B.N. John vs The State Of Uttar Pradesh on 2 January, 2025

2025 INSC 4 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NO. 2184 OF 2024)

B. N. JOHN ...APPELLANT (S)

VERSUS

STATE OF U.P. & ANR. …RESPONDENT(S)

JUDGMENT

NONGMEIKAPAM KOTISWAR SINGH, J.

Leave granted.

2. The present appeal has been preferred being aggrieved by the judgment dated 22.09.2023 passed by the High Court of Judicature at Allahabad under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC' for short) in Application No. 35311 of 2023 by which the appellant's plea for quashing of the chargesheet No.162 of 2015 dated 20.06.2015, order dated 11.08.2015 taking cognizance and issuing summons, and the entire proceedings in Case No. 9790 of 2015 arising out of Case Crime No. 290 of 2015 under Sections 353 and 186 of the Indian Date: 2025.01.02 16:15:09 IST Reason:

Penal Code, 1860 ('IPC' for short), P.S. Cantt. District Varanasi, U.P., was rejected.

FACTUAL BACKGROUND

3. It is the plea of the appellant that he is the owner of the premises and was in charge of managing & maintaining the hostel, which was being operated by a Non-Governmental Organization, named Sampoorna Development India. This hostel at the relevant time was used for underprivileged children by providing facilities for their accommodation, education and other needs.

3.1 According to the appellant, because of certain personal disputes with one K.V.

Abraham, the latter instituted six false cases against him, four of them resulted in his acquittal, while in the other two discharge applications are pending. According to the appellant, it was at the instance of the said Abraham that the officials conducted a raid in the said hostel arbitrarily without authorization and also without providing any prior notice, alleging that provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act' for short) as applicable then, were not followed in running and managing the said hostel.

3.2 It is the allegation of the appellant that the officials illegally conducted the raid on 03.06.2015 and sought to transfer the children accommodated in the said hostel to some other location purportedly on the ground that the hostel was being run without proper authorization from the competent authority under the JJ Act.

3.3. It was further contended that a false allegation was made against the appellant that he, along with his party, had attacked and assaulted the officials while they were conducting the raid in connection with which an FIR came to be lodged against the appellant and his wife, which was registered as FIR No. 290 of 2015 dated 03.06.2015 at the PS Cantt.

District, Varanasi under Section 353 of the IPC.

3.4. On the basis of the said FIR, the appellant was arrested on 08.06.2015. However, he was granted bail on the same day. Subsequently, on completion of the investigation, charge-sheet was filed before the Court of Chief Judicial Magistrate, Varanasi in connection with the said FIR on 20.06.2015 alleging commission of offences under Sections 353 and 186 of the IPC.

3.5. Pursuant to the filing of the chargesheet, the Chief Judicial Magistrate, Varanasi took cognizance and issued summons to the appellant vide order dated 11.08.2015, against which the appellant submitted an application for recalling the said order, which is pending before the Court of CJM, Varanasi.

3.6. According to the appellant, a complaint alleging commission of an offence under Section 186 of the IPC would be maintainable only if it is preceded by a complaint filed by a public servant as mentioned under Section 195 (1)(a) of the CrPC before the court/Magistrate, but there was no such prior complaint filed by any public servant before the Magistrate.

Further, though the FIR was filed under Section 353 of the IPC, there were no ingredients to make out a case under the said section. It is also the case of the appellant that the authorities had maliciously invoked the penal provision of Section 353 of the IPC in the FIR merely to make out a cognizable offence against the appellant to enable the Magistrate to take cognizance, even though there was no case of any assault or use of criminal force by the appellant to deter any public servant from discharging his duty. Hence, taking cognizance of the said FIR by the CJM, Varanasi under Section 353 of the IPC was unwarranted and illegal.

