

Moreshwar Savey and Etc. Vs. State of U.P. and anr.

Moreshwar Savey and Etc. Vs. State of U.P. and anr.

SooperKanoon Citation : sooperkanoon.com/487158

Court : Allahabad

Decided On : Feb-12-2001

Reported in : 2001CriLJ1765

Judge : Jagdish bhalla, J.

Acts : Criminal Law Amendment Act - Sections 7; [Code of Criminal Procedure \(CrPC\)](#) , [1973](#) - Sections 11, 11(1), 145, 161, 169, 173(8), 190, 193, 226, 227, 228, 233, 234, 234(1), 397, 460 and 482; [General Clauses Act 1897](#) - Sections 10 and 21; Delhi Special Police Establishment Act, 1946; Evidence Act - Sections 10; Indian Penal Code (IPC) - Sections 114, 120A, 120-B, 141, 147, 149, 153-A-B, 201, 295, 295-A, 297, 323, 332, 336, 337, 338, 342, 379, 391, 390, 392, 394, 395, 397, 406, 408, 409, 427 and 505; [Ayodhya Act, 1993](#); Limitation Act 1908; Companies Act - Sections 630; [Constitution of India](#) - Article 216, 233 and 227

Appeal No. : Criminal Revn. Nos. 199, 201, 211 and 255 of 1997

Appellant : Moreshwar Savey and Etc.

Respondent : State of U.P. and anr.

Advocate for Def. : P.K. Chaubey, Sr. Counsel, for C.B.I and ;Arun Sinha, ;A.K. Mittal, ;D. Satya Narain, ;Ravindra Pratap Singh, Govt. Advs.

Advocate for Pet/Ap. : B.L. Gupta, ;S.C. Srivastava, ;S.K. Gupta, ;Kr. Mridul Rakesh, ;M.R. Singh Rathore, ;Yuv Raj Singh Rathore, ;Mahipal, ;S.P. Singh, ;I.B. Singh, ;M.M. Srivastava, ;Smt. Madhuri Singh, ;M.K. Shukla, ;Mu

Judgement :

ORDER

Jagdish Bhalla, J.

1. All the above revisions are directed against the same order dated 9th September, 1997 passed by the Special Additional Sessions Judge (Ayodhya Prakaran), Lucknow for framing charges against the revisionists, therefore, they were heard together and are being disposed of by a common judgment.

2. In Criminal Revision No. 199 of 1997 (Moreshwar Savey v. State of U.P. and another) the revisionist is to be charged with offences punishable Under Sections 147, 153A, 153B, 295, 295A, 505 read with Section 120B of the Indian Penal Code (hereinafter referred to as the I.P.C.).

3. In Criminal Revision No. 201 of 1997 (Ms. Uma Bharti alias Gajra Singh and others v. State of U.P. and another) revisionists Nos. 1, 3 to 10 are to be charged with offences punishable under Sections 147, 153A, 153B, 295, 295A, 505 read with Section 120B, I.P.C. Revisionist No. 2 is to be charged with offences punishable under Sections 332, 338, 201, read with Sections 149/395 and Section 120B, I.P.C.

4. In Criminal Revision No. 211 of 1997 (Ravindra Nath Srivastava and another v. State of U.P.) the revisionists are to be charged with offences punishable under Sections 120B, 153A, 295, 295A, 505, 201 read with Section 114, I.P.C.

5. In Criminal Revision No. 255 of 1997 (Ashok Singhal and others v. State of U.P. and another) revisionists 1 to 3 and 5 to 8 are to be charged with offences punishable under Sections 147, 153A, 153B, 295, 295A, 505, I.P.C. read with Section 120B, I.P.C. whereas revisionists 4, 5 and 9 to 19 are to be charged with offences punishable under Sections 332, 338, 201, read with Sections 149/395 and 120B, I.P.C. It has come to the notice of this Court through print and electronic media that one of the revisionists, Rajrnata Vijay Raje Scindia, has passed away and is no more. I expected the learned counsel for the revisionists to move application before this Court informing about the sad demise of Rajmata Vijay Raje

Scindia and praying for deletion of her name but no such application was moved. By conscience does not permit me to carry on with the name of late Rajmata Vijay Raje Scindia as revisionist therefore I take judicial notice of her death. Accordingly I delete the name of late Rajmat Vijay Raje Scindia from the array of the revisionists in Criminal Revision No. 255 of 1997.

6. For deciding these revisions it is necessary to have a glance on the facts of the case which, in brief, are that on December 6, 1992 the disputed structure, popularly known as Ram Janam Bhumi/Babri Masjid at Ayodhya was demolished. In respect of this incident firstly two First Information Reports (hereinafter referred to as F.I.Rs.) were lodged on the same day i.e. 6th December, 1992. The details of these F.I.Rs. are given below: --

(i) Crime No. 197/92 under Sections 395, 397, 332, 337, 338, 295, 297, 153A, I.P.C. and Section 7 Criminal Law Amendment Act, Police Station Ram Jariam Bhoomi, district Faizabad. This F.I.R. was lodged by Sri Priyambada Nath Shukla, Station Officer of Police Station Ram Janam Bhoomi against lacs of unknown Karsevaks at 17.15 hours on 6-12-1992. The time of incident was stated to be 12.15 p.m. on 6th December, 1992.

(ii) Crime No 198/92 under Sections 153A, 153B, 505, I.P.C., Police Station Ram Janarn Bhoomi, district Faizabad. This FIR was lodged by Sri Ganga Prasad Tewari, Incharge Outpost Ram Janam Bhoomi, Police Station Ram Janam Bhoomi on 6th December, 1992 at 17.25 hours alleging the time of occurrence to be 10.00 a.m. on 6th December, 1992 and the following accused persons were named therein: --

(1) Ashok Singhal, Revisionist in Crl. Revision No. 255 of 1997,

(2) Giriraj Kishore, Revisionfst in Cr1. Revision No. 255 of 1997,

(3) Lal Krishna Advani,

(4) Murli Manohar Joshi,

(5) Vishnu Hari Dalmia, Revisionist in Crl. Revision No. 201 of 1997,

- (6) Vinay Katiyar, Revisionist in Crl. Revision No. 255 of 1997,
- (7) Uma Bharti, Revisionist in Crl. Rev. No. 201 of 1997, and
- (8) Sadhvi Ratimbhara, Revisionist in Crl. Revision No. 201 of 1997.

7. Besides the above mentioned two FIRs regarding demolition of disputed structure, 46 other FIRs with respect to cognizable offences and one FIR relating to non-cognizable offences, (all relating to offences committed against media persons who were recording the occurrence of demolition of the disputed structure and whose video cameras etc. were snatched away or broken/stolen/robbed of etc.) were also lodged at Po-lice Station Ram Janam Bhoomi on 6th December, 1992 and thereafter, on the basis of which the following case crime numbers were registered : --

- (1) Crime No. 203 of 1992 under Section 394, IPC.
- (2) Crime No. 204 of 1992 under Section 394, IPC.
- (3) Crime No. 205 of 1992 under Section 394, IPC.
- (4) Crime No. 206 of 1992 under Section 392, IPC.
- (5) Crime No. 207 of 1992 under Section 392, IPC.
- (6) Crime No. 208 of 1992 under Section 392, IPC.
- (7) Crime No. 209 of 1992 under Sections 147, 323, 427, IPC.
- (8) Crime No. 210 of 1992 under Section 395, IPC.
- (9) Crime No. 211 of 1992 under Section 394, IPC.
- (10) Crime No. 213 of 1992 under Section 392, IPC.
- (11) Crime No. 215 of 1992 under Section 392, IPC.
- (12) Crime No. 225 of 1992 under Sections 398, 336, IPC.

- (13) Crime No. 226 of 1992 under Sections 395, 114, IPC.
- (14) Crime No. 227 of 1992 under Section 394, IPC.
- (15) Crime No. 228 of 1992 under Sections 394/427, IPC.
- (16) Crime No. 229 of 1992 under Section 394, IPC.
- (17) Crime No. 230 of 1992 under Section 394, IPC.
- (18) Crime No. 231 of 1992 under Section 394, IPC.
- (19) Crime No. 232 of 1992 under Section 394, IPC.
- (20) Crime No. 233 of 1992 under Section 394, IPC.
- (21) Crime No. 234 of 1992 under Section 392, IPC.
- (22) Crime No. 235 of 1992 under Section 394, IPC.
- (23) Crime No. 236 of 1992 under Section 394, IPC.
- (24) Crime No. 237 of 1992 under Section 394, IPC.
- (25) Crime No. 238 of 1992 under Sections 394/406, IPC.
- (26) Crime No. 239 of 1992 under Section 392, IPC.
- (27) Crime No. 247 of 1992 under Sections 147, 323, 427, IPC.
- (28) Crime No. 267 of 1992 under Section 394/427, IPC.
- (29) Crime No. 268 of 1992 under Sections 394, 427, 506, IPC.
- (30) Crime No. 285 of 1992 under Section 395, IPC.
- (31) Crime No. 318 of 1992 under Section 394, IPC.
- (32) Crime No. 319 of 1992 under Section 394/427, IPC.

- (33) Crime No. 320 of 1992 under Sections 395, 427, IPC.
- (34) Crime No. 321 of 1992 under Sections 147, 352, 427, IPC.
- (35) Crime No. 322 of 1992 under Section 392, IPC.
- (36) Crime No. 481 of 1992 under Sections 147, 336, 323, 506, IPC.
- (37) Crime No. 482 of 1992 under Section 395, IPC.
- (38) Crime No. 1 of 1993 under Sections 395, 397, IPC.
- (39) Crime No. 2 of 1993 under Sections 395, 397, IPC.
- (40) Crime No. 16 of 1993 under Section 395, IPC.
- (41) Crime No. 27 of 1993 under Section 395, IPC.
- (42) Crime No. 31 of 1993 under Sections 394, 342, IPC.
- (43) Crime No. 32 of 1993 under Section 394, IPC.
- (44) Crime No. 33 of 1993 under Section 395, IPC.
- (45) Crime No. 61 of 1993 under Section 395, IPC.
- (46) Crime No. 70 of 1993 under Section 394, IPC.
- (47) NCR No. 57 of 1992 relating to non-cognizable offences under Sections 323, 427, IPC.

8. On 10th December, 1992 the investigation regarding case Crime No. 198 of 1992 was entrusted to CB, CID, U.P. while investigation with respect to case Crime No. 197 of 1992 was entrusted to Central Bureau of Investigation (hereinafter referred to as the C.B.I.) on 13th December, 1992 upon which the C.B.I, registered the case Crime No. 197 of 1992 with it as R.C. No. 8(S)/92-SIU.V-New Delhi. The other case i.e. Crime No. 198 of 1992 remained with the CB CID.

9. The State Government of Uttar Pradesh, after consultation with the High Court, issued Notification No. 6517(1)/VII-Nyaya-2-92-539-G, dated 16th December, 1992, under Section 11 of the Code of Criminal Procedure (hereinafter referred to as Cr. P.C.) which was published in the U.P. Gazette, Extra Part IV, Section Kha, dated 16th December, 1992, establishing a Special Court of Judicial Magistrate with its place of sitting at Lalitpur to try the case relating to Crime No. 198 of 1992. The said notification is reproduced below : --

Notification No. 6517(1) /VII-Nvaya-2-92-539-G. dated 16th December. 1992.

In exercise of the powers under proviso to sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act II of 1974), the Governor, after consultation with the High Court of Judicature at Allahabad, is pleased to establish, with effect from the date of the publication of this notification in the Gazette, a Special Court of Judicial Magistrate of the first class for the local area comprising the whole of the State of Uttar Pradesh with its place of sitting at Lalitpur to try the case specified in the Schedule below :

SCHEDULE

1. Case relating to Crime No. 198/92 under Sections 153A, 153B and 505 of the Indian Penal Code, 1860, P.S. Ram Janam Bhumi, Ayodhya, district Faizabad, State v. Sri Ashok Senghal and others.

10. Before the Court of Special Judicial Magistrate at Lalitpur constituted by the above notification the CB CID submitted a charge-sheet in case Crime No. 198 of 1992 against all the eight accused persons named in the F.I.R., as mentioned above, under Sections 153A, 153B, 505, 147, 149, IPC on 27th February, 1993 whereupon the Special Judicial Magistrate sitting at Lalitpur took cognizance of the case Crime No. 198 of 1992 on 1st March, 1993. Thereafter the State Government, after consultation with the High Court, shifted the place of sitting of the Court of Special Judicial Magistrate from Lalitpur to Rae Bareli by Notification No. 3123/VII-Nyaya-2-539-G-92-T.C. dated 8th July, 1993. The said notification is as under : --

Notification No. 3123/VII-Nyaya-2-539-G-92-T.C. dated 8th July. 1993.

In exercise of the powers under proviso to sub-section (1) of Section 11 of the Code of Criminal Procedure, 1972 (Act II of 1974) read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897), the Governor, after consultation with the High Court of Judicature at Allahabad, is pleased to modify the Notification No. 6517(1)/VII-Nyaya-2-92-539-G, dated Lucknow, December 16, 1992 regarding the establishment of a Special Court of Judicial Magistrate of the 1st class to the extent that now the place of sitting of that Special Court of Judicial Magistrate 1st Class shall be at Rae Bareli instead of Lalitpur.

11. On 25th August, 1993 the State Government made a request to the Central Government to entrust the investigation of case Crime No. 198 of 1992 as well as 47 other related cases, including one NCR case mentioned above to the CBI upon which the Central Government entrusted the investigation of the above cases to the CBI by Notification No. 228/28/93-AVD/II dated 26th August, 1993. Thereafter the CBI registered the case Crime No. 198 of 1992 with it as R.C. No. 1/93 and 47 other related cases as R.C. Nos. 2/93 to 48/93.

12. On 8th September, 1993 the State Government of Uttar Pradesh, after consultation with the High Court, vide Notification No. 4420/VII-Nyaya-2-739/87 created and established a Special Court of Additional Chief Judicial Magistrate/Judicial Magistrate first class at Lucknow for disposal of cases arising out of demolition of disputed structure at Ayodhya in district Faizabad investigated by the Central Bureau of Investigation.

13. On 9th September, 1993 the State Government of Uttar Pradesh, after consultation with the High Court, issued Notification No. 4421/VII-Nyaya-2-739/87 under Section 11 Cr. P.C. establishing a Special Court of Judicial Magistrate sitting at Lucknow to try or inquire into and commit to the Court of Sessions the cases arising out of Crime No. 197 of 1992 and 47 other cases. The said notification is reproduced below:--

Notification No. 4421 /VII-Nyaya-2-739/ 87 dated 9th September, 1993.

In exercise of the powers under proviso to sub-section (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor after the consultation with High Court of Judicature at Allahabad, is pleased to establish, with effect from the date of the publication of the notification in the Gazette, a Special Court of Judicial Magistrate of the first class for the local area comprising the whole of the State of Uttar Pradesh with its place of sitting at Lucknow, to try or inquire into and commit to the Court of Sessions all cases specified in the Schedule below in which investigations are made or charge-sheet filed by the Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (Act No. XXV of 1946).Sr. Crime No Number Police Station Sections1. 197/92 Ram 395, 397, 332, 337,Janam 338, 295, 297 andBhumi 153A, IPC and Sec.7 of Criminal Law Amendment Act.2. 203/92 -do- 394 IPC3. 204/92 -do- 394 IPC4. 205/92 -do- 394 IPC5. 206/92 -do- 392 IPC6. 207/92 -do- 392 IPC7. 208/92 -do- 392 IPC8. 209/92 -do- 147, 323, 427 IPC9. 210/92 -do- 395 IPC10. 211/92 -do- 394 IPC11. 213/92 -do- 392 IPC12. 215/92 -do- 392 IPC13. 225/92 -do- 398, 336 IPC14. 226/92 -do- 395, 114 IPC15. 227/92 -do- 394 IPC16. 228/92 -do- 394/427 IPC17. 229/92 -do- 394 IPC18. 230/92 -do- 394 IPC19. 231/92 -do- 394 IPC20. 232/92 -do- 394 IPC21. 233/92 -do- 394 IPC22. 234/92 -do- 392 IPC23. 235/92 -do- 394 IPC24. 236/92 -do- 394 IPC25. 237/92 -do- 394 IPC26. 238/92 -do- 394/406 IPC27. 239/92 -do- 392 IPC28. 247/92 -do- 147, 323, 427 IPC29. 267/92 -do- 394/427 IPC30. 268/92 -do- 394, 427, 506 IPC31. 285/92 -do- 395 IPC32. 318/92 -do- 394 IPC33. 319/92 -do- 394/427 IPC34. 320/92 -do- 395/427 IPC35. 321/92 -do- 147, 352, 427 IPC36. 322/92 -do- 392 IPC37. 481/92 -do- 147, 336, 323, 506 IPC38. 482/92 -do- 395 IPC39. NCR No 57 of 1992 -do- 323, 427 IPC40. 1/1993 -do- 395, 397 IPC41. 2/93 -do- 395, 397 IPC42. 16/93 -do- 395 IPC43. 27/93 -do- 395 IPC44. 31/93 -do- 394, 342 IPC45. 32/93 -do- 394 IPC46. 33/93 -do- 395 IPC47. 61/93 -do- 395 IPC48. 70/93 -do- 394 IPC'

14. After the investigation of case Crime No. 198 of 1992 having been entrusted to the CBI by the Central Government vide Notification No. 228/28/93-AVD/II dated 26th August, 1993 the CBI on 9-9-1993 moved an application before the Special Judicial Magistrate, Rae Bareli, who was trying the said case at that point of time, to grant permission for further investigation in case Crime No. 198 of 1992 and on

10th September, 1993 the learned Magistrate granted permission to the CBI for further investigation in the above case.

