as has been prayed by him the aforesaid 482 Cr.P.C. application filed by the petitioner Udai Bhan Karwariya and other co-accused persons Kallu @ Ram Chandra Tripathi, Suraj Bhan Karwariya and Kapu Muni Karwariya. He lastly submitted that in view of the infirmities pointed out about which shows that the investigation is tainted, biased and defective and it has been carried out because of the political interference, hence for doing complete justice and enforcing fundamental right, the matter be transferred to the C.B.I. or any other independent agency for impartial further investigation.

31. Per contra, Sri Vidhu Bhushan Singh, learned Additional Advocate General

has vehemently opposed the prayer for transfer of further investigation to the C.B.I. or any other independent agency at this stage as has been prayed by the petitioner and the impugned orders as well as the impugned charge-sheet and its consequential proceedings and submitted that no doubt both the parties have political affiliation but the investigation which has been done twice at the instance of the petitioner influencing his power through his political masters have been carried out in a most fair manner continuously. Initially by the local police thereafter by the other Sectors of the C.B.C.I.D., i.e., C.B.C.I.D. Allahabad, C.B.C.I.D. Varanasi and C.B.C.I.D. Lucknow, which after thorough investigation finding the involvement of the petitioner and other accused persons in the incident submitted charge-sheet against them before the Court of Special Chief Judicial Magistrate on 20.1.2014 on which the learned Magistrate has taken cognizance of the offence which requires no interference by this Court as the charge-sheet was submitted against the petitioner as well as other co-accused persons. He pointed out that on the date and time of incident, i.e., in the year 1996, there was President Rule in the State and continued upto 21.3.1997 and rest of the period was occupied by the political parties like B.J.P. and B.S.P. of which the petitioner and co-accused persons were leaders (Ex. MP and Ex. MLA) and are closely connected with said parties and such political position is being misused by them to any how demolish the prosecution case and delay the proceedings of criminal case in question. He submitted that after collection necessary materials in the investigation, the C.B.C.I.D. prepared LPR dated 24.12.1998 (C.B. No. 712 of 1996), thereafter LPR dated 2.7.2001 (C.B. No. 374 of 1999) and LPR dated 25.11.2003 (C.B. No. 307 of 2002) and in all these LPRs, the accused persons were found to be involved in the incident in question dated 13.8.1996 and a cognizable offence is disclosed against them. He submitted that in spite of the investigation being transferred at the instance of the petitioner twice, i.e., local police to C.B.C.I.D. Allahabad and C.B.C.I.D. Allahabad to C.B.C.I.D. Varanasi when the charge-sheet was submitted against the petitioner on 20.1.2004 after nearly about five years of the incident, petitioner again used his political power and got an order for further investigation on 19.11.2008 from the State Government and report was submitted by the C.B.C.I.D. Allahabad stating that the petitioner and his brother Kapil Muni Karwariya was found to be present at Lucknow in a meeting with Sri Kalraj Mishra a member of political party, namely, B.J.P. and the plea of alibi was raised on the basis of which the investigating agency C.B.C.I.D. Allahabad after further investigation submitted a report that the petitioner was not present on the date and time of the incident in Allahabad. He submitted that the said report also appears to be under influence of the petitioner and his brother co-accused Kapil Muni Karwariya though the charge-sheet was already submitted by the C.B.C.I.D. Lucknow in the Court of Special C.J.M. Allahabad. He submitted that the deceased as well as accused persons are having criminal history and one of the accused, namely, Shyam Narain Karwariya @ Maula (now dead) was having a criminal history of 58 cases. The allegation of alleged illegality, irregularity and defect in investigation and the materials relied upon by the petitioner and co-accused regarding same are not