3.7 Accordingly, the appellant approached the Allahabad High Court invoking jurisdiction under Section 482 of the CrPC seeking quashing of the aforesaid proceedings, that is, Crime Case No. 290 of 2015 pending before the CJM, Varanasi and orders taking cognizance and issuing summons in that regard.

3.8 The Allahabad High Court on perusal of the FIR No.290/15 and the statement of witnesses recorded under Section 161 of the CrPC held that a prima facie case has been made out against the appellant for being summoned and for prosecution under the aforesaid Sections 353 and 186 of the IPC and declined his plea for quashing the aforesaid criminal case which was pending before the CJM, Varanasi.

3.9 While dismissing the petition filed by the appellant, the Allahabad High Court referred to an earlier decision of the High Court in rejecting the application filed by the co-accused seeking quashing of the aforesaid proceedings under Section 482 of the CrPC which was affirmed by this Court on 13.04.2017 by dismissing the SLP in limine.

In the present impugned order, the High Court observed that the allegations against the present appellant and co-accused are same as well as the evidence collected against them and since the plea of quashing the charge sheet and cognizance taken against the said co-accused had already been rejected on merits by the High Court, which was not disturbed by this Court, no interference was warranted for quashing the proceedings under Section 482 of the CrPC, filed by the present appellant and dismissed the petition. Accordingly, the appellant is before us.

SUBMISSION OF THE APPELLANT

4. It is the specific plea of the appellant that cognizance in respect of an offence under Section 186 of the IPC can be taken by the court only after a complaint is made in writing by the public servant to the court as provided under Section 195 (1) of the Cr.P.C. It has been submitted that in the present case no such written complaint was filed by any public official as also ascertained by him from the concerned authority through an application filed to the competent authority under the Right to Information Act, 2005, whereby he was informed that no written complaint was filed before the court by any public servant in connection with Case No. 9790 of 2015 (State Vs B.N. John and Anr.).

4.1 Further, for invoking the provision of Section 353 of the IPC there must be a clear allegation of assault or criminal force by the accused for preventing the public servant from discharging his duty. However, a careful reading of the FIR would indicate that no such allegation was made against the appellant of using criminal force or assault and accordingly, even if the allegations made in the FIR are taken at their face value, it does not disclose the commission of any cognizable offence as contemplated under Section 353 of the IPC.

4.2 Accordingly, it has been submitted that taking cognizance by the CJM, Varanasi, of the aforesaid case under the stated facts and circumstances is quite illegal and perverse in law, as such, the same ought to have been quashed by the Allahabad High Court. It was contended that the Allahabad High Court, however, had misdirected itself by observing that a prima facie case is made out on the basis

of the contents of the FIR and the statement of the witnesses recorded under Section 161 CrPC.

4.3 It has also been contended that the Allahabad High Court in the present case ought not to have taken into consideration the order passed in respect of the other co-accused, as the legal issues as highlighted in this appeal, were not considered by the Allahabad High Court while rejecting the plea of the co-accused for quashing the complaint. As such, the said decision cannot be used against the present appellant.

PLEA OF THE RESPONDENT

5. Per contra, it has been submitted on behalf of the State that the decision rendered by the Allahabad High Court is in consonance with the law and no grievance can be made as the High Court had applied the relevant law to the facts of the present case.

Further, it has also been submitted that this Court must be very slow in interfering with a reasoned order passed by the High Court, and the impugned order cannot be said to be perverse, illegal, or without any jurisdiction. It was contended that merely because a different view could have been taken by the High Court, it does not render the decision of the High Court illegal, warranting interference from this Court, and the High Court passed the order after going through the records.

ANALYSIS

6. We have heard learned counsel for the parties and perused the record.

7. As far as quashing of criminal cases is concerned, it is now more or less well settled as regards to the principles to be applied by the court. In this regard, one may refer to the decision of this Court in State of Haryana Vs. Ch. Bhajan Lal and Ors., 1992 Supp. (1) SCC 335 wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the

allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." (emphasis added)

8. Of the aforesaid criteria, clauses no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings is instituted, such proceeding can be quashed.

