

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1343 OF 2022
(Arising out of SLP(CrI.)No.6190/2018)**

PARVEZ PARWAZ & ANR.

.....APPELLANTS

VERSUS

STATE OF UTTAR PRADESH & ORS.

.....RESPONDENTS

J U D G M E N T

C.T. RAVIKUMAR, J.

1. Leave granted.
2. This appeal by special leave is directed against the judgment and order dated 22.02.2018 passed by the High Court of Judicature Allahabad in Criminal Miscellaneous Writ Petition No. 21733 of 2008. The unsuccessful petitioners are the appellants herein. At the instance of the first appellant, for having made (allegedly) a hate speech that led to the incidents described as '2007 Gorakhpur Riots' and for such other offences related to the same, Crime

No.2776/2008 was registered against Sh. Yogi Adityanath, who was then a Member of Parliament and some others. After registration of FIR No.764/2008 (Crime No.2776/2008), the State Government directed investigation by the Crime Branch, Criminal Investigation Department (CB CID) of UP Police. Raising grievances against the investigation, the appellants filed the abovementioned Writ Petition under Article 226 of the Constitution of India seeking, *inter alia*, the following reliefs:

“(i) Issue a writ, order or direction the nature of mandamus directing and commanding the respondents to investigate case crime no. 2776 of 2008 in fair and impartial manner by an independent investigating agency and not by Crime Branch of Criminal Investigation Department as per Order dt. 3.11.2008.

(ii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to include appropriate section of Indian Penal Code e.g. 120-B, 121, 121-A, 122, 112 I.P.C. and Section 3/4 Prevention of Damages

to Public Property Act, 1984 and provision of Religious Institution (Prevention of Misuse) Act, 1988 in crime no. 2776 of 2008 and to investigate the issue of conspiracy also.

(iii) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to take disciplinary action against the officers who at the relevant point of time failed to act in accordance with law and had not taken any action to initiate criminal action against the culprits.

(iv) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondent no. 1 to provide adequate security to the petitioners."

3. During the hearing, the Division Bench of the High Court framed three issues for determination, which are as follows:

(1) When the State fails to perform its statutory and constitutional duty to investigate a crime in a fair and impartial manner, whether the High Court in exercise of its jurisdiction conferred

by Article 226 of the Constitution is vested with the power to transfer the investigation to be conducted by any other investigating agency.

(2) Whether in the facts and circumstances of the instant case, the State has failed to perform its statutory duty to conduct a fair investigation in the matter and the same is liable to be transferred to some other independent agency to ensure fair investigation.

(3) Whether the State can pass an order under Section 196 Cr.P.C. in respect of a proposed accused in a criminal case who in the meantime gets elected as the Chief Minister and is the Executive Head as per the scheme provided under Article 163 of the Constitution of India.

4. After hearing both sides and perusing the relevant records, the Division Bench of the High Court extensively dealt with all the issues and came to specific conclusions with respect to the same. Ultimately, the Division Bench of the High Court dismissed the Writ Petition and held as follows:-

“In view of the facts and discussions, we do not find any procedural error either in the conduct of the investigation or in the decision making process of refusal to grant sanction or any other illegality in the order which may require any interference by this Court while exercising its extraordinary power under Article 226 of the Constitution of India.”

5. Aggrieved by the impugned judgment, the present appeal by way of special leave has been filed by the appellants who were the original petitioners before the High Court.

6. Heard learned counsel for the parties.

7. Mr. Fuzail Ahmad Ayyubi, learned counsel for the appellants fairly conceded at the outset that he did not intend to press any submissions relating to prayer numbers (i) & (ii), as sought in the writ petition. The sole contention he sought to advance before us is in respect of issue no. (iii) as identified by the High Court, relating to denial of sanction for prosecution of the accused under Section

196 of the Code of Criminal Procedure. The foundation for such a grievance is that the accused no. 1, who was then a Member of Parliament and had allegedly made a hate speech, had later on become the Chief Minister of the State of Uttar Pradesh and thereby, the Executive Head of the State. It is contention of the appellants that in such a situation, it is the Governor of the State who is empowered to consider the question of grant of sanction in terms of the Rules of Business. He submits that the Division Bench of the High Court has failed to consider this issue in an appropriate manner, including the Constitution Bench judgment of this Court in ***M.P. Special Police Establishment v. State of M.P.***, (2004) 8 SCC 788.

8. On the other hand, Mr. Mukul Rohatgi learned Senior counsel for the State contends that nothing survives in this matter except for a mere academic exercise, as a closure report has already been filed by the investigating agency. Additionally, he submits that the judgment of this Court in ***M.P. Special Police Establishment*** (supra) does not have any relevance in the facts of this case as the underlying

material did not amount to anything, let alone establish a case for issuance of sanction. Learned Senior counsel submits that the first CD containing the recording in 2008 which was in a broken condition while the second CD which was provided by the appellants after a lapse of five years, was determined to be tampered by the Central Forensic Science Laboratory (CSFL). The third CD only provided a voice sample. All these facts have been extensively dealt with by the High Court before rejecting the prayers of the appellants.

9. Having heard the parties and considered the material placed on record, we are in agreement with learned Senior counsel appearing for the respondent that the subsequent events have rendered the present appeal into a purely academic exercise. We will now explain the *raison d'être* for such a conclusion.

10. The words "No Court shall take cognizance" employed in Section 196 of the Code of Criminal Procedure (for short 'CrPC') and the consequential bar created under the said provision would undoubtedly show that the bar is against 'taking of

cognizance by the Court'. In other words, it creates no bar against registration of a crime or investigation by the police agency or submission of a report by the police on completion of investigation as contemplated under Section 173, CrPC [Refer:- ***State of Karnataka v. Pastor P Raju, (2006) 6 SCC 728***].

11. It appears from the record that the forensic report of the CD which forms the basis of the prosecution was found to be tampered and edited as per the report dated 13.10.2014, submitted by the CFSL which position has not been disputed by the appellants herein.

12. In the instant case, a short affidavit was filed on behalf of the second respondent wherein it is stated that the investigation was closed vide FR No.1/17 dated 06.05.2017. This position is not disputed by the appellants. Thus, as of now, the position that emerges is that the investigation has culminated in a closure / refer report. Learned counsel for the appellants has informed us that a

protest petition has been filed which is pending consideration before the trial Court.

13. In the aforesaid circumstances, we do not think it necessary to go into the contentions raised by both sides on the issue of denial of sanction for prosecution and the legal pleas sought to be raised in relation to the said issue. However, we think it appropriate that the legal questions on the issue of sanction be left open to be considered in an appropriate case.

14. Consequently, this appeal is dismissed subject to the above observations. Pending applications, if any, stand disposed of.

.....CJI.
(N.V. RAMANA)

.....J.
(HIMA KOHLI)

.....J.
(C.T. RAVIKUMAR)

**NEW DELHI;
August 26, 2022**