germane to evaluate the quality of investigation and the same are in fact the defence of the petitioner and co-accused persons and that has to be proved before the trial Court by them for which they have opportunity before it. He submitted that the incident in question is most heinous, gruesome and high handed triple murder which was committed by using most sophisticated and prohibited weapon like A.K. 47, A.K. 56, Pistol etc. and there are two injured eye witnesses along with several other eye witnesses, who have supported the prosecution case. He has also pointed out that there was threat to life of deceased Jawahar Yadav, who had submitted an application on 15.6.1996 before the D.I.G. to provide him security from the accused persons. He further argued that the accused persons has no right to choose the investigating agency. In support of his arguments, he has placed reliance on the judgment of the Apex Court in the case of Narmada Bai Vs. State of Gujarat and Others, AIR 2011 SC 1804 : (2011) CriLJ 2651 : (2011) 2 Crimes 142 : (2011) 4 JT 279 : (2011) 3 RCR(Criminal) 12 : (2011) 4 SCALE 469 : (2011) 5 SCC 79 : (2011) 1 SCC(Cri) 1109 : (2011) 5 SCR 729 : (2011) AIRSCW 2417 : (2011) 3 Supreme 153 and drawn the attention of the Court towards para-36 of the aforesaid judgment in which it has been held that "it is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them." He lastly argued that the learned Magistrate as well as the Lower Revisional Court has rightly rejected the application of the petitioner for transfer of investigation as the Magistrate has no power to direct or order the C.B.I. either to investigate or further investigate a criminal case. So far as the prayer made in the two 482, Cr.P.C. application of the petitioner and co-accused persons for quashing of the charge-sheet and the proceedings before the Special C.J.M. is concerned on the ground that there is fault in the investigation is absolutely untenable, the same is liable to be rejected.

32. Mrs. Swati Agarwal, learned Special Counsel for the State too has strongly opposed the prayer for quashing of the impugned orders passed by the Court below as well as the prayer for transfer of further investigation to C.B.I. or any other independent agency and the charge-sheet of the present case and its consequential proceedings. She submitted that the issues which have been raised by the petitioner has already been investigated by the C.B.C.I.D. at regular intervals, to whom the investigation was transferred at the behest of the petitioner by the State Government and the petitioner in order to linger on the trial has been raising the said issues time and again in order to defeat the purpose of trial of an incident which has taken place 18 years ago. She submitted that all the issues which have been raised by the petitioner are the points of his defence which could be considered during the course of trial. She submitted that the Lower Revisional Court while rejecting the revision of the petitioner had observed in para-28 that "it cannot be concluded that the investigation was conducted partially and the points raised by the accused persons were not investigated." She submitted that the case of the petitioner has already been

committed by the Special Chief Judicial Magistrate to the Court of Additional Sessions Judge, Court No. 1, Allahabad and the trial is pending against the petitioner Udai Bhan Karwariya and the petitioner is not allowing the trial to proceed and is filing petition/application (s) before this Court one after other to linger on the trial. She submitted that the petitioner and his family members are politically powerful persons having a criminal family background and got the investigation transferred to one investigating agency to other, sector to sector of C.B.I., on his own volition and desire even after charge-sheet had been filed. She further submitted that the C.B.C.I.D. had investigated the case impartially after considering all the points of defence raised by the accused persons and filed charge-sheet hence no fundamental right of the accused has been violated. In fact, the victims' fundamental right of speedy justice is being violated by the petitioner and accused persons by his maneuvering skill in lingering on the case and not allowing the trial to start even after 18 years of occurrence.