9. Our criminal justice system, rooted in the rule of law, contemplates different approaches for dealing with serious and non-serious offences. When complaints pertaining to serious offences are filed, which are generally categorized as cognizable offences under the CrPC, the police, on receiving such information of the commission of a cognizable offence can immediately start the investigation as contemplated under Section 156 of the CrPC. On the other hand, when it relates to non-serious offences which are generally categorized as non-cognizable offences, the law is more circumspect in letting the full force of the criminal justice system operate. When it is related to non-cognizable offence there are certain safeguards put in place so that the invasive, intrusive, and coercive power of the police is not immediately brought into operation, as enabled under Section 156 of the CrPC. In such a situation any complaint alleging commission of non-serious offence(s) or non-cognizable offence(s) made before the police, has to be vetted by a legally trained person in the presence of a Judicial Magistrate before the police can initiate the investigation. Thus, even if the police receives any such complaint relating to non-cognizable offence, the police cannot start investigation without there being a green signal from the Magistrate. Further, when such non- cognizable offence(s) pertaining to officials who are obstructed from discharging their official duties, there is the additional safeguard before the Magistrate which permits the investigating authority to investigate. It must be preceded by a complaint filed by a public servant before the court/Magistrate. This is to ensure that only genuine complaints relating to non-serious offences or non-cognizable offences are entertained by the Magistrate. This is so for the reason that in a democracy, interactions of the citizen with the public servants is more frequent in wherein there may be instances where the members of the public cause obstruction to public servants preventing them from discharging public duties properly.

With these safeguards, the fine balance between the liberties of the citizens and the imperatives of the State endowed with coercive authority to maintain law and order is preserved.

10. Keeping the aforesaid principles and aspects in mind, we shall proceed to examine the issues and contentions of the parties before us.

11. Chapter XII of the CrPC deals with information given to the police and their powers to investigate.

Section 155 (2) of the CrPC provides that when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate. Section 155(2) of the CrPC further provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such a case or commit the case for trial.

Relevant portions of Section 155 of the CrPC reads as under:

> “155. Information as to non-cognizable cases and investigation of such cases.— (1) When information is given to an officer in charge of a police station of the

> commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
>
> (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

.....

....." Thus, there is a specific bar on the police to investigate any such non-cognizable offence, without the order of a Magistrate.

12. However, no such bar has been placed when it relates to a cognizable offence as provided under Sections 154 and 156 of the CrPC, under which, any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case that a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XII, as reproduced herein below:

> "154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:
>
> Provided that if ....." "156. Police officer's power to investigate cognizable case.— (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) .....

....."

13. While Section 155 of the CrPC deals with all non-cognizable offences, where the police cannot investigate without a prior order of the Magistrate, Section 195 of the CrPC provides additional conditions under which the Magistrates can take cognizance in respect of certain kinds of non-cognizable offences as mentioned in the said section, which includes Section 186 of the IPC with which we are directly concerned, only after a written complaint is filed by the concerned public servant to the court/Magistrate.

Relevant portions of Section 195 of the CrPC read as follows:

> "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
>
> (1) No Court shall take cognizance—
>
> (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or
>
> (ii) of any abetment of, or attempt to commit, such offence, or
>
> (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
>
> ...."

14. Since, the appellant has been charged for committing offences under Sections 186 and 353 of the IPC, it may be appropriate to reproduce the same.

Section 186 of the IPC reads as follows:

> "186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
>
> Section 353 of the IPC reads as follows:
>
> "353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

15. A bare perusal of Section 195 (1) of the CrPC clearly indicates that there is a bar on the court to take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of the IPC except on a complaint in writing made by the concerned public servant to the court. Therefore, if it is found as contended by the appellant that in respect of the offence under Section 186 of the IPC against him, no such complaint was filed by the concerned public servant as contemplated under Section 195 (1)(a) CrPC, the CJM could not have taken cognizance of the offence under Section 186

of the IPC.