15. Thereafter one Sri Vtjai Verma, the then III Additional Chief Judicial Magistrate (hereinafter referred to as ACJM), Lucknow was appointed by the High Court as Additional Chief Judicial Magistrate Special Court, the newly established Court, vide Notification dated 8th September, 1993. The said notification is reproduced below : --

HIGH COURT OF JUDICATURE AT

ALLAHABAD,

NOTIFICATION.

DATED: ALLAHABAD: SEPTEMBER 15, 1993.

No. 1371/JR(S)/93.

Sri Vijai Verma, III Addl. Chief Judicial Magistrate, Lucknow to be Additional Chief Judicial Magistrate, Lucknow (Special Court) created vide G.O. No. 4420/VII-Nyaya-2-739/87 dated Sept. 8, 1993, for trial and disposal of cases investigated by C.B.I, pertaining to demolition of the disputed structure at Ayodhya, District Faizabad.

By order of the Court

(K.S. RAKHARA)

ADDL. REGISTRAR.

16. On 5th October, 1993 the CBI filed a consolidated charge-sheet against all the 8 accused persons in case Crime No. 198 of 1992 as well as 32 other accused persons in case Crime Nos. 197 of 1992 and 47 other related, above mentioned, cases. This charge-sheet was filed in the Special Court of A.C.J.M. presided over by Sri Vijai Verma.

17. On 8th October, 1993 the Special Court at Lucknow was given jurisdiction with respect to case Crime No. 198 of 1992. Thereafter on 11th October, 1993 the Presiding Officer of the Special Court at Lucknow, Sri Vijai Verma, who was appointed vide Notification dated 15th September, 1993, took cognizance of all the cases including case Crime No. 198 of 1992.

18. On 18th October, 1993 the Special Judicial Magistrate sitting at Rae Bareli, in whose Court the case relating to Crime No. 198 of 1992 was pending, who still had jurisdiction to try the same and who had given permission to the CBI for further investigation, directed the CBI to file progress report regarding investigation in case Crime No. 198 of 1992. On 6th December, 1993 the CBI submitted its report before the Special Judicial Magistrate at Rae Bareli informing about the progress, subsequent developments, and also about filing of the consolidated charge-sheet before the Special Court of A.C.J.M. at Lucknow presided by Sri Vijai Verma as also indicating inclusion of the case Crime No. 198 of 1992 in the consolidated charge-sheet and also about the consequent cognizance taken by the Special Court of A.C.J.M. at Lucknow on 11th October, 1993. Thereafter on 24th January, 1994 the judicial record of Criminal Case No. 1/93 relating to Crime No. 198 of 1992 was transferred by Sri Amitabh Sahay, Special Magistrate, Rae Bareli through District Judge, Rae Bareli and further through District Judge, Lucknow to the Special Court of A.C.J.M. at Lucknow presided by Sri Vijai Verma which was received in the Special Court of A.C.J.M. Lucknow on 25th January, 1994. On 31st January, 1994 the CBI moved an application before the Special Court at Lucknow praying to fix an early date so as the judicial record received from Rae Bareli be ordered to be taken as part of the case i.e. State v. Bala Saheb Thackrey and others, arising out of Crime No. 197 of 1992. The prayer of the C.B.I, regarding clubbing of the records was objected to by some of the accused persons i.e. S/Shri Kalyan Singh, Swami Sakshi Maharaj, R.N. Srivastava and D.B. Roy even though they nowhere figured as accused before the Special Court at Rae Bareli. The said Special Court of A.C.J.M. at Lucknow after hearing both the parties decided the application of the C.B.I, as well as the objections of the above accused persons by order dated 23rd March, 1994. By the said order dated 23rd March, 1994 the prayer of the CBI for taking the judicial record received from Rae Bareli as part of the case was allowed and the objections of accused persons

to the effect that the Special Court of A.C.J.M. at Lucknow had no jurisdiction with regard to the case Crime No. 198 of 1992 were dismissed.

19. Against the said order dated 23rd March, 1994 passed by the Special Court of A.C.J.M. at Lucknow taking the judicial record of case Crime No. 198 of 1992 as part of case Crime No. 197 of 1992 and other 47 FIRs one of the accused persons, namely, Vinay Katiyar (revisionist No. 4 of present Criminal Revision No. 255 of 1997) filed Criminal Revision No. 6 of 1995 on 18th June, 1994 challenging the aforesaid order. This revision was dismissed by the Additional Sessions Judge (Ayodhya Prakarari), Lucknow, Sri Vimal Kishore, by order dated 20th February, 1995.

20. All the cases referred to above were committed by the Special Court of ACJM at Lucknow to the Court of Sessions on 27-8-1994.

21. Thereafter on 1st September, 1994 the CBI moved an application before the Special Court of ACJM at Lucknow praying for further investigation in the above referred cases. This application was rejected by the Special Court of A.C.J.M. Lucknow on 7th October, 1994. Against this order the CBI filed Criminal Revision No. 143 of 1994 in the Court of Special Judge (Ayodhya Prakaran). This revision was allowed by the Special Judge (Ayodhya Prakaran) on 19th November, 1994.

22. The C.B.I. after collecting further evidence in the case filed a supplementary charge sheet on 11-1-1996 against 9 more accused persons, i.e., (i) Mahant Aavidya Nath, (ii) Nritya Gopal Das, (iii) Dharmendra Das (iv) Dr. Ram Vilas Vedanti, (v) Param Hans Ram Chandra Das, (vi) Maha Mandaleshwar, the revisionists of Criminal Revision No. 201 of 1997, (vii) Rajmata Vijay Raje Scindia (since dead) and (viii) Baikunth Lal Sharma 'Prem', the revisionists of Criminal Revisionists of Criminal Revision No. 255 of 1997 and (ix) Dr. Satish Kumar Nagar. On 1-4-1996 the Special court of A.C.J.M. also committed the aforesaid 9 accused persons to the Court of Sessions.

23. On 9th September, 1997 the Additional Sessions Judge (Ayodhya Prakaran) passed the impugned order for framing charges against the revisionists and others as mentioned above.

24. Heard the learned counsel for the parties at considerable length. On behalf of the revisionsists Sri Kr. Mridul Rakesh and Sri I.B. Singh mainly addressed the Court. The other counsel appearing for the revlsionsts adopted the arguments made by Sri Kr. Mridula Rakesh and Sri I.B. Singh and nothing was added by them. On behalf of opposite parties Sri P.K. Chaubey appearing for the C.B.I, argued the matter and Additional Government Advocate for the State of U.P. produced the relevant records with regard to consultation with the High Court for constituting the special courts.

25. Learned counsel for the revisionists have assailed the impugned order dated 9-9-1997 for framing charges against the revisionists, on the following issues : --

1. Whether the Special Court of Additional Chief Judicial Magistrate, Lucknow (Ayodhya Prakaran) had jurisdiction and was legally competent to try, inquire into and commit the case relating to crime No. 198 of 1992.
2. Whether Notification No. 5175/VII-Nyaya-2-793/87 dated 9-9-1993 amending Notification No. 4421/VII-Nyaya-2-739/87 dated 8-10-1993 by adding case Crime No. 198 of 1992 is a valid notification?
3. Whether Sri Vijai Vema was competent to preside over the Court of Special A.C.J.M. created and established vide Notification No. 4421/vii-Nyaya-2~739/87 dated 9-9-1993, and whether the order passed by him (including the orders of taking cognizance) are bad in law and are not protected under 460 (e) Cr. P.C. ?
4. Whether the Special Judge (Ayodhya Prakaran) could not take cognizance of the cases under Section 193 Cr. P.C. on the ground that the same were committed by a Court having no jurisdiction to commit those cases
5. Whether offences are triable by the Magistrate and not by the Court of Sessions?
6. Whether the C.B.I. intended to make fresh investigation in the garb of further investigation under Section 173(8) Cr.P.C.?

7. Whether joint/consolidated charge-sheet in the matter filed by the C.B.I, is permissible or not?

8. Whether the offences of Conspiracy, dacoity (S. 395 IPC), common object of unlawful assembly committed in the course of same transaction and abetment etc. are prima facie made out against the revisionists?

9. Whether the disputed structure was a sacred place of worship for Muslims and whether an already defiled structure can be defiled again?

10. Whether it was a dispute of civil nature and has wrongly been shown as a criminal offence?

11. Whether actual culprits who had received, injuries while demolishing the disputed structure and who were arrested by the police and later released on bail, as well as the accused persons of 47 FIRs lodged by media persons, have not been charge-sheeted? If so, its effect?

12. Whether the impugned order dated 9-9-1997 for framing charges against the accused revisionists is sustainable or not?

28. I am of the considered opinion that the above issues ought to be decided in the backdrop of the jurisdiction conferred upon this Court by law while dealing with criminal revisions. The power of the High Court, though very wide but must be exercised sparingly and cautiously in revisional jurisdiction. The High Court while exercising revisional power has to ensure that justice is done in accordance with law in the light of the recognized rules of criminal jurisprudence and in the process may show interference when the subordinate Court exceeds its jurisdiction or any judicial error is committed and if there is abuse of power vested in the said Court under the Code of Criminal Procedure, or to prevent abuse of process of the inferior Courts or to prevent miscarriage of justice. While examining any matter if the High Court comes to the conclusion that there has been failure of justice and misuse of judicial mechanism or procedure, sentence or order is not pronounced in accordance with law it is the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice. In support of the above view there

are catena of judgments of the Apex Court. In the case of *Madhu Limaye v. State of Maharashtra* : 1978 CriLJ165 the Apex Court has laid down the following principles to exercise revisional jurisdiction under Section 397 Cr.P.C. : -- (Para 8)

1. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

27. In the case of *V.C. Shukla v. State through C.B.I* : 1980 CriLJ690 the Hon'ble Supreme Court has held as under : -- (Para 5)

By virtue of scores of decisions of the various High Courts in India and the Privy Council, it was well settled that the revisional jurisdiction possessed by the Sessions Judge and the High Court could be exercised only to examine the legality or propriety of the order impugned and more particularly the Courts were to interfere only if there was an error of the law or procedure.

28. In one of the latest decisions, in the case of *State of M.P. v. S.B. Johari* : 2000 CriLJ944 , the Madhya Pradesh High Court instead of considering the prima facie case appreciated and weighed the materials on record for coming to the conclusion that charge against the accused persons could not have been framed. The Hon'ble Supreme Court further observed that it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The Apex Court -held that the entire approach of the High Court was illegal and erroneous.

29. In another latest judgment of the Apex Court on this issue i.e. State of M.P. v. Mohanlal Soni : 2000 CriLJ3504 , the Apex Court has held that it is settled law that at the stage of framing of the charge the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and to arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then the charge has to be framed. Charge can be quashed if the evidence with the prosecutor proposes to adduce even if fully accepted before it is challenged by the accused during the course of cross-examination or rebutted by the defence evidence, does not show that the accused committed the offence because in such cases there would be no sufficient ground to proceed with the trial.

30. Last of the latest decisions is in the case of State by Central Bureau of Investigation v. Section Barigarappa (2001) 1 SCC 369, : (AIR 2001 SC 222), wherein the Apex Court has held that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed further. The relevant paragraph 21 of the report is as under :
--

Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed further.

31. It is settled law that at the stage of framing of the charge the Court has to prima facie consider whether there is sufficient ground for arriving at the conclusion on the basis of the material produced. If the Court is satisfied that a prima facie case is made out for proceeding further then the charge has to be framed. However, I am of the considered opinion that at this stage the trial Court need not go for appreciation of evidence. The only enquiry necessary in this respect is that

from the material available on the record of the case the offence is constituted on the basis of which the accused can be charged and only for this limited purpose the records be appreciated.

32. Keeping in mind the above settled principles of law, I proceed to consider the above issues as under : --

Issue No. 1. Whether the Special Court of Additional Chief Judicial Magistrate, Lucknow (Ayodhya Prakaran) had jurisdiction and was legally competent to try, inquire into and commit the case relating to Crime No. 198 of 1992, &

Issue No. 2. Whether Notification No. 5175/VII-Nyaya-2-793/87 dated 9-9-1993 amending Notification No. 4421 /VII-Nyaya-2-239/87 dated 8-10-1993 by adding case Crime No. 198 of 1992 is a valid notification

Both the above issues are co-related with each other therefore they are being considered together.

33. Sri Kr. Mridul Rakesh appearing on behalf of revisionists in Criminal Revision No. 201 of 1997 (Ms. Uma Bharti and others v. State of UP. and another) and Criminal Revision No. 255 of 1997 (Ashok Singhal and others v. State of U.P. and another) has challenged the jurisdiction of the Special Court of Additional Chief Judicial Magistrate at Lucknow to try, inquire into and commit the case relating to Crime No. 198 of 1992. In this connection he has drawn my attention to the U.P. Government Notification No. 4421/VII-Nyaya-2-739/87 dated September 9, 1993 whereby the Court of Special Judicial Magistrate, 1st Class was established with its place at Lucknow to try, inquire into and commit the case to the Court of Sessions with respect to all the cases referred to therein except the case relating to Crime No. 198 of 1992. He has further submitted that the Special Court of Judicial Magistrate sitting at Lalitpur and subsequently shifted to Rae Bareilly remained vested with the jurisdiction for all purposes over the case relating to crime No. 198 of 1992. The CB CID after completing investigation in case Crime No. 198 of 1992 had submitted charge-sheet in the Special Court of Judicial Magistrate at Lalitpur who had also taken cognizance thereof under Section 190 Cr. P.C. on 1-3-1993. He further contended that even if further investigation of the

Case relating to Crime No. 198 of 1992 was entrusted to C.B.I, after the cognizance had already been taken by the special Court of Judicial Magistrate at Lalitpur, the C.B.I, could not legally file charge sheet or final report in respect of case Crime No. 198 of 1992 and the C.B.I, could at the most forward the further evidence oral or documentary under sub-sec. (8) of Section 173 Cr.P.C. to the Court concerned where the case was already pending. But the C.B.I, illegally consolidated the investigation of case Crime No. 198 of 1992 with case Crime No. 197 of 1998 and other 47 related cases and also illegally submitted a consolidated charge-sheet in all these cases against 40 accused persons on 5th October, 1993 in the Special Court of Judicial Magistrate at Lucknow established vide Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993. He has further submitted that till the date of filing of the charge-sheet by the CBI i.e. 5th October, 1993, the Special Court of Judicial Magistrate at Lucknow had no jurisdiction or authority to deal in any manner with the case relating to Crime No. 198 of 1992.

34. He has further submitted that the Special Court created and established on September 9, 1993 vide Notification No. 4421/VII-Nyaya-2-739/87 had no jurisdiction to try or inquire into and commit to the Court of Sessions the case arising out of Crime No. 198 of 1992 because in the schedule appurtenant to the said notification a list of those cases was given for which the Special Court was created and established by the said notification after due consultation with High Court and in its schedule case Crime No. 198 of 1992 does not figure.

35. Subsequently vide Notification No. 5175/VII-Nyaya-2-739/87 dated Lucknow: October 8, 1993 His Excellency, the Governor of Uttar Pradesh, was pleased to make amendment in Notification No. 4421/VII-Nyaya-2-739/87 dated September 9, 1993 inserting the case Crime No. 198 of 1992, P.S. Ram Janam Bhumi, under Section 153A, 153B, 505 IPC. The said Notification is reproduced below : --

NOTIFICATION NO. 5175/VII-Nyaya-2-739/87 Dated Lucknow : October 8, 1993.

In exercise of the powers under proviso to sub-sec. (1) of Section 11 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), the Governor is pleased to make the following amendment in the Notification No, 4421 /VII-Nyaya-2-739/87, dated

Lucknow : September 9, 1993.

AMENDMENT

In the Schedule to the aforesaid notification after item 48, the following item columnwise shall be inserted, namely :-- SI. Crime Police Station SectionsNo. No.49. 198/92 Ram Janam 153A, 153B,Bhumi 505 IPCBy Order,A.K. Srivastava,Sachiv.

36. Sri Kr. Mridul Rakesh has further submitted that the notification referred to above is of no legal sanctity because while making the aforesaid amendment in the principal/parent notification dated 9th September, 1993 no consultation with the Hon'ble High Court ever took place, and therefore the said notification was issued in violation the provisions of Section 21 of the General Clauses Act. He has invited the attention of the Court towards the provisions of Section 21 of the General Clauses Act which are as under: --

21. Power to issue to include power, to add, to amend, vary or rescind notifications, orders, rules or bye-laws. -- Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

37. According to Kr. Mridul Rakesh it is crystal clear from the above that any addition, amendment, variation or rescinding could be made by the State Government subject to the 'like sanctions and conditions'. The power to issue the notification vested in the State Government subject to the provisions of Section 11 Cr. P.C. read with Section 21 of the General Clauses Act i.e. to say the amendment, addition or variation could be made by His Excellency, the Governor, in the principal notification dated 9th September, 1993 only after and with the consultation of the High Court and without consultation of the High Court it was not permissible under the law to make any amendment, addition or variation in the principal notification dated September 9, 1993. In support of this contention he has placed reliance on the case of Ram Autar Pandey v. State of Uttar Pradesh :

(1962)ILLJ148All (Full Bench) wherein the Full Bench has held that under Article. 309 of the [Constitution of India](#) read with Section 21 of the General Clauses Act, the Governor of Uttar Pradesh is competent to alter the rules regulating conditions of service of Government servants from time to time and alteration of the rules to be carried out. under the same conditions under which original rules can be framed.