33. She argued that the C.B.C.I.D. found that there was overwhelming evidence against the petitioner and other accused persons, hence charge-sheet was submitted against them and the case of the petitioner Udai Bhan Karwariya has been committed to the Trial Court and the three other co-accused persons have misused the process of law and filed 482, Cr.P.C. Application No. 4950 of 2004 and got an interim order from this Court on 16.8.2005 by which the proceedings before the Magistrate has been stayed. She submitted that all the issues which have been raised by the petitioner has already been considered by the C.B.C.I.D., hence there is no need for further investigation or transfer of investigation to the C.B.I. or any other independent agency. She submitted that the argument of learned Counsel for the petitioner that the F.I.R. is an ante-time and the incident has taken place in some other manner and not as stated by the prosecution and there was a gang war of liquor Mafia of Varanasi on account of which the deceased was done to death is wholly un-founded, false, frivolous and baseless as the involvement of the petitioner and other co-accused persons has come during the investigation by the C.B.C.I.D. and the petitioner Udai Bhan Karwariya managed to be out of jail for 17 long years by using his political power and influence though there is strong evidence against him and other co-accused persons. She submitted that the petitioner along with other accused persons was seen committing the murder of the deceased, his driver and one passer by using most sophisticated weapons by the informant and eye-witnesses for which F.I.R. was lodged at 20:45 p.m. on 13.8.1996 which was endorsed in G.D. No. 51 at 8:45 p.m. without any delay. The complainant, who is the brother of the deceased, namely, Sulaki Yadav lodged the F.I.R. which was got written by Madhup Agarwal, who also supported the prosecution case. She further argued that the allegation levelled that the whole case was concocted against the petitioner and co-accused persons on the arrival of the then Defence Minister Sri Mulayam Singh Yadav, who participated in the last rites of the deceased on 14.8.1996, is not true and has no legs to stand. She further pointed out that Maruti Van which was used by the petitioner and co-accused persons bearing

registration No. UP70 8070 belong to Surendra Singh whose uncle Dashrath Singh was the partner of the petitioner in Sand Mining business and is having good relationship with the petitioner which is evident from the statement of Dashrath Singh Patel, who has stated that on 18.8.1996 his father died at about 4 a.m. and he along with his relatives were present in the funeral at about 2:00-2:30 p.m. at the place of cremation and co-accused Surajbhan Karwariya was also present at the time of cremation and after the cremation, the police had visited there and had brought them to police station for investigation along with his nephew Surendra Singh. She further replied to the argument of learned Counsel for the petitioner that the statement of Kalia Yadav, the injured witness was not recorded by the investigating agency soon after the incident when he remained in the hospital and was recorded after 16 days of the incident, cannot be thrown out simply because of the delay in recording of his statement though he has supported the prosecution case as mentioned in the F.I.R. in toto before all the investigating agencies. She further submitted that under the influence of the petitioner Kalia Yadav, who twice supported the prosecution case in which he assigned specific roles to each of the accused persons but later he appears to have been won over by the accused persons and gave an affidavit in favour of the accused person denying their involvement in the crime and after giving the said affidavit he died in mysterious circumstances which shows otherwise conduct of the accused persons and the petitioner, who have also tampered with the evidence. She further submitted that it was found during the course of investigation by the C.B.C.I.D. that the incident at Varanasi and the incident at Allahabad are entirely different and there is no connection between them. The statement of Maya Shankar Singh recorded by the police while in custody does not carry any evidentiary value. She submitted that the contention of learned Counsel for the petitioner that the Fax messages which has been sent by the office of S.S.P. Allahabad could not be traced out after search. The Investigating Officer of the C.B.C.I.D. found during the course of investigation that the fax was not proved to be sent. She contended that after weighing all oral testimonies, documentary evidences. Forensic Science Laboratory Report, the C.B.C.I.D. came to the conclusion that the allegations made in the F.I.R. against the petitioner and other accused persons are proved to be true, hence submitted charge-sheet against them before the competent Court. The plea of alibi which has been raised by the petitioner and accused persons, if any, can be examined by the Trial Court during the course of trial. She further pointed out that co-accused Kapil Muni Karwariya changed his party affiliation and on his application the State Government ordered for further investigation on 19.11.2008 after almost five years of filing of charge-sheet and during the course of further investigation he somehow managed to got a report on the plea of alibi that his participation along with co-accused Kapil Muni Karwariya was found to be false at the place of incident. Thus she prayed that the present petition as well as two 482, Cr.P.C. applications filed by the petitioner and co-accused persons are devoid of merit and is liable to be dismissed and the accused persons may be put to trial.