In this regard, the appellant has specifically pleaded to which there is no rebuttal from the State that no such complaint was made in writing by a public servant as required under Section 195(1) of the CrPC relating to the commission of offence by the appellant under Section 186 of the IPC.

16. The State has, however, made a feeble attempt to show that there was indeed a complaint filed by the District Probation Officer to the City Magistrate, Varanasi, on 03.06.2015, alleging that the appellants and his party were creating obstructions to the officials in the process of sending the minor children residing in the institution run illegally by Sampoorn Development India to other approved institutions and requested the City Magistrate to take cognizance of the same and take legal action.

The aforesaid complaint reads as follows:

> "To, City magistrate Varanasi Sir, By your order dated June 3, 2015, letter no. 1346, Mr B.N. John, Ms Susan John and their people are creating obstruction in the process of sending the minor children residing in the non-legal institution run by the Sampoorna Development Trust to other Institutions legally. Please take cognizance of this and take further legal action.
>
> Sincerely Prabhat Ranjan 03/06/2013 District Probation Officer.
>
> Station Head Cantt/CO Cantt.
>
> S/O is creating obstruction in important work necessary action."

17. A careful examination of the aforesaid letter, however, would reveal the following crucial aspect.

The said letter in the form of complaint is addressed to the City Magistrate and not to any Judicial Magistrate. As to what is a complaint is defined under Section 2 (d) of the CrPC which reads as follows:

> "2. Definitions.—In this Code, unless the context otherwise requires,
>
> (a) .....
>
> (b) .....
>
> (c) ....
>
> (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Thus, a complaint within the meaning and scope of the Criminal Procedure Code would mean such a complaint filed before a Judicial Magistrate and not an Executive Magistrate.

18. As regards the difference between a Judicial Magistrate and an Executive Magistrate, it has been clarified by this Court in Gulam Abbas v. State of U.P., (1982) 1 SCC 71 as follows:

> "24. Turning to the 1973 Code itself the scheme of separating Judicial Magistrates from Executive Magistrates with allocation of judicial functions to the former and the executive or administrative functions to the latter, as we shall presently indicate, has been implemented in the Code to a great extent. Section 6 provides that there shall be in every State four classes of criminal courts, namely,
>
> (i) Courts of Session, (ii) Judicial Magistrates of the First class and, in any metropolitan area, Metropolitan Magistrates;(iii) Judicial Magistrates of the Second Class; and (iv) Executive Magistrates; Sections 8 to 19 provide inter alia for declaration of metropolitan area, establishment of Courts of Session, Courts of Judicial Magistrates, Courts of Metropolitan Magistrates and appointments of Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges, Chief Judicial Magistrates, Judicial Magistrates, Chief Metropolitan Magistrates and Metropolitan Magistrates together with inter se subordination, but all appointments being required to be made by the High Court, while Sections 20, 21, 22 and 23 deal with appointments of District Magistrates, Additional District Magistrates, Executive Magistrates, Sub-Divisional Magistrates and Special Executive Magistrates and their respective jurisdictions in every district and metropolitan area together with inter se subordination, but appointments being made by the State Government. Chapter III comprising Sections 26 to 35 clearly shows that Executive Magistrates are totally excluded from conferment of powers to punish, which are conferred on Judicial Magistrates; this shows that if any one were to commit a breach of any order passed by an Executive Magistrate in exercise of his administrative or executive function he will have to be challenged or prosecuted before a Judicial Magistrate to receive punishment on conviction. Further, if certain sections of the present Code are compared with the equivalent sections in the old Code it will appear clear that a separation between judicial functions and executive or administrative functions has been achieved by assigning substantially the former to the Judicial Magistrates and the latter to the Executive Magistrates. For example, the power under Section 106 to release a person on conviction of certain types of offences by obtaining from him security by way of execution of bond for keeping peace and good behaviour for a period not exceeding three years — a judicial function is now exclusively entrusted to a Judicial Magistrate whereas under Section 106 of the old Code such power could be exercised by a Presidency Magistrate, a District Magistrate or Sub-Divisional Magistrate; but the power to direct the execution of a similar bond by way of security for keeping peace in other cases where such a person is likely to commit breach of peace or disturb the public tranquillity — an executive function of police to maintain law and order and public peace which was conferred on a Presidency Magistrate,