38. He has further explained that since a Special Court can be created/established by a notification only after consultation with the High Court therefore obviously any amendment, addition or variation in the principal notification establishing the Special Court, cannot be made without the consultation of the High Court. He has further contended that Registrar or Registrar General of the High Court cannot be termed as High Court. According to him High court means the Chief Justice and such other Judges as the President of India may from time to time deem it necessary to appoint, as provided in Article 216 of the [Constitution of India](#). He has further submitted that when the Special Court at Lalitpur was established, it was established after consulta-tion with the High Court. Even when the place of sitting of the Special Court, Laitpur was changed to Rae Bareli, it was done after consultation with the High Court. When the Special Court of A.C.J.M. at Lucknow was created and established on 9th September, 1993 it was created and established with the consultation of the High Court but when the amendment in the said notification dated 9th September, 1993 was made by inserting case Crime No. 198 of 1992 at serial No. 49 without any consultation with the High Court such an act is wholly illegal, without jurisdiction and is no amendment in the eyes of law as the same suffers from the contravention of the mandatory provisions of Section 21 of the General Clauses Act.

39. Much emphasis has been given by Kr. Mridul Rakesh to the word 'consultation' used in Section 11 Cr. P.C. which provides that the State Government may, after consultation with the High Court establish for any area one or more special Courts of Judicial Magistrate of the first class or of the second class to try any particular case or particular class of cases. With regard to the meaning of 'consultation' he has placed reliance on the following cases : --

(i) Chandramouleshwar Prasad v. The Patna High Court : [1970]2SCR666 wherein it has been held that 'Consultation with the High Court under Article 233 is not an empty formality'. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without any thing more cannot be said to have issued after consultation. It was further held that in absence of consultation the validity of the notification issued by the State Government cannot be sustained.

(ii) State of Jammu and Kahsmir v. A.R. Zakki, 1992 Supp (1) SCC 548. In this case the Apex Court, while dealing with the word 'consultation' observed as under : --

Though 'consultation' does not mean 'concurrence', it postulates an effective consultation which involves exchange of mutual viewpoints of each other and examination of the relative merits of the other point of view. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. (Para 17).

(iii) Supreme Court Advocates-on-Record Association v. Union of India : AIR 1994 SC268 . In this case the Apex Court while dealing with the matter of appointment of Chief Justice of India, Judges of the Supreme Court, Chief Justice and Judges of the High Courts has expressed the meaning of the word 'consultation' as under : -- (Paras 120 to 133 of AIR)

The word 'consultation' is powerful and eloquent with meaning, loaded with undefined intonation' (Para 112).

The word 'consultation' is a noun whilst the word 'consult' is a verb and 'consultative' is an adjective. The meaning of expression 'consultation' is given in Shorter Oxford English Dictionary as 'Consultation' : 1. The action of consulting or taking counsel together; deliberation, conference; 2. a conference in which the

parties e.g. lawyers or medical practitioners consult and deliberate; 3. the action of consulting....In Webster's Encyclopaedic Unabridged Dictionary of the English Language, the meaning of consultation is given thus :

Consultation: 1. The act of consulting ; conference. 2. a meeting for deliberation, discussion, or decision.Black's Law Dictionary defines the expression as under :

Consultation : Act of consulting or conferring; e.g. patient with doctor; client with lawyer. Deliberation of persons on some subject. A conference between the counsel engaged in a case, to discuss its question or arrange the method of conducting it.Stroud's Law Lexicon gives the following definition:

Consulation [New Town Act, 196 (9 & 1) Geo. 6.c. 68], Section 1(1), 'consultation with any local authorities', 'consultation means that, on the one side the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice.Words and Phrases - Permanent Edition gives the meaning of 'consult' thus :

Consult means to seek opinion or advice of another, to take counsel; to deliberate together; to confer; to deliberate on; to discuss; to take counsel to bring about; devise; contrive; to ask advice of; to seek the information of; to apply to for information or instruction; to refer to (Paras 114 to 118).In common parlance, whenever the expression 'consultation' is used in connection with lawyers, or with the physician or with the engineer etc., it would mean as seeking opinion of advice or aid or information or iristraction.

In Corpus Juris Secundum, Vol. 16-A at page 1243 the meaning of the word 'consultation' is given thus :

Consultation : The word 'consultation' is defined generally as meaning the act consulting; deliberation with a view to decision; and judicially as meaning the deliberation of two or more persons on some matter; also a council or conference to consider a special case. In particular connections, the word has been defined as meaning a conference between the counsel engaged in a case, to discuss its

question or to arrange the method of conducting it, the accepting of the services of a physician, advising him of one's symptoms, and receiving aid from him. (Para 119). In Law Lexicon by P. Ramanatha Aiyar, it is stated as follows; Consultations always require two persons at least; deliberations may be carried on either with man's self or numbers; an individual may consult with one or many; assemblies commonly deliberate; advice and information are given and received in consultations; doubts, difficulties, and objections are stated and removed in deliberations. Those who have to co-operate must frequently consult together; those who have serious measures to decide upon must coolly deliberate. (para 120).

40. On the basis of the definition of 'consultation' as given above, the submission of the learned counsel for the revisionists is that since there was no consultation between the State Government and the High Court for issuing the Notification No. 5175/ VII-Nyaya-2-739/87 dated Lucknow : October 8, 1993 amending the parent Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 and adding case Crime No. 198 of 1992 at serial No. 49, therefore the said notification dated October 8, 1993 has not been issued in accordance with law and as such cannot confer any power upon the Special Court of Additional Chief Judicial Magistrate at Lucknow to try, inquire into and commit the case relating to Crime No. 198 of 1992.

41. Sri I.E. Singh has submitted that the Special Magistrate at Lucknow was not competent to take cognizance of the matter as cognizance of the same offence had already been taken by the Special Magistrate at Lalitpur on 1-3-1993 regarding case Crime No. 198 of 1992 on the charge-sheet filed by the CB CID on 27-2-1993. Thereafter on 8-7-1993 the Court of Special Magistrate was shifted from Lalitpur to Rae Bareilly. On 26-8-1993 the investigation of the above case was handed over to CBI and the CBI on 10-9-1993 sought permission from the Court of Special Judge sitting at Rae Bareilly for further investigation in case Crime No. 198 of 1992 in which charge-sheet had already been filed by the C.B. CID. It means that after 8-10-1993 two Courts of Special Judicial Magistrate were simultaneously working for one case i.e. case Crime No. 198 of 1992. I am of the considered opinion that it shows that the State Government, the Central Government and the

CBI were in a dilemma and were unable to find a harmonious solution and to decide the correct method to be applied. Ultimately a consolidated charge-sheet was submitted in the Court of Special Judicial Magistrate, Lucknow on 5-10-1993. Since a charge-sheet relating to case Crime No. 198 of 1992 had already been filed in the Court of Special Judicial Magistrate, Lalitpur who had also taken cognizance thereof on 1-3-1993, hence cognizance of the same offence cannot be taken by another Special Judicial Magistrate sitting at Lucknow.

42. Sri P.K. Chaubey, learned counsel appearing on behalf of the C.B.I., while replying the above submissions made on behalf of the revisionists, has submitted that by 26-8-1993 all the 49 cases co-related with 49 different FIRs (inclusive of Crime No. 197/92 and Crime No. 198/92 as also 47 other such FIRs lodged at the behest of media persons) stood legally transferred for the purpose of investigation to the C.B.I, since all of them had cognate relationship with the demolition of the disputed structure at Ayodya. In accordance with the basic requirement under proviso to Section 11(1) of the Cr. P.C. whereby in respect of any particular case or particular class of cases it was in consultation with the High Court that the State Government could establish Special Court of Judicial Magistrate (First Class) for any local area fixing its place of sitting and thus vesting it with the jurisdiction to try any case of such class of cases, the process for such consultation stood initiated inter-se between the High Court and the State Government after 26-8-1993. It may be reasonably assumed that in all such correspondence which in particular dealt with the establishment of a Special Court of Judicial Magistrate (First Class) vesting in it the jurisdiction for the disposal of a case or class of cases, the subject head so denoted above such correspondence clearly and unequivocally asserted for the establishment at Lucknow a Court of additional C.J.M./Judicial Magistrate (First Class) in respect of disposal of cases arising out of the demolition of the disputed structure at Ayodhya, Faizabad which stood investigated by the Central Bureau of Investigation. According to him the above assertion finds support from a perusal of Government Order No. 4420/VII-Nyaya-2-739/87 dated 8-9-1993 as also High Court Notification No. 1371/JR(S)/93 dated 15-9-1993 appointing Sri Vijai Verma as Addl. C.J.M. Lucknow (Special Court) for trial and disposal of cases investigated by C.B.I, pertaining to demolition of the disputed structure at Ayodhya. He has further submitted that during the process of such consultation

with the High Court only generality of the cases arising out of demolition of the disputed structure at Ayodhya investigated by C.B.I, was discussed but there was no consultation regarding any specific crime number or numbers. In this respect he has drawn the attention of the Court towards the words used in the proviso to Section 11(1) Cr. P.C. which are 'any particular case or particular class of cases'. He has further submitted that by U.P. Act No. 16 of 1976 sub-sec. (1-A) has been inserted in Section 11 Cr. P.C. wherein the words 'in respect to a particular case, or to a particular class or particular classes of cases, or in regard to cases generally, in any local area' have been used. In the light of the above he has reiterated that on the question of consultation with the High Court correspondence between the State Government and the High Court took place without specifically referring to any particular case number maintaining the characteristic of generality and purposely for establishing a Court of Special Judicial Magistrate at Lucknow to try the cases arising out of demolition of the disputed structure at Ayodhya investigated by the C.B.I. He has further submitted that after 26th August, 1993 all the 49 cases pertaining to different FIRs finally stood conjoined for the purpose of investigation by the C.B.I, and therefore the subject of correspondence between the State Government and the High Court for the purpose of establishing the Special Court of Judicial Magistrate (First Class) at Lucknow stood confined in generality to the , cases relating to demolition of disputed structure at Ayodhya investigated by the C.B.I. He has further submitted that the Notification No. 4421/VII-Nyaya-2-739/87 dated 9-9-1993 annexing therewith the schedule of 48 cases, could by no interpretation be construed as having purposely excluded Crime No. 198/92. According to him the reason for not mentioning the Crime No. 198/92 in the schedule of the aforesaid notification may be on account of casual slip. He has further submitted that in the inter-se correspondence between the State Government and the High Court emphasis was given for establishment of Special Court of Judicial Magistrate (First Class) under Section 11(1) Cr. P.C. embracing in general all the cases arising out of demolition of the disputed structure at Ayodhya investigated by the C.B.I. According to him the second reason for not mentioning case Crime No. 198/ 92 in the Notification dated 9-9-1993 might be due to the fact that the C.B.I, by then would not have arrived at the conclusion that all the 49 cases had arisen out of the same transaction and

therefore it might have been considered to keep case Crime No. 198/92 in abeyance. The third reason for non-inclusion of case Crime No. 198/92 in the said notification, according to him, might be that a Court of competent jurisdiction with regard to case Crime No. 198/92 was already functioning at Rae Bareilly which had already taken cognizance of the offences relating to case Crime No. 198/92 on 1st March, 1993 and it was necessary to seek permission from that Court for further investigation by the C.B.I. Sri Chaubey has further submitted that the above explanations for non-inclusion of case Crime No. 198/92 in the said notification dated 9-9-1993 find every logical and legal support if the notification dated 15-9-1993 issued by the High Court appointing Sri Vijai Verma as A.C.J.M. Special Court at Lucknow is appreciated in its proper perspective wherein it has been mentioned that Sri Vijai Verma was appointed for trial and disposal of cases investigated by C.B.I, pertaining to demolition of the disputed structure at Ayodhya, District Faizabad. He has further contended that by no stretch the case Crime No. 198/92 could be excluded from generality as the facts contained in the F.I.R. of the said Crime No. 198/92 form an integral part of the demolition of the disputed structure at Ayodhya. As the C.B.I, opted to file a consolidated charge-sheet in all the cases and filed the same in the Special Court of A.C.J.M. at Lucknow on 5-10-1993 therefore having regard to the same recourse the State Government vide notification dated 8-10-1993 amended its earlier notification dated 9-9-1993 by inserting therein case Crime No. 198/92. According to him the said notification dated 8-10-1993 was issued by the State Government under proviso to sub-sec. (1) of Section 11 Cr. P.C. read with Section 21 of the General Clauses Act. Sri Chaubey has further submitted that in view of the notification dated 15-9-1993 issued by the High Court, appointing Sri Vijai Verma as A.C.J.M. Special Court, Lucknow for trial and disposal of all cases investigated by C.B.I, pertaining to demolition of disputed structure at Ayodhya, the inclusion of case Crime No. 198/92 by the notification dated 8-10-1993 as aforesaid was not only warranted but was the only recourse for the State Government and therefore it rightly adhered to it by issuing the said notification dated 8-10-1993. He also pointed out that the transfer of judicial records relating to case Crime No. 198/92 from Rae Bareilly to Lucknow further fortifies the jurisdiction of the Special Court of A.C.J.M. at Lucknow because the Special Court at Lucknow covered larger

canvass with broader ramifications than the one related to Crime No. 198/ 92 which covered a smaller field of narrower dimension and thus inevitably had to form part of such larger canvas. The transfer of judicial records of case Crime No. 198/92 also stood justified because from 10-9-1993 onwards by judicial order permitting the C.B.I, for further investigation, the C.B.I. stood legally seized as also lawfully gripped with the investigation culminating with the filing of the consolidated charge sheet before the Special Court of A.C.J.M. at Lucknow and the requisite cognizance thereof having already been taken (inclusive of case Crime No. 198/92) by the Special Court of A.C.J.M. at Lucknow. Therefore, according to Sri Chaubey, the Special Court of A.C.J.M. at Lucknow was competent and had jurisdiction to try and commit case Crime No. 198/92 and the said Court rightly took cognizance of the offences relating to case Crime No. 198/92 01111-10-1993 and committed the case to the Court of Sessions on 27-8-1994. He has further submitted that the accused revisionists never challenged the cognizance and committal orders before any higher Court which have become final and now they cannot challenge the said orders in the present four criminal revisions since they are barred by period of limitation. He has further submitted that the bar of the period of limitation cannot be circumvented through the provision of Section 482 Cr. P.C. In support he has placed reliance on the case of Awadh Narain Lal v. State of U.P., 1986 Cri.L.J. 1233. After giving anxious consideration to the law cited I am of the opinion that this case does not apply to the argument raised on behalf of C.B.I, as it relates to maintainability of the petition under Section 482 Cr. P.C. against such interlocutory order rejecting the plea of the accused which, if accepted would conclude the proceedings.

43. I have given my anxious consideration to the submissions made by the learned counsel for the revisionists as well as learned counsel for the C.B.I. It is admitted case of parties that in the schedule annexed with Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 (conferring jurisdiction to inquire and commit the) case Crime No. 198 of 1992 was not included. It is also admitted that the said notification was issued after consultation with the High Court. Three reasons have been given by the learned counsel for the C.B.I. for not including the case Crime No. 198 of 1992 in the said notification i.e. (a) it might be due to casual slip, (b) the C.B.I. by them might not have arrived at the conclusion that all the 49 cases had

arisen out of the same transaction; and (c) a Court of competent jurisdiction was already functioning at Rae Bareli which had already taken cognizance of case Crime No. 198/92. These reasons may or may not be true but the fact remains that case Crime No. 198 of 1992 was not included in the said notification. Now the question arises as to whether the subsequent notification No. 5175/VII-Nyaya-2-739/87 dated 8th October, 1993 amending the earlier notification dated 9th September, 1993 is a valid notification or not? It is an admitted case of the C.B.I. that for issuing the said notification there was no consultation between the State Government and the High Court. According to Sri Chaubey, learned Counsel for the C.B.I, since all the correspondence between the State Government and the High Court for establishing a Special Court of Judicial Magistrate (First Class) took place in general i.e. for trial and disposal of cases arising out of demolition of disputed structure at Ayodhya, there was consultation in general for all the cases arising out of demolition of the disputed structure at Ayodhya and since the case Crime No. 198 of 1992 also arises out of demolition of the disputed structure therefore it would be deemed that consultation with the High Court regarding case Crime No. 198 of 1992 has also taken place and therefore there was no necessity to further consult the High Court before issuing the subsequent notification No. 5175/VII-Nyaya-2-739/87 dated 8th October, 1993 and therefore the said notification is a valid document. This contention of the learned counsel for the C.B.I. is not acceptable rather it is belied by the own conduct of the State Government while issuing earlier notifications in the matter. Firstly by Notification No. 6517(I)/VII-Nyaya-2-92-539-G dated 16th December, 1992 the State Government after consultation with the High Court established a Special Court of Judicial Magistrate First Class with its place of sitting at Lalitpur to try case Crime No. 198 of 1992. Thereafter when the place of sitting of the above Court was shifted by Notification No. 3123/ VII-Nyaya-2-539-G-92-T.C. dated 8th July, 1993 the High Court was again consulted before issuing the said notification. If the logic of Sri Chaubey that since consultation in general already took place at the time of issuing the earlier notification, there was no need to consult the High Court again before issuing the subsequent notification; is accepted then there was no need again to consult the High Court before issuing the said notification No. 2123/VII-Nyaya-2-539-G-92-T.C. dated 8th July, 1993.

44. Since it is admitted case of the parties that no consultation took place between the State Government and the High Court for issuing notification dated 8th October, 1993 it is not necessary for this court to delve on the meaning and definition of the word 'consultation'.