34. Sri Yogesh Agrawal, learned Counsel for the complainant/respondent No. 4 has also vehemently opposed the prayer for of the petitioner and co-accused persons and adopted the arguments of learned Additional Advocate General as well as of the Special Counsel for the State. He in support of his argument has placed reliance on the judgment of the Apex Court in the case of Municipal Corporation of Delhi Vs. Asian Art Printers (P) Ltd. and others, etc. etc., AIR 1995 SC 40 : (1994) 5 JT 607 : (1994) 3 SCALE 919 : (1994) 6 SCC 87 : (1994) 3 SCR 8 Supp : (1994) 2 UJ 733 and has drawn the attention of the Court towards para-9 of the aforesaid judgment which is quoted hereinbelow:--

"that the question then required to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality, vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190, Cr.P.C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance, section 190, Cr.P.C. is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., sections 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of section 190 are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537, Cr.P.C. which is in the following terms is attracted:--

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a

failure of justice."

If, therefore, cognizance is in fact taken on a police report vitiated by the breach of a mandatory provisions relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Parbhu vs. Emperor* AIR 1944 73 (Privy Council) , and "*Lumbhardar Zutshi v. The King*" AIR 1950 PC 26 (D).

These no doubt relate to the illegality of arrest in the course of investigation which we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

35. He submitted that in the present case the investigation has been conducted in fair and unbiased manner by the C.B.C.I.D. there has been no miscarriage of justice to the petitioner or co-accused persons, who are involved in a triple murder case which has been witnessed by two injured persons and the petitioner and co-accused persons are lingering on the committal proceedings for the last 18 years for their vested interest by misusing the process of law and approaching this Court time and again and held up the proceedings of the trial and present petition as well as two 482 Cr.P.C. applications filed by the petitioner and other accused persons are liable to be dismissed.

36. Considered the submissions advanced by learned Counsel for the parties and perused the record.

37. The contention on which learned Counsel for the petitioner laid much stress that the right to fair investigation and fair trial of the petitioner and co-accused persons as enshrined under Article 21 of the Constitution of India has been violated because of unfair investigation done by the C.B.C.I.D., which submitted charge-sheet against them on 20.1.2004 on which cognizance was taken by the Magistrate, is liable to be quashed by this Court, but the said argument of learned Counsel for the petitioner does not find weight as the petitioner has been canvassing his right of fair trial and investigation being his fundamental right but it appears that the petitioner himself has got the investigation of the case being transferred time and again and in the said process he has lingered on the case for the last 18 years by misusing the process of law and not allowed the trial to proceed which has been got stayed by co-accused Kallu @ Ram Chandra Tripathi and others at its committal stage by filing aforesaid 482, Cr.P.C. application

without realizing the fact that the points which have been raised by him are the points of his defence and have already been investigated by the C.B.C.I.D. but as the investigation done was not found to be in his favour he thereafter started complaining the same to be tainted, unfair and defective. It further appears that the case which the petitioner and co-accused persons want to set up is that the incident has taken place in some other manner and not as stated by the prosecution, is also not borne out from the material and evidence collected during investigation and it appears that he wants to delay the trial on one count or the other which shows the otherwise conduct of the accused persons.