> District Magistrate, etc. under the old Section 107 is now assigned exclusively to the Executive Magistrate under the present Section 107; Chapter X of the new Code deals with the topic of maintenance of public order and tranquillity and in that Chapter Sections 129 to 132 deal with unlawful assemblies and dispersal thereof, Sections 133 to 143 deal with public nuisance and abatement or removal thereof, Section 144 deals with urgent cases of nuisance and apprehended danger to public tranquillity and Sections 145 to 148 deal with disputes as to immovable properties likely to cause breach of peace — all being in the nature of executive ("police") functions, powers in that behalf have been vested exclusively in Executive Magistrates whereas under equivalent provisions under the old Code such powers were conferred indiscriminately on any Magistrate, whether Judicial or Executive. In particular it may be stated that whereas under the old Section 144 the power to take action in urgent cases of nuisance or apprehended danger to public tranquillity had been conferred on "a District Magistrate, a Chief Presidency Magistrate, a Sub-Divisional Magistrate or any other Magistrate, specially empowered by the State Government", under the present Section 144 the power has been conferred on "a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in that behalf". Having regard to such implementation of the concept of separation of judicial functions from executive or administrative functions and allocation of the former to the Judicial Magistrates and the latter to the Executive Magistrates under the Code of 1973, it will be difficult to accept the contention of the counsel for Respondents 5 and 6 that the order passed by a District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate under the present Section 144 is a judicial or quasi-

judicial order, the function thereunder being essentially an executive (police) function. ....."

19. Since the Magistrate referred to under Section 155 under Chapter XII of the CrPC refers to a Magistrate who has the power to try such case or commit the case for trial and thus exercises judicial function, he has to be a Judicial Magistrate. Further, under Section 195 (1) of the CrPC read with Section 2 (d) of the CrPC, the complaint, has to be filed before the court taking cognizance, and the complaint which is required to be filed under Section 195 (1) of the CrPC, can only be before a Judicial Magistrate and not an Executive Magistrate who does not have the power to take cognizance of an offence or try such cases.

20. In the present case, since the complaint was filed before the City Magistrate and not before a Judicial Magistrate, the requirement of Section 195 (1) of the CrPC was not fulfilled.

21. Under such circumstances, we are satisfied that the appellant has been able to make out a case that taking cognizance of the offence under Section 186 of the IPC by the Court of CJM, Varanasi, was illegal, as before taking such cognizance it was to be preceded by a complaint in writing by a public servant as required under Section 195(1) of the CrPC. A written complaint by a public servant before the court takes cognizance is sine qua non, absence of which would vitiate such cognizance

being taken for any offence punishable under Section 186 of the IPC.

22. This leads us to the next consideration as to whether taking cognizance of the offence under Section 353 of the IPC by the CJM, Varanasi, was in order or not.

23. For a prohibited act to come within the scope of the offence under Section 353 of the IPC, such an act must qualify either as an assault or criminal force meant to deter public servant from discharge of his duty. Obviously, such an act cannot be a mere act of obstruction which is an offence under Section 186 of the IPC. The offence contemplated under Section 353 of the IPC is of a more serious nature involving criminal force, or assault which attracts more stringent punishment that may extend to two years. On the other hand, the offence of obstruction covered under Section 186 of the IPC is punishable by imprisonment, which may extend to three months at the maximum.