45. Sri Chaubey has further submitted that the words 'any particular case or particular class of cases' as used in Section 11(1) Cr. P.C. cover the case Crime No. 198 of 1992 because this case cannot be excluded from the particular class of cases i.e. the cases arising out of demolition of disputed structure and therefore, the consultation with the High Court for the said particular class of cases would also be deemed to be consultation for case Crime No. 198 of 1992. In this context he has also given reference of Notification No. 4420/VII-Nyaya-2-739/87 dated September 8, 1993 issued by the State Government creating a Special Court of A.C.J.M. at Lucknow and Notification No. 1371/JR (S)/93 dated September 15, 1993 issued by the High Court appointing Sri Vijai Verma in the said Special Court wherein the words 'for trial and disposal of cases investigated by C.B.I. pertaining to demolition of the disputed structure at Ayodhya, District Faizabad' have been used. No doubt, case Crime No. 198 of 1992 belongs to the same class of cases i.e. the cases arising out of demolition of disputed structure at Ayodhya out knowingly it was discriminated by the State Government itself by not including this case in the schedule of cases annexed with Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 issued by the State Government after consultation with the High Court. Actually there was no need to annex any schedule with the said notification dated 9th September, 1993 and adhering to the 'generality' and 'particular class of cases' it was expedient to use the words 'for trial and disposal of cases pertaining to demolition of the disputed structure at Ayodhya, District Faizabad' in the said notification. In not doing so and in not mentioning the case Crime No. 198 of 1992 in the schedule annexed with the notification dated 9th September, 1993 the State Government itself excluded this case from the 'particular class of cases'. For this reason also it was necessary to consult the High Court for issuing notification dated 8th October, 1993.

46. There is another aspect of the matter. Once consultation takes place between the State Government and the High Court for creation and establishment of a

Special Court under Section 11(1) Cr. P.C. and in consequence thereof a notification is issued by the State Government, the 'consultation' stands exhausted and cannot be re-used for issuing subsequent notifications. Thereafter to rescind, to add, amend or vary such notification the State Government will have to undergo/repeat the same process again which was adopted while issuing such notification as provided under Section 21 of the General Clauses Act according to which the power to issue notifications includes power to add,- amend, vary or rescind the notification 'in the like manner and subject to the like sanctions and conditions'. This view finds support from the following decisions of the Hon'ble Supreme Court: --

(1) Scheduled Caste and Weaker Section Welfare Association (Regd.) v. State of Karnataka : [1991]1SCR974 wherein it has been held as under : --

The source of power of issuing the notification rescinding the earlier one could be traced under Section 21 of the General Clauses Act which is in pari materia with Sec. 10 of the Karnataka General Clauses Act. Under Sec. 21 a power to issue a notification includes a power to rescind it subject to the qualification that the power should be exercisable 'in the like manner and subject to the like sanction and conditions (if any)'. When a notification is made rescinding the earlier notifications without hearing the affected parties it is clear violation of the principle of natural justice. Such action in exercise of the implied power to rescind cannot then be said to have been exercised subject to the like conditions within the scope of Section 21 of the General Clauses Act.

When a declaration is made under Section 3 and a further declaration is made under Section 11, the inhabitants of the areas are affected and any further action in relation to the area which is declared to be 'slum clearance area' without affording such persons an opportunity of being heard would prejudicially affect their rights. The right to be heard in the matter has been acquired by the earlier action of the authority in considering the area for purpose of the scheme.' (Para 16)

(2) Chairman Public Service Commission J&K; v. Sudarshan Singh Jamwal : AIR 1999 SC840 . In this case the Jammu and Kashmir (Judicial Recruitment) Rules

provided the upper age limit for the candidates and Rule 9-A thereof provided for relaxation of upper age limit in certain circumstances. Later on the said Rule 9-A was deleted. Subsequently the State Government by its order relaxed the upper age limit of a candidate by a certain period. The Hon'ble Supreme Court held that as the order relaxing the age limit of the candidate not having been passed under the rule-making power and not in the like manner and subject to the like sanctions and conditions' which operated for rule-making, therefore the said order was not sustainable under Section 21 of the General Clauses Act.

(3) Kamla Prasad Khetan v. Union of India : (1958)IIILLJ461SC . In this case the Apex Court held as under : -- The power to amend, which is included in the power to make the order, is exercisable in the like manner and subject to the like sanction and conditions (if any) as govern the making of the original order.

47. It appears that while issuing the notification dated 8th October, 1993 the matter was taken lightly and it was not thought proper by the State Government to consult the High Court again before issuing the said notification dated 8th October, 1993. Unless there is categorical statutory consultation with the High Court the State Government is not empowered to issue notifications on the basis of presumptions or assumptions. The authority of the High Court should not be taken lightly by the State Government otherwise it will dilute the whole legal system. The scheme of the [Constitution of India](#) does not permit weakening of one of the wings of the State. The spirit of the [Constitution of India](#) is independent functioning of the three wings of the State i.e. Legislature, Executive and Judiciary and to show full respect to each other. In the instant case at a particular juncture the Executive has ignored the statutory consultation with High Court and issued Notification No. 5175/VII-Nyaya-2-739/87 dated 8th October, 1993 which ultimately has culminated into jurisdictional error of the two Courts below.

48. In view of the above discussion it is held that Notification No. 5175/VII-Nyaya-2-739/87 dated 8th October, 1993, amending the earlier notification dated 9th September, 1993, is illegal, without jurisdiction and violative of the provisions of Section 11(1) Cr. P.C. as well as Section 21 of the General Clauses act. This notification being illegal and without jurisdiction is invalid. Therefore it could not

confer jurisdiction upon the Special Court of A.C.J.M. Lucknow to try or inquire into and commit to the Court of Session case Crime No. 198 of 1992. Therefore the said Special Court of A.C.J.M. at Lucknow had no jurisdiction to try, enquire into and commit case Crime No. 198 of 1992. Since committal of accused persons relating to case Crime No. 198 of 1992 by order dated 27-8-1994 passed by the Special Court of A.C.J.M. at Lucknow was illegal, subsequent proceedings in the Court of Special Judge (Ayodhya Prakaran) including the impugned order dated 9th September, 1997 for framing of charges as far as the accused persons of case Crime No. 198 of 1992 are concerned are illegal, without jurisdiction and are liable to be set aside. However the mistake committed by the State Government in issuing the notification No. 5175/VII-Nyaya-2-739/87 dated 8th October, 1998 is curable and it is open to the State Government, if they so desire, to rectify its mistake/illegality by issuing fresh notification after consultation with the High Court in accordance with law.

49. Issue No. 3. Whether Sri Vijai Verma was competent to preside over the Court of Special A.C.J.M. created and established vide Notification No. 4421.VII-Nyaya-2- 739/ 87 dated 9-9-1993, and whether the orders passed by him (including the orders of taking cognizance) are bad in law and are not protected under Section 460(e) Cr. P.C.?

Sri Kr. Mridul Rakesh has challenged the appointment of Sri Vijai Verma as the Presiding Officer of the Special Court of Judicial Magistrate, Lucknow. In this connection he has submitted that the Special Court of Judicial Magistrate at Lucknow was established by the State Government of Uttar Pradesh vide Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 while the appointment of Sri Vijai Verma was made by the High Court vide Notification No. 1371/JR(S)/93 dated September, 15, 1993 as Presiding Officer of the Special Court created vide G.O. No. 4420/VII-Nyaya-2 739/ 87 dated Sept. 8, 1993. According to him Sri Vijai Verma was never appointed as Presiding Officer of the Special Court created and established on September 9, 1993 vide Notification No. 4421/VII-Nyaya-2-739/87 instead he was appointed as Additional Chief Judicial Magistrate in some other special court created and established on September 8, 1993 vide Notification No. 4420/VII-Naya-2-739/87 and therefore Sri Vijai Verma

could by no means possess or enjoy or be vested with any jurisdiction whatsoever to preside over the Special Court created and established on September 9, 1993 vide Notification No. 4421/VII-Nyaya-2-739/ 87 and he should, in all fairness, have taken the charge of some other Special Court which was created and established on September 8, 1993 vide Notification No. 4420/ VII-Nyaya-2-739/87. He has further submitted that in view of the above facts all the orders (including the order of taking cognizance, the orders passed on various applications moved by the CBI and the orders of committal of the case to the Court of Session) passed by Sri Vijai Verma were beyond his jurisdiction as he was vested with no jurisdiction at all to pass the aforesaid orders as the presiding officer of the Special Court created and established on September 9, 1993 vide Notification No. 4421/VII-Nyaya-2-739/87. He further submits that Section 460(e), Cr.P.C. does not provide any protection to the cognizance, enquiry, trial or committal of cases by a Magistrate having no jurisdiction at all to do these acts. Thus the orders passed by Sri Vijai Verma including the orders taking cognizance and orders of committal of cases to the Court of session are bad in law.

50. Sri P.K. Chaubey, appearing for the C.B.I. has submitted that vide Notification No. 4420/VII-Nyaya-2-739/87 dated 8th September, 1993 a Special Court of Judicial Magistrate First Class was created by the State Government with its place of sitting at Lucknow to try and dispose of the cases arising out of demolition of disputed structure at Ayodhya and the notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 is in continuation of the notification dated 8th September, 1993. By the subsequent notification dated 9th September, 1993 only the cases have been specified for which the jurisdiction was given to the said special Court. Therefore there is no illegality in the appointment of Sri Vijai Verma as presiding officer of the Court created and established vide notification dated 8th September, 1993. He has further submitted that even for the sake of argument, though not accepted, it is presumed that Sri Vijai Verma was not competent to take cognizance of the cases and pass subsequent orders which he did, even then the orders passed by him will not become illegal in view of the provisions of Section 460(e), Cr.P.C. Section 460(e) is reproduced below : --

460. If any Magistrate not empowered by law to do any of the following things, namely : --

(a) to (d)....

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of Section 190;

(f) to (i)....

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

51. In order to properly appreciate the above provisions of Section 460(e) it is necessary to have a look on the provisions of sub-clauses (a) and (b) of sub-section (1) of Section 190, Cr.P.C. which are as under :--

190 (1) Subject to the provisions of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence. --

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

52. I am of the considered opinion that Sri Vijai Verma was very well empowered and competent to take cognizance, try and/or commit the cases as mentioned in the schedule of Notification No. 4421/VII-Nyaya-2-739/87 dated 9th September, 1993 (except the case arising out of Crime No. 198 of 1992 as held under issues Nos. 1 and 2) and all the orders passed by him are protected by Section 460(e),

Cr.P.C. In the backdrop of the above provisions of Sections 190 and 460(e), Cr.P.C. and the notification regarding Vijai Verma's appointment the argument of the learned counsel for the revisionists that Sri Vijai Verma was not empowered to take cognizance and commit the said cases to the Court of session, fails and has no legs to stand except the case arising out of Crime No. 198 of 1992 as held under issues Nos. 1 and 2.

53. Issue No. 4. Whether the Special Judge (Ayodhya Prakaran) could not take cognizance of the cases under Section 193, Cr.P.C. on the ground that the same were committed by a Court having no jurisdiction to commit those cases

The submission of Kr. Mridul Rakesh is that the learned Court of Session (Special Judge-Ayodya Prakaran) has acted illegally in dealing with these cases as these cases were committed to the Court of session under the orders of a Court having no jurisdiction to pass such orders as Sri Vijai Verma who dealt with these matters was not appointed the presiding officer of the Court created and established for the purpose by Notification No. 4421 dated 9th September, 1993 but he was appointed in the Court created and established by Notification No. 4420 dated 8th September, 1993.

54. He has further submitted that Section 193, Cr.P.C. provides that no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless a case is committed to it by the Magistrate and since Sri Vijai Verma committed the case without jurisdiction it does not empower the Court of Session to take cognizance of the offences as the Court of original jurisdiction. In the process he has submitted that an illegal order of (committal does not entitle the Court of Session to try the said case. In these circumstances it was contended that if the Magistrate passes the order without jurisdiction that is not protected by Section 460(e), Cr.P.C. Therefore the cognizance taken by the Special Judge (Ayodhya Prakaran) is bad in law.

55. While considering issue No. 3 above it has already been held that Sri Vijai Verma was competent to deal with these matters and all the orders passed by him are legal except that he had no jurisdiction with regard to case arising out of Crime No. 198 of 1992, as decided in issue Nos. 1 and 2. Consequently the

cognizance of the cases taken by the Special Judge (Ayodhya Prakaran) is also legal and does not suffer from any infirmity. Therefore the above argument of Sri Kr. Mridul Rakesh has no legs to stand.

56. Sri I.E. Singh has submitted that the learned Special Judge had no jurisdiction to frame the charges as the creation of the Court of Special Judge itself is illegal because there is no provision in the Cr.P.C. for creation of a Special Court for trial of an offence which took place in a different district.

57. It is true that the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) is silent on this point. But silence does not mean denial. There is also no provision in the Code to the contrary. It is not for the first time that the Court of Special Judge has been established but it has happened time and again in the past not only in Uttar Pradesh but in other States also and the validity of such Courts has also been recognized by the Apex Court also. Keeping in view the cardinal principle of law that every law is designed to further the ends of justice but not to frustrate on the mere technicalities I hold that the establishment of the Court of Special Judge is not against the purpose, intent and the spirit of the Code of Criminal Procedure, 1973. Therefore it is held that the Special/Sessions Judge (Ayodhya Prakaran) sitting at Lucknow was competent to take cognizance of these cases and he has jurisdiction to try these cases except, the case arising out of Crime No. 198 of 1992 as held under issues Nos. 1 and 2.

58. Issue No. 5. Whether the offences are triable by the Magistrate and not by the Court of Session?

Sri I.E. Singh has submitted that the offences are triable by the Magistrate and not by the Special/Sessions Judge. In this regard he has submitted that the consolidated charge-sheet has been filed for the offences under Sections 153A, 153B, 295, 295A, 505, 147, 149, 332, 338, 201, 395 and 114. IPC. Out of these offences Section 395 is the only offence which is triable by the Sessions Judge. According to him Section 395, IPC has been imposed for taking away the Meer Baqi Ka Silalekh and snatching and destroying the still and video cameras (including their tapes and films) of the journalists. According to him both the acts if taken to be true would amount to mischief and not robbery or dacoity. Therefore all

the offences are triable by the Magistrate and not by the Sessions Judge.

59. Sri Kr. Mridul Rakesh has submitted that with respect to charge under Section 395, IPC there is no evidence that Mir Baqi Ka Shilalekh was taken away by Pawan Pandey and his associates. However, even if this averment is accepted yet there is no allegation that any force was used or any resistance was given by anybody in removing the same so at best only offence under Section 379, IPC can be made out which is triable by the Court of Magistrate. Besides this there is no other offence which is triable by the Court of Session.

60. This is a question of fact as to whether any force was used by the accused-revisionists at the time of snatching the cameras of media persons, destroying the cameras as well as their films of the cameras as well as in taking away the Mir Baqi Ka Shilalekh. Such a question cannot be decided at the stage of framing of charges. It is a matter which can be decided at the trial only after the witnesses are examined before the trial Court. That stage has not come yet. Therefore at this stage it cannot be said that the offences are such which can only be tried by the Magistrate and not by the Sessions Court.

61. Issue No. 6. Whether the C.B.I, intended to make fresh investigation in the garb of further investigation under Section 173(8), Cr.P.C.?

Sri Kr. Mridul Rakesh has argued that the prosecution intended to re-investigate the whole matter or make certain new investigation in the garb of further investigation provided under Section 173(8), Cr.P.C. He has further submitted that the aspects for further investigation, as indicated by the C.B.I., were to identify associates of Pawan Pandey appearing in one of the photographs, to affix identity of persons responsible for assault on media persons, to make recovery of Mir Baqi Ka Shilalekh, to investigate involvement of Vasant Tllange in view of his admission in the case of attack on Sri Mulayam Singh, to collect evidence by scrutinizing newspapers and magazines, to fix identity of persons admitting responsibilities about preparation and planning of demolition, to identify the persons on the dome during the course of demolition on 6th December, 1992 with the help of photographs and a video cassette seized during investigation, to examine the remaining injured Karsewaks as out of 423 injured Karsewaks only 151 Karsewaks

were examined, to collect documentary evidence in respect of telegrams etc. sent by media persons on 6-12-1992 to their respective offices, to contact and examine police officers on duty on the day of demolition. According to him these grounds were also available to the prosecution agency even at the time of initial investigation.

62. As already indicated above the C.B.I, had moved an application before the Special Court of A.C.J.M., Ayodhya Prakaran for permission to conduct further investigation on certain relevant points and aspects as referred to hereinabove. This application was rejected by the Special Court of A.C.J.M., Lucknow vide order dated 7-10-1994. Aggrieved by the said order the C.B.I, without impleading any one of the 40 accused persons named in the 1st charge-sheet, as opposite parties, filed Criminal Revision No. 143 of 1994. However, learned Counsel for the revisionists admit that the counsel representing 40 accused persons were allowed to be heard in the said revision. This revision was allowed by the Special Judge (Ayodhya Prakaran), Lucknow on 19th November, 1994. It has been further contended that after conclusion of the further investigation 9 more accused persons were charge-sheeted. They are (i) Mahant Avidya Nath, (ii) Dr. Ram Vilas Vedanti, (iii) Shri Dharam Das, (iv) Mahant Nritya Gopal Das, (v) Maha Mandaleshwar Jagdish Muni, (vi) Baikunth Lal Sharma, (vii) Param Hans Rarn Chandra Das, (viii) Rajmata Vijay Raje Scindia, and (ix) Dr. Satish Kumar Nagar.