38. From the entire material which has been pointed out by the petitioner and co-accused persons to show that the points which have been raised by them before the investigating agency right from the registration of the F.I.R. till the investigation was carried out have not been properly investigated by the C.B.C.I.D. and they even not tried to discover the truth or the origin of the prosecution case and have simply carried out the investigation in the light of the F.I.R. which was lodged against the petitioner and other accused persons, appears to be wholly unfounded as the investigation by the C.B.C.I.D. has been done twice at the instance of the petitioner, who got the investigation transferred from the local police just after 13 days of the incident to the C.B.C.I.D. Allahabad which carried out thorough investigation and had recorded the statements of eye witnesses and injured and other persons of the area wherein participation of the petitioner and other accused persons have been found and the petitioner being not satisfied with the said investigation which was transferred at his behest as time and again prayed the State Government and got the investigation transferred to C.B.C.I.D. Varanasi which carried out the investigation also on the issues raised by the petitioner trying to dilute the earlier investigation but could not reach to otherwise conclusion and when the matter was again transferred to C.B.C.I.D. Lucknow, which investigated the matter and taking into account the two investigation done by the two sectors of C.B.C.I.D., i.e., Allahabad and Varanasi submitted charge-sheet against the petitioner and other accused persons before the Special Chief Judicial Magistrate on 20.1.2004 and the learned Magistrate after finding prima facie case and evidence collected during the course of investigation took cognizance of the offence on 27.1.2004 and summoned the petitioner and other accused persons for the case being committed to the Court of Sessions. The petitioner did not even stop here but he again used his political influence and power and after five years of taking cognizance against him got an order from the State Government on 19.11.2008 on his application for further investigation and managed to get further investigation done by C.B.C.I.D. Allahabad which submitted a contrary report under his influence on 28.10.2009 stating that the petitioner Udai Bhan Karwariya and his brother Kapil Muni Karwariya were in a meeting at Lucknow with Sri Kalraj Mishra a Member of political party, namely, BJP at the date and time of the incident.

39. There is no doubt in the submission of the learned Counsel for the petitioner

that it is a fundamental right of the accused to have fair and impartial trial which includes fair investigation but the instances and infirmities pointed out by the petitioner to show that the investigation in the present case was not carried out by the Investigating agency in a fair manner, does not appear to be correct as thorough investigation of the case was done by the C.B.C.I.D. for 8 years and then submitted the charge-sheet. Simply because the points which have been raised by the petitioner have though being investigated by the C.B.C.I.D. at regular intervals find continuous involvement of the petitioner and other accused persons, who tried to demonstrate the same to be tainted and unfair, is wholly unjustified. The petitioner as well as other co-accused persons and the deceased are no doubt political persons but it cannot be ignored that the incident has taken place on the date and time when the State of U.P. was under the President Rule and ghastly and gruesome murder which has been committed in the heart of the city in a busy market place in which three persons were done to death including one passerby and two persons suffered injuries by sophisticated weapon like A.K. 47 of which pellets were recovered from the dead body of the deceased Jawahar Yadav shows the daring act of the petitioner and other accused persons, who after committing the murder have misused the process of law for their ulterior motive and in order to defeat the purpose of trial had been approached this Court time and again adopting dilatory tactics of filing petitions and ultimately seeing the conduct of the petitioner and other co-accused persons, the wife of one of the deceased had to approach the Apex Court for getting speedy justice for expediting the hearing of 482, Cr.P.C. Application No. 4950 of 2004 which has been filed by co-accused persons and the committal proceedings before the Magistrate was stayed by this Court on 16.8.2005.

40. The facts and instances pointed out by the learned Counsel for the petitioner that the F.I.R. was an ante-time document as is evident from the fax of the S.S.P. Allahabad, who had sent three fax messages to the State Government which shows that the F.I.R. was not lodged till date and time of sending of fax as the S.S.P. has informed the State Government about the incident, the F.I.R. of the Forest Department was not lodged by the police and the investigation was not done with respect to the angle of Varanasi incident which has taken place before the present incident in which there was attack on one Liquor Mafia Jawahar Lal Jaiswal, who happens to be the close friend of the deceased and the assailants of the said case may be the assailants of the present case and the cartridges which have been recovered in the said incident had not been found as they were not traceable in order to prove that the assailants may be the same, the statement of injured Kalia Yadav was not recorded within time, Maruti Van was not used in the crime, the deceased himself was having a long criminal history and it cannot be ruled out that the deceased was killed by some other persons and the petitioner and other co-accused persons have been falsely implicated in the present case on account of previous animosity between the parties, the deceased belong to Samajwadi Party and the petitioner was strong supporter of BJP and further had changed his affiliation to BSP and it may be