63. It has been pointed out that in the light of the above it is obvious that the 9 accused persons referred to above against whom supplementary charge-sheet had been filed and who were summoned had no occasion to be heard in Criminal Revision No. 143 of 1994 which was ultimately allowed. Thus they have locus to assail the order allowing Criminal Revision No. 143 of 1994. They claimed discharge challenging further investigation and since their claim of discharge was disallowed they have every locus to assail the impugned order through the present revisions. In the light of the above it was argued that the 9 accused who were charge-sheeted subsequently had locus to challenge the fresh/new investigation made under the garb of further investigation which cannot be permitted under the eyes of law and grounds of investigation indicated in the application were in fact available to the investigating agency even at the time when the investigation was

going on. Therefore, there was no occasion for the prosecution to move any such application. In fact it was only moved to fill up lacunae by making fresh investigation. In support he has placed reliance on the case of Ram Lal Narang v. State (Delhi Administration) : 1979 CriLJ1346 , wherein the Apex Court, in para 20, has observed as under: --

Anyone acquainted with the day-to-day working of criminal Courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interest of both the prosecution and the defence that the police should have such power. It is easy to visualize a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it is not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate. After all the investigating agency has greater resources at its command than a private individual. Similarly where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Cr. P.C. in such situation is a matter best left to the direction of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police

to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interest of the independence of the magistracy and the judiciary, in the interests of purity of the administration of criminal justice and in the interest of comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. (Para 20 of SCC) : (Para 21 of AIR)

Practice, convenience and preponderance of authority permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation. (Para 21 of SCC) : (Para 22 of AIR)

64. From the above ratio laid down by the Hon'ble Supreme Court it is absolutely clear that it is the duty of the investigating agency to investigate every fresh fact or information which comes to their notice irrespective of the fact whether the case relating to that crime is already pending before the Court or not, and submit its report to the Court under Section 173(8), Cr. P.C. It is for the Magistrate to decide his future course of action. The criticism that a 'further investigation' by the police would trench upon the proceedings before the Court is really not of very great substance since the final word is with the Magistrate.

65. Sri I.B. Singh, supporting the above arguments of Sri Kr. Mridul Rakesh that the C.B.I. fresh investigation in the garb of further investigation, has placed reliance on the case of K. Chandrasekhar v. State of Kerala : 1998 CriLJ2897 , wherein the Apex Court while considering the 'further investigation' under sub-

section (8) of Section 173, Cr. P.C. has held, in para 25, as under: --

From a plain reading of the above section it is evident that even after submission of police report under sub-section (2) on completion of investigation the police has right of 'further investigation' under subsection (8) but not 'fresh investigation' or 're-investigation'.... The dictionary meaning of 'further' is 'additional; more; supplemental'. Further investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that subsection (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports - and not fresh report or reports -- regarding the 'further' evidence obtained during such investigation. Once it is accepted - and it has got to be accepted in view of the judgment of Kazi Lhendup Dorji (1994 AIR SCW 2190) (supra) -- that on investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that 'further investigation' is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173.

66. In the above case it has been held that under Section 173(8), Cr. P.C. the police has power to further investigation but not of fresh investigation or re-investigation..

67. Sri Chaubey, learned Counsel for the C.B.I, has submitted that initially the C.B.I. was entrusted to investigate case Crime No.197 of 1992. Thereafter on 25-8-1992 the State Government of Uttar Pradesh issued a notification according its consent for investigation of case Crime No. 198 of 1992 as well by the C.B.I, and the Central Government on 26-8-1993 issued a corresponding notification entrusting the investigation of case Crime No. 198 of 1992 to the C.B.I. At that time the case relating to Crime No.198 of 1992 was pending before the Court of Special Judicial Magistrate at Lalitpur since after investigating case Crime No. 198 of 1992 the C.B.C.I.D. had already filed a charge-sheet in the said case. The said Court was later on shifted from Lalitpur to Rae Bareli. Therefore the C.B.I, moved

an application before the competent Court i.e. the Court of Special Judicial Magistrate at Rae Bareilly for seeking permission for further investigation under Section 173(8), Cr. P.C. and the said Court granted permission to the C.B.I. on 10-9-1993 for further investigation of the case under Section 173(8), Cr. P.C. Thus the C.B.I. was perfectly justified in seeking permission for further investigation under Section 173(8), Cr. P.C. and thereafter further investigating the case and filing charge-sheets. In support of his contention Sri Chaubey has placed reliance on the following cases: --

(1) Ram Lal Narang v. State (Delhi Administration) : 1979 CriLJ1346 . This case has already been discussed above while dealing with the arguments of Mr. Mridul Rakesh.

(2) D.D. Patel v. State of Gujarat, 1980 Cri LJ 29 (Guj). In this case the Gujarat High Court has observed as under (Para 5) : --

An enabling provision in the form of Section 173(8) is, therefore, inserted. Ordinarily conceivable occasion for an additional charge-sheet would be the disclosure of some new material and so, while acknowledging and recognising the police officer's right to submit a fresh charge-sheet. Those conceivable circumstances are put on the statute. However, those circumstances are enumerative and not exhaustive in character. If the very material is misunderstood by the Police Station Officer and if he has received proper light from his superiors he can certainly file an additional charge-sheet though there may not be strictly speaking the further investigation and collection of new material. In such a case instead of new material there is a new light that is received.

(3) Achchan v. State of U.P., 1982 All Cri C 305 : (1982 All LJ NOG 31), wherein, considering the provisions of Section 173, Cr. P.C., this Court observed as under : --

It is well established that a provision of law should be interpreted keeping in mind the purpose and the background in which it is enacted. Interpreted in that manner the words 'as soon as it is completed' occurring in sub-section (2) of Section 173 cannot be assigned the meaning which the learned Counsel for the applicants

wants the Court to assign them. Those words should be liberally construed and it should be held that if in a given case, the police after investigating the matter for a reasonable length of time, is able to complete the investigation with respect to a particular number of accused, it would be permissible to submit the charge-sheet as against them. Putting it differently, the words 'completion of investigation' should have some relation to the offenders. In this connection it cannot be ignored that sub-section (8) of Section 173 expressly permits further investigation and states that on completion thereof a further report or reports may be given in the same form as provided in sub-section (2). If the intention of the legislature were that only one charge-sheet can be submitted in relation to an offence and that it can be done only after the entire investigation is completed, there could be no logic in the legislature inserting sub-section (8) in Section 173 of the Code of Criminal Procedure.

(4) In *Shanker Ram v. State*, 1986 Cri LJ 707 (Patna) (Full Bench), the Patna High Court has held as under (Paras 12 and 13): --

The right of the police to make repeated investigation and to file supplementary police reports was clearly recognised thereunder and this view now bears the seal of approval of the final Court.

Now once the legal position was as above under the old Code it would be doubly more so under the new Code in view of the insertion of sub-section (8) to Section 173. As has already been noticed earlier this sub-section was inserted to give statutory affirmance to the presidential mandate under the old Code with regard to the right of the police to further investigate. Reading sub-sections (1), (2) and (8) of Section 173 together it is clear that they envisage expeditious completion of police investigation and submission of police report in the prescribed form, thereafter, with a proviso to further investigate, if necessary. Sub-section (8) of Section 173 expressly declares that nothing in the said sub-section preclude further investigation in respect of an offence even after a report under subsection (2) has been forwarded to the Magistrate. It then provides that upon such investigation the officer-in-charge of a police station may forward not one but more than one further reports with regard to such investigation. To these further police

reports the identical provisions of sub-sections (2) to (6) of Section 173 would also apply. To my mind this explicit provision would drive the last nail in the coffin of the argument of a single inflexible police report under Section 173(2) and a legal bar to the submission of such reports thereafter. On sound canons of construction sub-section (8) must, therefore, be read as a proviso to sub-sections (1) and (2) of Section 173 or, in any case, harmoniously together therewith.... However, the law not only visualises but mandates a further investigation, where necessary, and consequential further police report or police reports....

(5) In *Muzaffar Abbas v. State of U.P.*, 1989 LLJ 68 : (1989 All LJ 429), this Court has held that the provisions of sub-section (8) of Section 173, Cr. P.C. show that further investigation can be made even after a charge-sheet has been submitted and after this further investigation if the Investigating Officer considers necessary and he gets further evidence, he shall forward to the Magistrate a further report regarding such evidence in the prescribed form that is in the form of charge-sheet.

(6) In *Zulfiqar Beg alias Baby v. State of U.P.*, 1992 Cri LJ 2067, this Court has held as under (Para 13) : --

No doubt, the Magistrate Under Section 156(3) of the Code can direct further investigation of the case, but this power of the Magistrate does not take away the power of the executive wing of the Government to direct further investigation in the case. The framers of the Code of Criminal Procedure have kept the two jurisdictions quite separate. Up to the stage of submission of a charge-sheet final report in the case by the police Under Section 173 of the Code, the executive wing of the State Government has full power and control over the investigation of the case.... The executive wing of the State Government retains the power to direct further investigation in the case even if upon an earlier report submitted to the Magistrate. Under Section 173(2) of the Code, the cognizance of the case has been taken by the Magistrate.

(7) *King Emperor v. Khwaja Nazir Ahmad* . The Privy Council has observed as under : --

The judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of enquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with these statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of judiciary and police are complimentary, not overlapping....

68. In view of the above case law it is well settled that the investigating agency has the power under sub-section (8) of Section 173, Cr. P.C. to further investigate every fresh fact that comes to their notice irrespective of the fact that the charge-sheet in the same matter has already been submitted under Section 173(2), Cr. P.C. and the case is pending before the Court during further investigation. To investigate fresh fact does not amount investigation of the entire case afresh but it is in continuation of the earlier investigation. In the present case the C.B.I, while moving applications seeking permission of the Court for further investigation has enumerated a number of facts which had come to their knowledge and upon which further investigation was necessary. In the above circumstances I am of the opinion that the C.B.I, did not intend to re-investigate or carry fresh investigation in the garb of further investigation and Courts below have not committed any illegality much less irregularity in granting permission for further investigation. The C.B.I. was legally entitled and empowered to further investigate the matter under Section 173(8), Cr. P.C. and on completion of the further investigation file its report/reports under Section 173(2), Cr. P.C. which the C.B.I, has done in accordance with law. The argument of the learned Counsel for the revisionists that actually the C.B.I, wanted to re-investigate the matter or making the investigation afresh in the garb of further investigation, fails.

69. Issue No. 7. Whether joint/consolidated charge-sheet in the matter filed by the C.B.I, is permissible or not?

Issue No. 8. Whether the offences of Conspiracy, dacoity (Section 395, IPC), common object of unlawful assembly committed in the course of same transaction

and abetment etc. are prima facie made out against the revisionists?

Both the above issues are related to each other, therefore, they are being discussed , together.

70. On the question of joint/consolidated charge-sheet Sri Kr. Mridul Rakesh has argued that neither the joint charge-sheet could have been filed by the C.B.I, nor the prosecution could be permitted for mass amalgamation of cases. While explaining the procedure provided under the Code of Criminal Procedure it was submitted that every F.I.R. under Section 154, Cr. P.C. must culminate into either a report under Section 173, Cr. P.C. or 169, Cr. P.C. Therefore every F.I.R. is to be investigated independently and there is no provision to amalgamate the F.I.Rs. enmass for a composite investigation. In this connection it has been asserted that the scheme of law provided that joinder of charges and joinder of trial can be allowed by the Court, however, there is no provision of law permitting the prosecution for joinder of charges or joinder of trials which is the only prerogative of the Courts who may use their discretion judiciously in this regard and such wisdom used by the Courts cannot be usurped by the prosecuting/investigating agencies. There is no provision under law permitting submission of the joint charge-sheet. In fact it is the duty of the investigation to file a separate charge-sheet for separate offences arising out of separate F.I.Rs. and it is the sole discretion of the Court either to try jointly such cases or independent of each other. In support the revisionists rely upon the following cases : --

(i) Natwar Lal Sarkar Lal Mody v. State of Bombay, (1984) 26 Delhi LT 14. In this case the Apex Court has held as under : --

Separate trial is the rule and joint trial is an exception. While Sec. 239 of the Code of Criminal Procedure allows a joint trial of persons and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not having regard to the circumstances of each case.

(ii) In State of Maharashtra v. Anjanbai alias Anjana Mohan Gavit, 1997 Cri LJ 2309, a Division Bench of the Bombay High Court has observed as under : --

We are of the view that for the purpose of a joint trial it is sufficient that the accusation alleges offences committed by the respondents-accused being committed in the course of the same transaction within the meaning of Section 233(d) of the 1973 Code. It is the tenor of accusation and not the wording of the charge that must be considered to be a decisive test.

Explaining the words 'same transaction' the Division Bench observed as under : --

It is necessary to have some connection between a series of acts which is an essential ingredient for those acts to constitute the same transaction. A transaction may consist of an isolated act or may consist of series of acts.

71. It has further been contended that the prosecution has introduced a modus operandi unknown to law by mass amalgamation of cases and filing a joint charge-sheet thereof and thereby compelling the Court to try the cases in the manner as the C.B.I. desired and depriving the Court from exercising its judicial power and discretion as to whether the offences were to be tried jointly or severally. It is the discretion of the Court only to decide as to whether there should be a joint trial or a separate, but not the discretion of the investigating agency to make a joinder of cases and incidents influencing its own decision upon the Court. The scheme of Criminal Procedure nowhere provides any power to the investigating agency to make a joinder of cases or charges on accused. The discretion rests with the Court only. The Legislature though provided the joinder of charges, joinder of accused and the joinder of trials by the Court only but not by the investigating agency.

72. It has further been submitted by Sri Kr. Mridul Rakesh that the CBI failed to solve the crimes allegedly committed and narrated in the 47 FIRs in addition to FIRs of case Crime Nos. 197 of 1992 and 198 of 192. The CBI did not bring the bitter truth to the notice of the Court that the cases relating to the aforesaid 47 FIRs remained unsolved wherein the CBI mala fide and deliberately did not file any final report under Section 169, Cr. P.C. Thus the CBI in order to shield and camouflage its utter failure in solving the abovereferred 47 criminal cases deliberately took recourse of filing a joint charge-sheet. He has further submitted that Section 223(d), Cr. P.C. is not applicable to the present case which provides

for jointly charging the persons and jointly trying them. Section 223(d) does not permit mass amalgamation of the cases by the investigating agency to file a joint charge-sheet depriving the Court exercising its judicial discretion in this regard.

73. Regarding joint/consolidated charge-sheet Sri I.B. Singh has submitted that filing of a joint charge-sheet in respect of 49 offences is a strange phenomenon. In fact charge-sheet is the document by which the Court and the accused know the exact case i.e. the nature of allegations, the nature of evidences proposed to be led against the accused which enables the accused to take his defence in the trial. Filing of a consolidated charge-sheet for 49 offences has totally confused the matter and the defence of the revisionists would be seriously prejudiced on account of filing of the consolidated charge-sheet. According to him the investigating agency has to investigate each and every offence separately and is required to submit charge-sheets separately. It is for the Court to decide as which of the charges are to be tried jointly. Sections 221 to 223, Cr. P.C. provide for joinder of charges and its trial by the Court and not by the prosecuting agency. Therefore the consolidated charge-sheet is in violation of the law, accordingly is illegal and liable to be quashed.

74. It has also been contended by Sri Kr. Mridul Rakesh that the dominant object of the conspiracy was not the destruction of the disputed structure but was the construction of the temple. In this regard he invited the attention of (he Court towards the gists of the statements of a large number of witnesses recorded under Section 161, Cr. P.C. He has further submitted that the intention to demolish the disputed structure could have been developed at the spot and the accused persons charge-sheeted by the CBI can by no stretch of imagination be held responsible for the actions of a group of stray persons and an unguided individual or a group of certain persons unable to depict or display the object of assembly. There is no evidence that any of the charge-sheeted accused ever planned or had knowledge that the alleged structure would be demolished. On the contrary there is positive evidence that out of the charge-sheeted accused persons who were present in the vicinity of the place of occurrence, were severely tensed at the time of occurrence and the evidence shows that they even appealed to the Karsewaks and expressed their annoyance but the Karsewaks/crowd did not hear them which

clearly establishes that neither of the charge-sheeted accused expected this and all this was against their wish, consent or acquiescence and all that was done by the uncontrolled crowd, was not in the prior knowledge of any of the charge-sheeted accused persons. He has further submitted that the CBI in order to prove conspiracy has mala fide mentioned in the charge-sheet that some secret meeting was held on 5-12-1992 at the residence of Viriay Katiyar which was attended by L.K. Advani, Pawan Paridey etc. wherein a final decision was taken to demolish the disputed structure although no such evidence is available. In support of his arguments he has placed reliance on the following cases : --

(i) Kehar Singh v. State (Delhi Administration) : 1989 CriLJ1 . In this case the Apex Court while dealing with Sections 120A, 120B of the Indian Penal Code and Section 10 of the Indian Evidence Act laid the following principles necessary to prove the conspiracy (Para 44 of AIR) : --

- (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy;
- (2) If the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;
- (3) Anything said, done or written by him should have been said, done or written by him after the intention was formed by anyone of them;
- (4) It would also be relevant for the said purpose against another who entered the conspiracy or after he left it;
- (5) It can only be used against a co-conspirator and not in his favour.

75. In para 275 (of SCC (Cri)) : (Para 272 of AIR) of the said judgment the Hon'ble Supreme Court has held as under : --

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The

conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

(ii) In *P.K. Narayanan v. State of Kerala* (195) 1 SCC 142 : (194 AIRSCW 5043), the Hon'ble Supreme Court has held as under (Paras 8 and 9 of AIR) : --

An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent evidence.

The ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the implication of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it cannot be held that the prosecution has successfully established its case.

76. It has been argued by Sri I.B. Singh that even though the allegations of the prosecution are taken to be correct, for argument's sake, the conspiracy was to demolish the disputed structure. Thus no sooner than the demolition of the disputed structure had taken place the object of the conspiracy stood completed. Thereafter any overt act committed by an individual or a certain group of persons after the object of the demolition was achieved can by no means be said to be the part of criminal conspiracy allegedly hatched for demolition of the structure. On

own showing of the prosecution the stone, Mir Baqi Ka Shilalekh, was allegedly taken away by Pawan Kumar Pandey and his associates after the completion of the demolition i.e. to say after the object of the demolition of the disputed structure was achieved. Thus the act, if any, regarding taking away of Mir Baqi Ka Shilalekh by Pawan Pandey and his associates was at the worst their individual act not concerned with the object of the conspiracy of the demolition of the disputed structure. Section 390, IPC defines 'robbery' describing as to when an act of 'theft' becomes an act of 'robbery'. According to Section 390, IPC theft becomes robbery when the offender violently causes or attempts to cause any person death or hurt or wrongful restraint or fear of instant death or instant hurt or instant wrongful restraint. Section 391, IPC contains the definition of dacoity. According to Section 391, IPC when five or more persons jointly commit or attempt to commit a 'robbery' then that robbery becomes dacoity. There is no evidence that Pawan Kumar Pandey or his associates or the revisionists Braj Bhushan Saran Singh, Lallu Singh, Jai Bhawan Paweya and Kamlesh Tripathi had, in any manner, violently caused or attempted to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. Neither of the ingredients to constitute an offence punishable under Section 395, IPC is present on the record. At the most even if the prosecution is to be taken as correct that Mir Baqi Ka Shilalekh was removed from the place of the place of the disputed structure it was removed in order to erase even the last sign which could indicate that there ever existed any mosque or any structure with which Mir Baqi could have any connection. Even if some persons individually acted in taking away the Mir Baqi Ka Shilalekh and taking away, for argument's sake, is considered an offence under Section 395, IPC, even in that event that group of individuals cannot be tried with rest of the accused persons even though they are taken to be as the offenders committing the offence of dacoity.

77. He has further submitted the learned trial Court should have considered the mens rea of the revisionists R.N. Srivastava and D.B. Roy but the learned trial Court failed to do so. He has further submitted that there is difference between 'blameworthy conduct' and 'criminal offence' and this aspect of the matter was also not considered by the trial Court. In this regard he has placed reliance on the following cases : --

(1) Director of Enforcement v. M.C.T.M. Corporation Pvt. Ltd : 1996 CriLJ1623 . This was a case under Section 23(1)(a) of FERA, 1947 wherein 'mens rea' was considered and the Apex Court held as under (Para 7 of AIR) : --

'Mens rea' is a state of mind. Under the criminal law, mens rea is considered as the 'guilty intention' and unless it is found that the 'accused' had the guilty intention to commit the 'crime' he cannot be held 'guilty' of committing the crime. An 'offence' under the Criminal Procedure Code and the General Clauses Act, 1897 is defined as any act or omission 'made punishable by any law for the time being in force.

In para 13 the Apex Court also held as under :-

The High Court apparently fell in error in treating the 'blameworthy conduct' under the Act as equivalent to the commission of a 'criminal offence', overlooking the position that the 'blameworthy conduct' in the adjudicatory proceedings is established by proof only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention.

(2) Nanboo Kedar v. State : AIR 1962 MP91 (Indore Bench). In this case while considering abetment the Apex Court observed as under (Para 6) :-

A reading of the section will show that it applies to cases where a person abets a commission of the offence some time at different place and also remains present at the time the offence is committed. The words 'if absent would be liable to be punished as an abettor' would show that abetment has been made sometime prior to the actual commission of the offence. But in the instant case the appellant No. 2 was present on the spot and it is at his instigation that the offence was committed. Therefore, the appropriate Section would be 109 and not 114, I.P.C.

(3) In Gopal Chunder Sirdar v. Foolmoni Bewa, (1882) ILR 8 Cal 728, the Calcutta High Court has held that since the appellant was present on the spot and in his presence the offence was committed added to the fact that he did not disapprove

the action of the accused persons does not amount abetment.

78. On the basis of the above case law, according to Sri 1. B. Singh, learned counsel for the revisionists R.N. Srivastava and D.B. Roy in Criminal Revision No. 211 of 1997, the Sessions Judge was required to do some labour for deciding to proceed or not to proceed with the case but the learned Sessions Judge adopted a short cut method by holding that a prima facie case is made out and framed the charges against the accused-revisionists. The learned Sessions Judge also ignored to consider the relevant rulings which were placed before the Special Judge but they have neither been considered nor discussed by the Special Judge in the impugned order.

79. Lastly it has been submitted by Sri I.B. Singh that in view of the above submissions the impugned order of the Special Judge (Ayodhya Prakaran), Lucknow dated 9th September, 1997 for framing charges against the revisionists R.N. Srivastava and D.B. Roy is liable to be set aside.

80. It has further been submitted by Sri Kr. Mridul Rakesh that right from the first meeting till Rath Yatra or even at the spot there is no evidence that there was any conspiracy to demolish structure. The Karsewaks were invited only for symbolic Karsewa as there was no possibility to construct the Ram Temple on any site on the day of the incident and hence a definite procedure was devised and adopted for performance of symbolic Karsewa at a definite place i.e. the acquired land of Shilanyas with some soil or water. Therefore a group of stray and unguided individual or a group or an assembly of certain persons cannot decide, depict or display the object of assembly. It was not pursuant to the achievement of main object of construction of Ram Temple. The intention to demolish the disputed structure developed at the spot and the accused persons cannot be held responsible for the actions done by such group of persons. There is no evidence that these accused even planned or had knowledge that the disputed structure was to be demolished rather they were tensed, they appealed and expressed their annoyance but the Karsewaks did not hear them which exhibits that they never expected it and it was done against their wish and without their knowledge. Therefore the accused-revisionists cannot be said to be the members of the

unlawful assembly and they cannot be charged for the acts done by individuals or group of persons. In support of his arguments Sri Kr. Mridul Rakesh has placed reliance on the following cases: --

(i) *Allauddin Mian v. State of Bihar* . In this case the Apex Court considered the 'common object' and 'unlawful assembly' as under (at Pp. 1463-64 of AIR) : --

In order to fasten vicarious responsibility on any member of an unlawful assembly the prosecution must prove that the act constituting an offence was done in prosecution of the common object of that assembly or the act done is such as the members of that assembly knew to be likely to be committed in prosecution of the common object of that assembly. Under this section, therefore, every member of an unlawful assembly renders himself liable for the criminal act or acts of any other member or members of that assembly provided the same is/ are done in prosecution of the common object or is/are such as every member of that assembly knew to be likely to be committed. This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/ were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of anyone or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section 149, I.P.C.

(iii) Mukteshwar Rai v. State of Biha : 1992 CriLJ518 . This was a case under Sections 302, 436, 364, 149, I.P.C. wherein on 25-3-1978 at about 11.00 a.m. persons of several villages gathered in village Bisharam, under Police Station Dinara, District Rohtas. They were armed with rifles, guns, bhalas (spear), lathis etc. and the mob was searching for some persons in the village and the villagers fled in all directions. The mob set some houses on fire and ransacked them. On receiving information a police officer came there and the mob fled. According to the prosecution in all four persons were killed. Two of them got burnt and the other two were not traced. In this case the Hon'ble Supreme Court held as under (para 4) : --

We have given earnest consideration to this aspect. Taking a general picture of the case and after a close scrutiny of the evidence we find that two persons were charred to death. This must have been the result of setting fire to those houses. With regards the other two missing persons it cannot be concluded that they were murdered in the absence of any iota of evidence. Under these circumstances we find extremely difficult to hold that a common object of the unlawful assembly was to commit murder.

We are unable to agree with the learned counsel that these appellants were mere onlookers. The prosecution case is that mob in which these appellants were present moved into the village. Therefore it is established beyond reasonable doubt that the common object of the unlawful assembly was at least to set the fire punishable under Section 436 read with Section 149, I.P.O. So in the result the conviction in respect of each of these appellants under Section 302 read with Section 149, I.P.C. and sentences of imprisonment for life are set aside.

81. Sri Chaubey, appearing on behalf of the C.B.I, while replying the submissions made by the learned counsel for the revisionists, has submitted that after due investigation of all the 49 FIRs it was found that the accused persons committed the offences in the course of the same transaction and they cannot be separated from each other and the entire episode was the result of a single general conspiracy and the accused persons acted jointly to achieve the goal of the said conspiracy i.e. to demolish Ram Jariam Bhumi/Babri Masjid structure at Ayodhya.

The facts mentioned in all the 49 FIRs show their cognate relationship, form part of a common pool and thus approve the general nomenclature applicable to each one of them. He has further submitted that prima facie there is evidence that a secret meeting took place at the residence of one of the accused persons i.e. Vinay Katiyar, wherein a decision was taken to demolish the disputed structure on 6th December, 1992 and therefore there was an agreement amongst all the accused persons to accomplish the conspiracy to demolish the disputed structure. He has further submitted that the scheme of the Code of Criminal Procedure contemplates the provision of joint trial as contained in Section 223(1)(d), according to which the persons accused of different offences committed in the course of same transaction should be charged and tried together. Accordingly applying this spirit of the Code of Criminal Procedure into the facts of this case the C.B.I. thought it more prudent and viable to file a consolidated charge sheet in the matter. In support he has placed reliance on the following cases : --

(1) In re: Govindaswami alias Subbiah Kalgarayar : AIR1953 Mad372 . In this case the accused had murdered two persons in the same night at two different places divided by a street which formed the boundary between two districts. The accused confessed both the murders in one statement. Separate charge-sheets were filed in two different Sessions Courts of different districts. It was held that there was no impediment in trying both the murders together under Section 234(1), Cr. P.C. and one Court should have dealt with both the murders.

(2) In Kameshwar v. State : AIR1958 All318 , it was held by this Court that where a number of offences are alleged to have been committed in pursuance of a criminal conspiracy, the link which unites the various offences is the link of conspiracy and that whatever be the offences committed in pursuance of the conspiracy, there would be at least one single offence which the accused would be said to have committed in respect of all of them, namely the crime of criminal conspiracy. In the offence of criminal conspiracy various offences could be said to have been committed in the course of the same transaction.

(3) In Kadri Kunhahammad v. State of Madras : 1960 CriLJ1013 the Hon'ble Supreme Court held as under (Para 4) : --

Section 239(d) authorises a joint trial of persons accused of different offences committed in the course of same transaction; and there can be no doubt that in deciding the question whether or not more persons than one can be tried together under the said section, the Criminal Court has to consider the nature of the accusation made by the prosecution. It would be unreasonable to suggest that though the accusation made by the prosecution would justify a joint trial of more persons than one, the validity of such a trial could be effectively challenged if the said accusation is not established according to law. It is true that in framing the charge against more persons than one and directing their joint trial, Courts should carefully examine the nature of the accusation; but if they are satisfied that prima facie the accusation made shows that several persons are charged of different offences and that the said offences prima facie appear to have been committed in the course of the same transaction, their joint trial can and should be ordered.

(4) *Purshottamdas Dalmia v. State of West Bengal* : 1961 CriLJ728 . The Hon'ble Supreme Court held that the Court having jurisdiction to try the offence of conspiracy, has also jurisdiction to try an offence constituted by the overt acts which are committed in pursuance of the conspiracy even beyond its jurisdiction.

(5) *Banwari v. State of Uttar Pradesh* : AIR 1962 SC1198 . In this case it has been held by the Apex Court that the question of the trial of various committed persons does not depend on the number of committal orders, but on the provisions of Sections 233 to 239 of the Code. If one trial can be justified under those provisions and there is no prejudice to the accused the Sessions Judge can certainly consolidate the committal orders in those cases and try the accused persons at one trial.

(6) In *State of Andhra Pradesh v. Cheemalapati Ganeswara Rao* : [1964]3SCR297 , it has been held by the Apex Court that on a plain construction of Section 239 it is open to the Court to avail itself cumulatively of the provisions of different clauses of Section 239 for the purpose of framing charges and the charges so framed by it will not be in violation of the law.

(7) *Public Prosecutor v. Kapu Chinniah*, 1978 Cri LJ 396, Andhra Pradesh. In this case it was held that the reports lodged at three different places would not cause

any prejudice to the defence since evidence is one and the same describes the incident which took place within a space of one or two hours in pursuance of the common object of unlawful assembly and therefore single trial is quite valid in the circumstances of the case.

(8) Jagdish Singh v. State of H.P., 1990 Cri LJ 19 (HP). In this case it was held that as a result of conspiracy between petitioners and co-accused trees in large number were illicitly felled and transported by the petitioners. This was a consequence of initial act of conspiracy. Therefore joint trial was justified.

(9) Gorey Lal v. State of U.P., 1994 Cri LJ 1337 ; (1994 All LJ 751), wherein it has been held that if after committing the crime the witnesses chase the culprit and they arrest him then the whole occurrence from the time of start of crime and the arrest from one bundle of fact constitute one crime. If at the time of arrest some more crimes are committed, then these crimes are a continuation of the first crime, they do not form separate facts and do not constitute two different offences. Such a crime has to be tried together and two trials were not at all required.

82. On the question of criminal conspiracy Sri Chaubey, learned counsel for the C.B.I, has submitted that prima facie it is an established fact there was a criminal conspiracy among all the accused persons to demolish the disputed structure on 6th December, 1992 and all the offences have been committed by the accused persons (including revisionists) in pursuance of that criminal conspiracy and in furtherance of the common object of the unlawful assembly and in the course of the same transaction. Therefore charges of conspiracy and common object of unlawful assembly have been rightly framed against the accused-revisionists and there is no illegality in it. In support he has placed reliance on the case of Suresh Chandra Bahri v. State of Bihar : 1994 CriLJ3271 wherein it has been held by the Hon'ble Supreme Court as under : --

In the above context we may refer to the provisions of Section 120A of the Indian Penal Code which defines criminal conspiracy. It provides that when two or more persons agree to do, or cause to be done, (1) an illegal act or (2) an act which is not illegal, by illegal means, such agreement is designated a criminal conspiracy; provided that no agreement except an agreement to commit an offence shall

amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Thus, a cursory look to the provisions contained in Section 120A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence in a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every persons who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in Section 120B (Para 96).

83. In view of the above discussions I am of the opinion that no illegality has been committed by the Courts below while taking cognizance of a joint/consolidated charge-sheet on the ground that all the offences were committed in the course of the same transaction and to accomplish the conspiracy; that the evidence for all the offences is almost the same and therefore these offences cannot be separated from each other irrespective of the fact that 49 different FIRs were lodged on the basis of which 49 criminal cases were registered by the police. Although there is no provision in the Cr. P.C. with regard to joinder of charge-sheets by the prosecution agency but on the other hand there is no prohibition also for the same. Learned Courts below by permitting the filing of joint/consolidated charge-sheet has accepted in principle the permissibility of the joint-consolidated charge-sheet.

As regards the offences regarding criminal conspiracy and common object of unlawful assembly they prima facie made out against the accused-revisionists and since these offences are alleged to have been committed in the course of same transaction therefore the Special Court of A.C.J.M. rightly took cognizance of the same and also rightly committed the same to the Court of Sessions.

84. Issue No. 9. Whether the disputed structure was a sacred place of worship for Muslims and whether an already defiled structure can be defiled again? and

Issue No, 10 Whether it was a dispute of civil nature and has wrongly been shown as a criminal offence?

Both the above Issues are co-related therefore they are being considered together, 85. Sri Kr. Mridul Rakesh has submitted that in the charge-sheet it has been mentioned that investigation has also disclosed that Babri Masjid disputed structure was a sacred place of worship by the Muslims although there is no evidence to give even a minimum support to this allegation of the prosecution. In the charge-sheet the CBI has further alleged that as per records in 1855 Ram Chabutra and Sita Rasoi was constructed on the outer courtyard of the disputed structure resulting in the title suit being filed in 1858 by the Muslims against such constructions in the District Court at Faizabad. But no legal, oral or documentary, evidence is available on record to substantiate the allegations of the presentation of any title suit filed by the Muslims in the year 1858. It has further been mentioned in the charge-sheet that the investigation shows that on 22/23rd December, 1949 Ram Lala idol was installed in Ram Janam Bhoomi-Babri Masjid under the central dome. In accordance with the faith of the Hindus and their religious belief, Shri Ram was born within that precincts and they considered the entire area under the central dome to be the most auspicious location i.e. the Grabh Grih. Installation of Ram Lala idol gave rise to a report being lodged in the local police station as a result of which necessary attachment order under Section 145, Cr. P.C. was issued and vide order of the Magistrate entry to the disputed structure was prohibited by locking the same. This fact was denied in paragraph 42 of Criminal Revision No. 201 of 1997 by stating that the proceedings under Section 145, Cr. P.C. were initiated at the instance of police and not at the instance of any Muslim

individual or citizen. Thereafter two title suits were filed in the year 1950. Two suits were filed by Gopal Singh Visharad and the revisionist Param Hans Ram Chandra Das. In January, 1950 the Civil Judge, Faizabad passed interim orders allowing the Puja and restraining the removal of idol of Sri Ram Lala from the Sanctum Sanctorum. No orders were passed to put any lock denying or depriving the Hindus from offering Puja etc. whereas on the other hand the order referred to above passed by Civil Judge, Faizabad was confirmed by the High Court on 26-4-1955. The learned counsel has submitted that the CBI has not denied the correctness of the contents of paragraphs 39, 40 and 42 of Criminal Revision No. 201 of 1997. According to him from December, 1949 till 6th December, 1992 the disputed structure had not been used as a Mosque, therefore there was no question of defiling of any Muslim structure or Mosque. He has further submitted that though not conceded but if it is taken for argument's sake only that, when Shri Ram Lala's idol was installed in 1949 and if there was any Muslim structure or Mosque then the same stood defiled in the year 1949 itself and therefore a defiled structure cannot be defiled again on 6th December, 1992. In support he has placed reliance on the following cases:-

(i) Dr. M. Ismail Foruqui v. Union of India : AIR 1995 SC605 . It was a case wherein the Hon'ble Supreme Court considered the validity of the Acquisition of Certain Area at [Ayodhya Act, 1993](#) as also the maintainability of the Presidential Reference 1 of 1993 in respect of Ram Janma Bhumi-Babri Masjid dispute. In this case the question of defiling a mosque was never considered. Therefore this case does not apply to the contention of the learned counsel for the revisionists with regard to defiling of the mosque.