possible that the petitioner and other accused persons have been falsely implicated in the present case on account of political enmity, the said facts and instances have also not been properly and thoroughly investigated by the C.B.C.I.D. also do not appear to be convincing as the investigation has been carried out in a fair and impartial manner by the C.B.C.I.D. which submitted charge-sheet against the petitioner and co-accused persons. Moreover, the petitioner has ample opportunity during the course of trial to lead defence and prove the same before the Trial Court by reliable evidence.

41. Learned Counsel for the petitioner in support of his above arguments has drawn the attention of the Court towards para-48 of the judgment of the Apex Court in the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 which is quoted hereinbelow:--

"48. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the Court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the Court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a Court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons."

42. Here it is relevant to refer para-20 of the said judgment wherein it has been stated that the investigation can be of following counts:--

- "1. Initial investigation.
2. Further investigation.
3. Fresh or de novo or reinvestigation.

The "initial investigation" is one which the empowered police officer shall conduct in furtherance of registration of an F.I.R. Such investigation itself can lead to filing of a final report under section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the Court of competent jurisdiction in terms of section 156(3) of the Code.

"Further investigation" is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of section 173(8). This is a kind of continuation of the previous

investigation. The basis of "further investigation" is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation" "fresh" or "de novo" investigation. The scope of further investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. The report submitted in pursuance of further investigation is commonly described as "supplementary report" as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency."

43. From the reading of the kind of investigation, i.e., further investigation it is apparent that the purpose of further investigation is not to wipe out directly and impliedly the initial investigation-conducted by the investigating agency. In the instant case, it is apparent that investigation done by the C.B.C.I.D. and after finding overwhelming evidence against the petitioner and co-accused persons submitted charge-sheet against them on 20.1.2004 on which cognizance was taken by the Special C.J.M., Allahabad on 27.1.2004 and nearly after about five years, the petitioner and co-accused persons got an order from the State Government on 19.11.2008 for further investigation on which the C.B.C.I.D. Allahabad after further investigation submitted a report on 28.10.2009 stating the involvement of the petitioner Udai Bhan Karwariya and his brother co-accused Kapil Muni Karwariya to be false on the basis of plea of alibi as they were found to be present at Lucknow this shows that the C.B.C.I.D. Allahabad which carried out further investigation had tried to wipe out initial investigation conducted by the same Investigating Agency which appear to be not proper and fair. However, the petitioner has a right before the Trial Court to lead his defence and prove his case by cogent evidence before the Trial Court and on the contrary report which has been submitted by the C.B.C.I.D. Allahabad by submitting a supplementary report, it cannot be said that the initial investigation which has been done by the C.B.C.I.D. earlier is not a fair or impartial one.

44. The law regarding "further investigation" which has been settled by the Apex Court in the case of Vinay Tyagi v. Irshad Ali @ Deepak (supra) has clarified that the Court of competent jurisdiction can consider all reports, entire records and documents submitted therewith by the investigating agency and its report in terms of section 173(2) of the Code subject to some exception. The Trial Court may after considering all the reports of the investigating agencies and the evidence which are produced by the either parties, may proceed with the trial and pass appropriate orders accordingly.

45. The contention of learned Additional Advocate General that the accused have no right to choose the investigating agency appears to have force but as the

investigation of the case have been twice transferred at the instance of the petitioner and the fact that after submission of the charge-sheet the case was again transferred for further investigation at the instance of the petitioner and the co-accused persons, who are avoiding their trial by misusing the process of law and delaying the proceedings of the trial which is long way to go as the trial of co-accused persons are only at its committal stage before the Magistrate though 18 years have elapsed since the incident has taken place only which reflects and speaks of the otherwise act and conduct of the accused persons.