(ii) Mosque known as Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar AIR 1938 Lahore 369 wherein it was held that a mosque can be adversely possessed and suit relating to mosque is not exempt from operation of Limitation Act, 1908. In this case also the question of defiling of a mosque was not considered, therefore, this case does not support the contention of the learned counsel for the revisionists.

(iii) Mosque known as Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar . In this case also the question of defiling of a mosque was not considered and, therefore, this case also does not apply to the contention of the learned counsel for the revisionists.

86. He has further submitted that it is yet to be decided as to whether the disputed structure was a mosque or not and it was a sacred place of worship of Muslims or not. Unless it is decided that the disputed structure was a mosque and sacred place of worship of Muslims it is not open for the CBI to say that the disputed structure was a mosque or a sacred place of worship for Muslims and no offence can be said to have been committed by the revisionist. It has further been submitted that if the revisionists are prosecuted for demolishing the mosque or sacred place of worship by Muslims and the Hon'ble Special Bench holds that the disputed structure was not a mosque nor was it a sacred place of worship by Muslims then the whole exercise of the prosecution of the revisionists would become redundant. Under the fundamental principle of criminal jurisprudence unless it is proved that the disputed structure was a mosque or a sacred place of worship by Muslims the revisionists cannot be prosecuted for defiling the disputed structure.

87. Sri I.B. Singh has submitted that it was a dispute of civil nature. Regarding title of the disputed structure several civil suits are pending before this Court and the C.B.I, has wrongly shown it as a criminal offence.

88. Litigation regarding title over a disputed structure is no doubt a dispute of civil nature but demolition of a structure is a criminal offence. These two things are separate and are not relevant to each other. In criminal law 'intention' plays a vital role. It is the 'intention' which is considered while deciding criminal cases. Therefore in the present case it is not the question that the structure which was defiled in the present occurrence had already been defiled 42 years ago. The question which has to be considered is as to what was the intention of the culprits at the time of occurrence which led to the demolition of the disputed structure? In the light of the discussion referred to herein above with regard to the scope of this Court while dealing with criminal revision I am of the considered opinion that the

arguments advanced by the learned counsel are matter of evidence and this Court cannot appreciate the same in revisional jurisdiction and the same would be decided by the appropriate Court.

89. Issue No. 11. Whether actual culprits who had received injuries while demolishing the disputed structure and who were arrested by the police and later released on bail as well as the accused persons of 47 FIRs lodged by media persons, have not been charge-sheeted? If so, its effect?

90. It has been submitted by Sri I.B. Singh, learned counsel for the revisionists R.N. Srivastava and D.B. Roy in Criminal Revision No. 211 of 1997 that the actual culprits who were large in number and who had received injuries while doing Kar Sewa and demolishing the disputed structure and who were arrested by the police and later on released on bail should have been charge-sheeted but surprisingly the C.B.I, has not charge-sheeted any of them. It has been submitted that about 423 persons (Karsewaksj who had actually taken part in demolition of the disputed structure and who were injured and were arrested by the police and later on released on bail have not been charge-sheeted.

91. He has further contended that the prosecution has not proposed in the charge-sheet to charge any of the accused persons pertaining to 47 FIRs. Even otherwise there is specific averment in the charge-sheet that the purpose of taking away camera or destroying the cameras of the media persons was only to remove evidence by scrubbing or destroying the films and photos of the offenders which at best constitutes an offence under Section 201, IPC.

92. In my opinion the revisionists have no locus to raise this question because this fact does not affect the trial of the revisionists nor does it prejudice their defence. Moreover, it is the prerogative of the State Government to charge-sheet a person or not. Therefore this argument of Sri I.B. Singh has no substance and accordingly fails.

93. Issue No. 12. Whether the impugned order dated 9-9-1997 framing charges against the accused-revisionists is sustainable or not?

While assailing the impugned order one of the learned counsel for the revisionists, Sri Kr. Mridul Rakesh, has submitted that for framing charges under Section 228, Cr. P.C. existence of a strong and grave suspicion against the accused is a must. Unless the suspicion is strong and grave the provisions of Section 228, Cr. P.C. cannot be attracted. Whether the suspicion is strong and grave or not it requires a strict judicial scrutiny by a judicially strong mind of an experienced Sessions Court. In support he has placed reliance on the case of Niranjana Singh Karam Singh Punjabi Advocate v. Jitendra Bhimraj Bijaya : 1990 CriLJ1869 , wherein the Hon'ble Supreme Court, while affirming the law laid down in Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 , has held that in exercise of jurisdiction under Section 227, Cr. P.C. the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, and any basic infirmities appearing in the case etc.

94. In Prafulla Kumar's case : 1979 CriLJ154 (supra) it was laid down that where the materials placed before the Court disclose grave suspicion against the accused and which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial; the test to determine the prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application.

95. He has further relied upon the case of Kanti Bhadra Shah v. State of West Bengal : 2000 CriLJ746 . In this case the Metropolitan Magistrate who framed the charge against the accused had opted to write a short order for dismissing the petition filed by the accused to discharge him. Against this order the accused approached the High Court and the High Court remanded back the matter to the trial Court directing the Magistrate to peruse the charge-sheet along with other papers and satisfy himself again as to the existence of a prima facie case against the accused. The accused approached the Hon'ble Supreme Court against the said judgment of the High Court. The Hon'ble Supreme Court while deciding the matter observed that the High Court when moved by the accused for quashing the charge, would have re-examined the records to consider whether the charge framed was sustainable or not. The Hon'ble Supreme Court, in para 13, has

observed as under :-

In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reasons. But the direction to the Magistrate to consider the materials once again and then to frame the charge for the same offence (If the Magistrate reaches the opinion that there is ground for presuming the commission of the offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial Court.

96. He has also placed reliance on the case of *Satish Mehra v. Delhi Administration*, 1966 SCC (Cri) 1104 wherein it has been held that when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formality compelling the procedure to pronounce the conclusion on a future date.

97. He has also placed reliance on the case of *Dr. Dattatraya Narayan Samant v. State of Maharashtra*, 1982 Cri LJ 1025, Bombay High Court. In this case a single Judge of the Bombay High Court has held as under :-

It is wrong to say that at the stage of framing the charges, the Court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming commission of the offence. It affects person's liberty. The responsibility of framing of the charges is that of the Court and it has to judicially consider the question of doing so. Without fully advertng to the material on record it must not blindly adopt the decision of the prosecution. (Para 14).

The illegal act may or may not be done in pursuance of the agreement, but the very agreement is an offence punishable under Section 120B of the Penal Code. Entering into an agreement by two or more persons to do an illegal act or legal act

by illegal means and not merely an intention to do such acts constitutes the very quintessence of the offence of conspiracy. So long as such a design rests in intention only, it is not indictable. The prosecution must further show that the agreement was entered into and that there was a meeting of minds between two or more persons or as is described etymologically, conspiracy means-breathing together and two people cannot breathe together unless they put their heads together. The gist of offence of conspiracy lies not in doing the act or effecting the purpose for which the conspiracy is formed, nor in attempting to do any of the act, nor in instigating others to do them, but in the forming of the scheme of agreement between the parties. It is well settled that an agreement can be proved either by direct evidence or by circumstantial evidence or by both. (Para 17)

If there is concurrence in the intention of accused persons to do an illegal act, it is not enough for the purpose of establishing a charge of conspiracy. What the prosecution must prove by the positive evidence is that there was positive agreement in the minds of two or more persons or there was a meeting of minds to do an unlawful act or to do a lawful act by unlawful design.

In all speeches of Dr. Datta Samant there was only general exhortation to violence for solving the union problems and exhortation to violence in general is not the same thing as an agreement to commit a particular crime. It is true that in some of the statements including that of Naval Godrej and the General Manager Navroji, it is stated that when Dr. Samant had sought interview with Mr. Naval Godrej and that interview having been refused, Dr. Samant had threatened the management. However, I have not been able to see in all the statements of witnesses and in speeches any exhortation to violence on the members of the Godrej family.

98. According to learned counsel for the revisionists the reasons given by the trial Court in the impugned order for framing charges against the accused persons can very well undergo a judicial scrutiny by this Court. He has further submitted that the evidence produced before the trial Court in the present case is not only diagonally conflicting but is self destructive. He has further submitted that the trial Court while passing the impugned order has violated the law laid down in *Union of India v. Prafulla Kumar Samal* : 1979 CriLJ154 (supra) and *Niranjan Singh Karam*

Singh Punjabi Advocate v. Jitendra Bijayya : 1990 CriLJ1869 (supra) by conveniently ignoring the broad probabilities of the case, the total effect of the evidence and documents produced before the Court, basic infirmities appearing in the case and the trial Court further ignored the fact that there existed no material to arrive at a conclusion about the positive existence of grave suspicion and failed to sift and weigh the evidence to find out whether or not a prima facie case against the accused was made out or not? He has further submitted that the trial Court acted as a mouth piece of the prosecution and while, doing so the trial Judge conveniently ignored the fact that there was no legal evidence to give a bare minimum support to the prosecution's allegation that the disputed structure was a sacred place of worship by the Muslims and that there was no legally admissible evidence to the allegation that a secret meeting was held on 5th December, 1992 at the residence of accused Vinay Katiyar which was attended by Sri L.K. Advani and Pawan Pandey etc. wherein final decision to demolish the disputed structure was taken.

99. Lastly it has been submitted by Sri Kr. Mridul Rakesh that the impugned order on the face of it is an order passed in a mechanical manner, it lacks the proper application of judicial mind. The trial Judge ignored and erred in overlooking the fact that insertion of case Crime No. 198 of 1992 to the schedule appurtenant to the notification dated September 9, 1993 was not in accordance with law and therefore the trial Court erred in not holding that it had no power to try the accused persons relating to case Crime No. 198 of 1992.

100. Sri I.B. Singh, learned counsel appearing on behalf of R.N. Srivastava and D.B. Roy, the revisionists in Criminal Revision No. 211 of 1997, has assailed the impugned order dated 9th September, 1997 for framing charges against the accused-revisionists on the ground that the learned Special Judge has failed to exercise the jurisdiction vested in him. He has further submitted that the trial Court has exercised the jurisdiction in excess. According to C.B.I, the substantive offence committed by the revisionists is under Section 114, I.P.C. and if it is found that no case under Section 114, I.P.C. is made out against the revisionists then the whole case is washed off and the revisionists would be entitled to be discharged. He has further submitted that on pages 28, 30 and 31 of the impugned

order the learned Special Judge has recorded that no offence under Section 120B, IPC against these two revisionists i.e. R.N. Srivastava and D.B. Roy is made out while on page 36 the Special Judge has recorded that there was a conspiracy for demolition and both the revisionists were conspirators and ultimately he framed charges upon these two revisionists under Sections 120B, 153A, 295, 295A, 505, 201 read with 145, I.P.C. According to him it is the prosecution case that there was no intelligence report regarding any threat of demolition of the disputed structure. Looking into the importance of the Ayodhya dispute all the decisions were being taken by the State Government under the Rules of Business. He has further submitted that there is no allegation against these two accused-revisionists in the entire charge-sheet except pages 24 and 26 of the first charge-sheet by the C.B.I' and the allegations made at pages 24 and 26 of the charge-sheet do not disclose commission of any criminal offence. He has further submitted that even remotely there is no allegation against the revisionists that they abetted the Karsewaks and therefore the ingredients of Section 114, I.P.C. are not fulfilled. He has further submitted that the Special Judge should have considered all the statements and documents filed by the C.B.I. and then to consider whether sufficient ground to proceed is there or not.

101. Sri I.B. Singh has further submitted that the record placed before the trial Court does not disclose grave suspicion against the accused-revisionists, R.N. Srivastava and D.B. Roy and therefore the trial Court referred in framing the charges against the above two accused persons. In support he has placed reliance on the following cases :-

(i) State of Bihar v. Ramesh Singh : 1977 CriLJ1606 wherein the Hon'ble Supreme Court, in para 4 of the report, has been pleased to observe as under :-

Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes the initial stage, the duty of the Court, to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either

under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing', as enjoined by Section 228. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the acts, if proved, would be incompatible with the innocence of the accused or not. The standard of text and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is

neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But, if on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

(ii) Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 . In this case the Hon'ble Supreme Court has laid down the following principles (Para 10 of AIR):-

(1) That the Judge while considering under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of findings as to whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial;

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused;

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court, cannot act merely as a post office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

This case has also been relied upon by Sri Kr. Mridul Rakesh, learned counsel for the revisionists in Criminal Revisions Nos. 201 of 1997 and 255 of 1997.

(iii) Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja : 1979 CriLJ1390 wherein the Hon'ble Supreme Court has held as under (Para 18 of AIR) :-

It may be remembered that the case was at the stage of framing charges, the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh : 1977 CriLJ1606 the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of the charge against the accused in respect of the commission of that offence.

(iv) Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia : [1989]1SCR560 . In this case while placing reliance on the four principles laid down in Union of India v. Prafulla Kumar Samal : 1979 CriLJ154 (supra) and the law laid down in State of Bihar v. Ramesh Singh (: 1977 CriLJ1606 (supra) the Hon'ble Supreme Court held as under :-

These two decisions do not lay down different principles. Prafulla Kumar case has only reiterated what has been stated in Ramesh Singh case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceedings against the accused.' The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, there-fore,

need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally accepted, would reasonable connect the accused with the crime. No more need be enquired into.

(v) *Satish Mehra v. Delhi Administration* : (1996)9SCC766 . In this case the Hon'ble Supreme Court has held as under :-

When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible. Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is whether there is sufficient ground for proceeding.

An incidental question which emerges in this context is whether the Sessions Judge can look into any material other than those produced by the prosecution. Section 226 of the Code obliges the prosecution to describe the charge brought against the accused and to state by what evidence the guilt of the accused would be proved. The next provision enjoins on the Sessions Judge to decide whether there is sufficient ground to proceed against the accused. In so deciding the Judge has to consider (1) the record of the case and (2) the documents produced therewith. He has then to hear the submissions of the accused as well as the prosecution on the limited question whether there is sufficient ground to proceed. What is the scope of hearing the submissions? Should it be confined to hearing oral arguments alone?

The object of providing such an opportunity as is envisaged in Section 227 of the Code is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the material produced by the accused even at that early stage would clinch the issue, why should the Court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, we are of the view that Sessions Judge would be within his powers to consider even materials which the accused may produce at the stage contemplated in Section 227 of the Code.

But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of workload. If the Sessions Judge is almost that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself.

(vi) *Niranjan Singh Karam Singh Punjabi Advocate v. Jitendra Bhimraj Bijjaya* : 1990 CriLJ1869 wherein the Apex Court observed as under (Para 7 of AIR) :-

It seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

Upon this case reliance has also been placed by Kr. Mridul Rakesh, learned counsel for the revisionists in Criminal Revision Nos. 201 of 1997 and 255 of 1997.

(vii) *Pepsi Foods Ltd. v. Special Judicial Magistrate* : 1998 CriLJ1 . The Apex Court in this case held as under (Page 29 of All LJ): --

No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.

(viii) *State of J. and K. v. Romesh Chander* : 1997 CriLJ2976 . In this case the Hon'ble Supreme Court has observed as under (Para 7 of AIR) : --

It is now settled law that the charge-sheet constitutes *prima facie* evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused.

(ix) Jagdish Chandra Nijhawan v. S.K. Saraf : 1999 CriLJ268 . This was a case of wrongfully withholding the property of the Company under Section 630 of the Companies Act and Sections 406, 408, 409, I.P.C. In this case the appellant's initial appointment was on the post of President of the Andrew Yule and Co. Ltd. ABC Products Ltd. Subsequently by mutual consent he was appointed as Managing Director of the above Company. His tenure came to an end as the Company Law Board agreed to his appointment for a limited period only. The appellant retained the flat and other property of the company with him and refused to hand over possession thereof to the company. The Magistrate discharged the accused-appellant on the ground that it was really a dispute of civil nature. In revision the High Court quashed the Magistrate's order and remanded the case. The Hon'ble Supreme Court held that since it was not possible to say that the appellant had wrongfully withheld the property of the Company in his possession because the appellant in the meanwhile had purchased the flat from its owner. Thus it was a dispute of civil nature and the High Court erred in quashing the Magistrate's order of discharge and remanding the case.

(x) State of M.P. v. S.B. Johari : 2000 CriLJ944 wherein the Apex Court held as under (Para 4 of AIR):-

In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the *prima facie* case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced

are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial.

(xi) *Kanti Bhadra Shah v. State of W.B* : 2000 CriLJ746 . This case has also been relied upon by Kr. Mridul Rakesh, learned counsel for the revisionists in Criminal Revision Nos. 201 of 1997 and 255 of 1997. In this case, in para 12 of the report, the Apex Court has held that there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, there is no need to further burden the already burdened trial Courts with such extra work. The time has reached to adopt all possible measures to expedite the Court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. A detailed order may be passed for culminating the proceedings before them, but it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It has further been observed that the High Court, when moved for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not but it was not proper for the High Court to set aside the charge without stating any reasons and directing the Magistrate to consider the material once again and then to frame a charge for the same offence because it 'is simply to repeat what the Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial Court.

102. Sri P.K. Chaubey, appearing on behalf of the C.B.I. has submitted that on 9th September, 1997 Sri J.P. Srivastava, Special Judge (Ayodhya Prakaran) has passed the impugned order which is in accordance with the provisions contained

in Section 228(1)(b), Cr. P.C. The learned trial Court has passed the impugned order after due consideration of the record and after affording due opportunity of hearing to the parties. In the opinion of the trial Court a prima facie case was made out for presuming that all the 49 accused persons have committed various offences in the course of the same transaction warranting a joint trial and that the case was exclusively triable by the Court of Sessions. The charges in respect of various offences as detailed in the impugned order vis-a-vis respective accused were accordingly to be framed under Sections 228(l)(b), Cr. P.C. in the presence of all the accused and accordingly all the accused persons were directed to appear on the next date for the respective charges to be read over and explained to them and for recording their respective pleas in respect of the charged offences. On the date when the impugned order was passed i.e. 9th September, 1997 none of the accused was physically present and therefore the provisions pertaining to recording of the pleas of the accused persons could not be adhered to by the Special Judge which as per law is only permissible when each accused is physically present before the Court. Out of 49 accused persons who have been called upon by the impugned order to be personally present for framing of the charges, only 33 accused persons have come up before this Court in the revisions and the rest 16 accused persons have not agitated the impugned order before this Court.

103. Sri Chaubey further submitted that the purpose of Sections 227 and 228, Cr. P.C. is to ensure that the Court should be satisfied that the accusation made against the accused persons is not frivolous and that there is prima facie some material for proceeding against him. The stage prior to the framing of charge is not expected to be a dress rehearsal of a trial. He has further submitted that from a reading of both the sections i.e. Sections 227 and 228, Cr.P.C. together in juxtaposition it would be clear that at the beginning and the initial stage of the trial the truth veracity and effect of evidence which the prosecutor proposes to adduce are not to be meticulously judged! In support he has placed reliance on the following cases:-

(1) Richard Winn Harcos v. State of West Bengal, 1975 Cri LJ 1256 (Calcutta) wherein a Division Bench of the Calcutta High Court has observed as under (Para

5) :-

Under Section 226 of the Code the Public Prosecutor in opening his case for the prosecution is required to describe the charge brought against the accused and to state by what evidence he proposes to prove the guilt of the accused. In other words the Public Prosecutor should give a brief summary of the evidence and the particulars of the witnesses by which he proposes to prove the case against the accused persons. It is not necessary for a Public Prosecutor in opening the case for the prosecution to give full details regarding the evidence including the documents by which he intends to prove his case.

Section 228 of the Code relates to framing of charges by the learned Sessions Judge after the case had been opened by the learned Public Prosecutor and after the submissions made on behalf of the accused have been heard. According to the said section if after having heard the prosecution and the defence the learned Judge is of the opinion that there is ground for presuming that the accused has committed an offence the Court shall frame in writing a charge against the accused. Therefore, according to Section 228 of the Code, at the time of framing of the charge it is not necessary for the prosecution to establish beyond all reasonable doubt that the accusation which they are bringing against the accused person is bound to be brought home against him. The purpose of Sections 227 and 228 of the Code is to ensure that the Court should be satisfied that the accusation made against the accused person is not frivolous and that there is some material for proceeding against him. The stage prior to the framing of a charge is not expected to be a dress rehearsal of a trial or in other words the details of all materials which the prosecution will produce or rely on during the stage of the trial, are not expected to be produced or referred to before the learned Judge at the time of opening of the case for the prosecution.

(Emphasis supplied)

(2) In *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606 (supra), the accused was discharged by the trial Court under Section 227, Cr.P.C. and the order of the discharge was affirmed by the High Court. The apex Court allowed the Special Appeal filed by the State and set aside the order of discharge. The ratio laid down

by the Hon'ble Supreme Court in this case has been also relied by the learned counsel for the revisionists. Sri P.K. Chaubey, learned counsel for the C.B.I. has placed reliance on the following observations of the Hon'ble Supreme Court (Para 4) :-

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter Under Section 227 or 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

(Emphasis supplied)

(3) In State of U.P. v. Raja Babu, 1978 All Cri C 239 : (1978 Cri LJ NOG 148) this Court while considering the provisions of Sections 227 and 228, Cr.P.C. and relying upon the case of State of Bihar v. Ramesh Singh : 1977 CriLJ1606 (supra) held as under (para 4) :-

Reading the two provisions together, it would be clear that at initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously Judged. It is not necessary for the Judge at that stage to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the Innocence of the accused or not. The

standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or the trial is sure to end in his conviction.

(Emphasis supplied)

(4) In *Rampal Singh v. State*, 1979 All WC 352 (Allahabad) this Court while considering the provisions of Sections 227 and 228, Cr.P.C. held that at the stage of framing of charge under Section 228, Cr.P.C. the Court is not to see whether there is sufficient ground for conviction of the accused or the trial is sure to end in his conviction. What the Court has to see is that whether there is ground for presuming that the accused has committed an offence. It is not necessary for the Judge at that stage to consider in detail whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied is not to be applied at the stage of framing of the charge.

(5) In *Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunia* : 1979 CriLJ1390 the apex Court while considering Section 227 and 228, Cr.P.C. regarding discharging the accused or framing the charge, while relying upon the ratio laid down in *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606 has held as under (Para 18 of AIR, Cri LJ) :-

It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon material before the

Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of the offence.

In the said case the accused persons were discharged by the trial Court. The High Court, in the revision filed by the State, upheld the order of the trial Court discharging the accused persons. The Hon'ble Supreme Court, in special appeal rejected the discharge by setting aside the orders of the trial Court as well as that of the High Court.

(6) Union of India v. Prafulla Kurnar Samal : 1979 CriLJ154 (supra). This case has also been relied by the learned counsel for the revisionists in order to submit that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution or not. In this case the Hon'ble Supreme Court has formulated four principles to be applied at the time of considering the case at the stage of Sections 227 and 228, Cr.P.C. Those principles have already been quoted above and need not be repeated again.

(7) Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, 1989 SCC (Cri) 285 (supra). This case has also been relied by the learned counsel for the revisionists. Learned counsel for the C.B.I, has, however, emphasised on the following ratio laid down by the apex Court :-

Section 228 requires the Judge to frame charges if he considers that there is ground for presuming that the accused has committed the offence.

In fact Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused.

The ground in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will

be determined and not at the time of framing of charge.

(Emphasis supplied)

Self restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the Court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are Courts but it no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

(Emphasis supplied)

(8) In *Radhey Shyam v. Kunj Behari* : 1990 CriLJ669 the Sessions Judge framed charges against accused persons Under Section 302 read with Section 120B, IPC. The Rajasthan High Court allowed the application of the accused persons under Section 482, Cr. P.C. and quashed the charges. In the Special Appeal filed by the deceased's grandfather the Hon'ble Supreme Court allowed the appeal, quashed the High Court's order and directed trial of the accused persons. In the said case the apex Court held as under (Paras 8 and 10) :-

The High Court has failed to give due consideration to the fact that the investigation of the case had been handed over to the C.I.D. because of unsatisfactory investigation by the authorities to Todabhim Police Station. As such the C.I.D. was under an obligation to examine once again the witnesses already examined and to examine other persons whom the original investigating agency ought to have examined but had failed to examine. In the very nature of things, a fuller and effective investigation by the C.I.D. is bound to bring out several materials not discovered or recorded by the first investigating agency. As to how much acceptance has to be given to the investigation done by the C.I.D. and the statements of witnesses recorded by its officers is a matter which can be determined only after the trial is held and the witnesses and the investigating officer adduce their evidence on oath.

We, therefore, find that there was no warrant for the High Court to quash the charge against respondents 1 to 3 in exercise of its powers under Section 482,

Cr.P.C.

(9) In *Kamal Singh v. Resham Singh*, 1991 Cri LJ 1114 : (1991 All LJ 364) the Sessions Judge discharged the accused persons after examination of the case diary holding that the statements of witnesses recorded in the case diary were unreliable. This High Court while dealing with Section 227 and 228, Cr.P.C. observed as under (Para 6) :-

The stage of Section 226/227, Cr. P.C. can not be equated with that of the trial of the accused. A meticulous examination of the statement of witnesses which exist in the case diary is not permissible because the opinion which is to be formed at the time of trial will necessarily depend upon the statement of the witnesses to be made in the Court. The cumulative result of all the circumstances and facts produced in the Court may give a picture totally different from that of merely reading of some of it. It is with that end in view that the legislature has used the words 'that there is not sufficient ground for proceeding against the accused, that the Judge shall discharge the accused'. It has further been provided mandatory that the Judge will record his reasons for discharging an accused. The intention thus is clear that consideration of the record of the case and the document submitted therewith must only be conclusion for the purpose of judging whether there is not sufficient, ground for proceeding against the accused. The language is in negative terminology. As compared to this language, Section 232, Cr, P.C. which details how and when acquittal is to be recorded, lays down that when the Judge considers that there is no evidence that the accused committed the offence he shall record an order of acquittal. The language used herein is in the positive terminology. Considering this distinction it is not open to the Sessions Judge to weigh the pros and cons, alleged improbability and then proceed to discharge the accused holding the said statements existing in the case diary as unreliable.

(10) In *State of M.P. v. Ramdeen*, 1991 Cri LJ 1192 (M.P. High Court) the Madhya Pradesh High Court relying on the law laid down by the apex Court in *State of Bihar v. Ramesh Singh* : 1977 CriLJ1606 (supra), *Union of India v. Prafulla Kumar Samal* (: 1979 CriLJ154 (supra.) and *Suptd. & L.R. v. Anil Kumar Bhunja* : 1979 CriLJ1390 (supra) has held that the strong suspicion founded on

material on record and presumptive opinion are sufficient for framing of charges.

(11) In *State of Maharashtra v. Somath Thapa* : 1996 CriLJ2448 the apex Court has held that if there is ground for presuming that the accused has committed the offence, it can be said that a prima facie case has been made out against the accused. Even if the Court thinks that the accused might have (committed the offence, it can frame the charges. At the stage of framing of charge probative value of the materials on record cannot be gone into.

(12) In *State of Maharashtra v. Priya Sharan Maharaj* : 1997 CriLJ2248 while considering the provisions of Sections 227 and 228, Cr.P.C. the Hon'ble Supreme Court observed as under (Para 8 of AIR) :-

The law on the subject is now well settled, as pointed out in *Niranjan Singh Punjabi v. Jintendra Bijaya* : 1990 CriLJ1869 that at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(13) In *Umar Abdul Sakoor Sarothia v. Intelligence Officer, Narcotic Control Bureau* : 1999 CriLJ3972 the Hon'ble Supreme Court has held that it is well settled law that at the stage of framing of charge the Court is not expected to go deep into the probative value of the materials on record. If, on the basis of the material on record the Court could come to the conclusion that the accused would have committed the offence the Court is obliged to frame the charge and proceed to the trial.

(14) In *Kanti Bhadra Shah v. State of W.B* : 2000 CriLJ746 . Reliance on this case has also been placed by the learned counsel for both the parties. Horrible the apex Court has observed that if there is no legal requirement that trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial Courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the Court procedure and to chalk out measures to avert all roadblocks causing avoidable delay. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail paced progress of proceedings in trial Courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.

(15) *State of M.P. v. S.B. Johari* : 2000 CriLJ944 . This case too has been relied upon by the learned counsel for both the parties. However, Sri P.K. Chaubey, learned counsel for the C.B.I, has placed reliance on the following observations made by the apex Court. :-

In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of charges is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. (Para 6)

(16) *State of T.N. v. J. Jayalalitha* 200 SCC (Cri) 981 : (AIR 2000 SC 1589). This was a case of criminal conspiracy. The Special Court had discharged the respondent, J. Jayalalitha and the High Court had also affirmed the order of discharge. The apex Court set aside the orders of the Special Court as well as that of the High Court and directed the Special Court to proceed against the respondent as one of the accused. While dealing with the framing of the charges the apex Court observed as under :-

This is not the stage for weighing the pros and cons of all the implications of the materials not for sifting the materials presented by the prosecution. The exercise at this stage should be confined to considering the police report and the documents to decide whether the allegations against the accused are 'groundless' or whether 'there is ground for presuming that the accused has committed the offences'. Presumption therein is always rebuttable by the accused for which there must be opportunity of participation in the trial.

For all the above reasons we have no doubt in our mind that the Court would not, and should not, have discharged the respondent at this premature stage in respect of the offences charged against the other nine accused persons. (Paras 34 and 35).

(17) In *Om Prakash Sharma v. C.B.I. Delhi* : 2000 CriLJ3478 after considering the cases of *Union of India v. Prafulla Kumar Samal* : 1979 CriLJ154 (supra) and *Sathish Mehra v. Delhi Administration* (1996 SCC (Cri) 1104) (supra) the Court held as under (At p 2337, Para 6 of AIR) :-

It is trite that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same.

104. In view of the above deliberation now it is well settled that at the stage of 227/228, Cr. P.C. i.e. for discharging the accused or for framing of charges against the accused the trial Court shall keep in mind that (a) the Court has undoubted powers to sift and weigh the evidence for the limited purpose of finding as to whether or not a prima facie case against the accused has been made out; (b) where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing the charges, (c) the test to determine the prima facie case would depend upon the facts of each case; (d) the Court cannot act merely as a post office or a mouth piece of the prosecution but has to consider broad probabilities of the case, total effect of the evidence and the documents produced before the Court and any basic infirmities appearing in the case; (e) the truth, veracity and effect of the

evidence which the prosecutor proposes to adduce are not to be meticulously judged; (f) the standard of proof normally adhered to at the final stage is not to be applied at the state of 227/228, Cr.P.C. (g) no weight is to be attached to the probable defence of the accused; (h) the Judge should apply his judicial mind to the consideration whether or not there is any ground for presuming commission of the offence; (i) the Judge should not make a roving enquiry into the pros and cons of the matter and should not weight evidence as if he was conducting a trial; (j) it is not the stage where benefit of doubt is to be given to the accused, that stage comes at the conclusion of the trial; (k) it is not the stage to determine the guilt of the accused; (l) in sifting and weighing the material the court need not undertake an elaborate enquiry nor is it necessary to delve deep into various aspects; (m) it is not necessary for the prosecution to establish beyond all reasonable doubts the guilt of the accused; (n) it is not obligatory for the Judge to consider in detail and weigh in a sensitive balance whether the facts if proved would be incompatible with innocence of the accused or not; (o) the stage prior to the framing of the charge is not expected to be dress rehearsal of a trial; (p) if the Court is satisfied that the accusation is not frivolous and that there is some material or proceeding against him, the Court will be fully justified in framing of the charges; (q) all that the Court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime, no more need be enquired into; (r) at this stage the Court is not to see whether there is sufficient ground for conviction of the accused; (s) presumptive opinion is sufficient for framing of the charges on the basis of the material placed before the Court.

105. This Court while keeping in mind the above considerations has earnestly considered and examined the impugned order dated 9th Sept. 1997 passed by the trial Court for framing charges against the accused revisionists and does not find any infirmity with respect to the cases referred to in the Schedule of Notification No. 4421 / VII-Nyaya-2-793/87 dated 9th Sept. 1993. Further the Courts below committed jurisdiction error as far as case Crime No. 198 of 1992 is concerned which is curable. In the light of the above no interference is warranted in the impugned order of the trial Court as far as the cases referred to in the schedule of Notification No. 4421/VII-Nyaya-2-739/87 dated 9th Sept. 1993 are concerned.

106. It is indeed a matter of great concern that though the unfortunate incident took place eight years ago, but the stage of the case is at framing of charge. No charge sheet has been filed against 423 accused persons who were injured on the spot, taken into custody and later released on bail and whose identity is known to the prosecution. Under the scheme of criminal jurisprudence it is specifically provided that immediately after the investigation is over the prosecution has to take decision for filing charge sheet under Section 173, Cr. P.C. on the basis of the material/evidence available, and in the alternative if no offence is made out then submit a final report under Section 169, Cr.P.C. I am of the view that the prosecution has no right to linger on with the matter because such omission unnecessarily creates doubt in the mind of the public at large if connected matters are delayed. Nothing has come on either side as to whether final report in the cases relating to 47 FIRs of media persons has been submitted or not. According to the prosecution the accused persons are either rich, influential or politically strong. In the process I recall the observations of High Court in the case of *Ganesh Narain Hegde v. S. Bangarappa*, 1995 SCC (Cri) 634 : (1995 AIR SCW 2364 at p 2370) which are as follows :-

The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all the interruptions, the time would have taken its own toll; the witnesses are won over; evidence disappears; the prosecution loses interest - the result is in all too familiar one.

107. The concept of the joint charge/sheet and joint trial has been adopted by the prosecution and accepted by the Courts below. I am afraid this may not add to the slow motion becoming slower which is evident from the fact that from the last eight years the case is moving at a snail's pace. I pondered over the matter and it occurred to my mind that the above circumstances can further delay the completion of the trial. In the light of the above I am of the considered opinion that the trial Court should ensure speedy trial and in the process take necessary steps.

108. In the premise the impugned order dated 9th Sept. 1997 passed by the Special/Sessions Judge (Ayodhya Prakashan), Lucknow for framing of charges is upheld as far as 48 cases referred to in the Schedule of Notification No. 4421/VII-Nyaya-2-' 739/87 dated 9th Sept., 1993 are concerned and the impugned order is set aside with respect to case Crime No. 198 of 1992 mentioned in Notification No. 5175/VII-Nyaya-2-739/87 dated 8th Oct., 1993 which being invalid does not confer any jurisdiction upon the Courts below to take cognizance, commit and try the case relating to Crime No. 198 of 1992 under Sections 153A, 153B and 505 of the Indian Penal Code, Police Station Ram Janarn Bhumi, Ayodhya, district Faizabad. However, the mistake in issuing the said notification dated 8th Oct., 1993 is curable and it is open for the State Government to cure the legal infirmity.

109. In the light of the above all the four revisions are decided.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com