46. Hence now again, the prayer of the petitioner to order for transfer further investigation of the case to the C.B.I. or any other independent agency, is not at all justified as the F.I.R. of the incident has been lodged against the petitioner and other co-accused persons and during the course of investigation C.B.C.I.D. found their participation in the present crime after collecting material evidence which is apparent from the post-mortem report of the three deceased as well as testimony of injured witnesses and other eye-witnesses, hence the prayer for transferring the case for further investigation to the C.B.I. or any other independent agency, is hereby refused.

47. So far as quashing of the impugned orders is concerned, there appears to be no illegality in the orders passed by the Magistrate as well as Lower Revisional Court as it cannot direct the C.B.I. either to investigate or further investigate any criminal case as it has been well settled by the Apex Court that the investigation, further investigation, de novo or re-investigation can only be ordered by the High Court or by the Apex Court in rarest of rare cases, hence the prayer for quashing of the same is also refused.

48. The last submission of learned Counsel for the petitioner that as there has been tainted and unfair investigation done by the C.B.C.I.D., hence the charge-sheet submitted against the petitioner and the proceedings of the trial on the basis of tainted charge-sheet also vitiates and are liable to be quashed, too is not sustainable in the eyes of law as it has already been held above by the Court that there is no fault in the investigation carried out by the police and the C.B.C.I.D. of the present case and the charge sheet submitted discloses a cognizable offence against the petitioner and co-accused persons and the learned Magistrate has rightly taken the cognizance of the offence, hence the prayer for quashing the charge-sheet dated 20.1.2004 and the order taking cognizance dated 27.1.2004 also has no substance and the same is refused. The trial of the petitioner Udai Bhan Karwariya has already been committed before the Additional Session Judge, Court No. 1, Allahabad and it shall proceed in accordance with law.

49. Thus, the proceedings of the trial of co-accused Kallu @ Ram Chandra Tripathi, Suraj Bhan Karwariya and Kapil Muni Karwariya which has been stayed by this Court vide interim order dated 16.8.2005 passed in CrI. Misc. 482, Cr.P.C. Application No. 4950 of 2004 is concerned, the said interim order is hereby vacated and the aforesaid two 482, Cr.P.C. applications, i.e., CrI. Misc. 482 Cr.P.C.

Application Nos. 4950 of 2004 and 2795 of 2006, are dismissed.

50. The three accused, namely, Kallu @ Ram Chandra Tripathi, Suraj Bhan Karwariya and Kapil Muni Karwariya are directed to surrender before the Court concerned forth with and the Special C.J.M. Allahabad shall commit the case to the Court of Sessions within ten days from the date of production of a certified copy of this order and if the said accused do not surrender before the Special Chief Judicial Magistrate, Allahabad, he shall pass appropriate orders in accordance with law for securing their presence.

51. After committal of trial of co-accused Kallu @ Ram Chandra Tripathi, Suraj Bhan Karwariya and Kapil Muni Karwariya, to the Court of Sessions, the District and Sessions Judge, Allahabad, is directed to transmit the trial of the aforesaid accused persons to the Court where the trial of accused Udai Bhan Karwariya is pending and the said Court shall expedite the trial of all the accused persons and conclude the same within eight months strictly in accordance with the provisions of section 309 Cr.P.C. from the date it comes before it.

52. As the trial of all the accused persons including the petitioner Udai Bhan Karwariya have already been directed to be expedited by the Court as mentioned above, the 482, Cr.P.C. Application No. 3829 of 2015 filed by the complainant Sulaki Yadav also stands disposed of. Accordingly, the aforesaid writ petition No. 14941 of 2014 and 482 Cr.P.C. Application Nos. 4950 of 2004 and 2795 of 2006 respectively are hereby dismissed and the interim order dated 16.8.2005 is vacated and the 482 Cr.P.C. Application No. 3829 of 2015 stands disposed of.