A close examination of Section 353 of the IPC would indicate that to invoke the aforesaid offence, there must be use of criminal force or assault on any public servant in the execution of his official duty or with the intent to prevent or deter such public servant from discharging his duty. It would be clear from a reading of the provisions of Section 186 as well as Section 353 of the IPC that Section 353 of the IPC is the aggravated form of offence where criminal force or assault is involved. Unlike in the case of Section 186 of the IPC where voluntarily obstructing any public servant in discharge of his official function is sufficient to invoke the said section, in the case of offence under Section 353 of the IPC as mentioned above, not only obstruction but actual use of criminal force or assault on the public servant is necessary.

24. In the present case, however, what can be seen from a perusal of the contents of the FIR, is that no such allegation of assault or use of criminal force has been made. The aforesaid FIR is based on the complaint filed by the District Probation Officer, which has already been quoted above, and the same has been reproduced verbatim in the said FIR in which only the allegation of creating disturbance has been made.

25. In the FIR there is no allegation of use of criminal force or assault by the appellant so as to invoke the provision of Section 353 of the IPC. It is to be remembered that a criminal process is initiated only with the lodging of an FIR. Though FIR is not supposed to be an encyclopedia containing all the detailed facts of the incident and it is merely a document that triggers and sets into motion the criminal legal process, yet it must disclose the nature of the offence alleged to have been committed as otherwise, it would be susceptible to being quashed as held in Bhajan Lal's case (supra) (vide clause 1 of Para 102 of the decision).

This Court in CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 observed as follows:

> "20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in

> great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information....." (emphasis added)

26. However, a perusal of the FIR in issue does not at all indicate the commission of any crime of use of criminal force or assault by the appellant to the public servant, except for the offence of obstruction which is punishable under Section 186 of the IPC. As such the ingredients of offence under Section 353 of the IPC are clearly absent in the FIR. To that extent, we are in agreement with the appellant that since no ingredient for the offence under Section 353 of the IPC is found in the FIR, taking cognizance by the CJM of an offence that is not made out in the FIR does not appear to be correct.

27. The High Court, however, has held that on a perusal of the contents of the FIR and the statement made by the witnesses recorded under Section 161 of the CrPC, it can be said that a prima facie case has been made out against the appellant for commission of offences under Section 353 and Section 186 of the IPC. It is to be noted that the FIR was filed under Section 353 of the IPC without mentioning Section 186 of the IPC.

What is to be noted in the present case is that if the appellant had actually used criminal force or had assaulted the public servants, which would bring the said acts within the scope of Section 353 of the IPC, nothing prevented the complainant from mentioning the same in the FIR being the first information. If such vital and crucial facts are missing from the FIR of which the complainant was fully aware of and was already cognizant of, which he could have mentioned at the first instance, it would indicate that any subsequent mentioning of these facts in the case by the complainant would be an afterthought as has happened in the present case. The alleged fact of assault, or use of criminal force by the appellant could not be said to have been discovered at a later point of time, as these offensive acts, if really had happened, would have happened before the filing of the FIR/complaint and thus should have found mention in the FIR. These acts were not something that had happened at a later point of time, but would have been known to the complainant had these happened when the complainant and official party were raiding the hostel managed by the appellant. Thus, the absence of mentioning these alleged acts which would constitute ingredients of the offence under Section 353 of the IPC, renders the FIR legally untenable as far as the offence under Section 353 of the IPC is concerned. We do not see any reason why the complainant failed to mention in the FIR the alleged use of criminal force or assault of the public servants to prevent them from discharging their official duties when they were raiding the premises.

28. It appears from the impugned order of the High Court that the High Court also perused the statements of the witnesses recorded under Section 161 of the CrPC during the investigation. We have also gone through these statements made by Sh. Prabhat Ranjan, District Probation Officer; Sh. Satyendra Nath Shukla, City Magistrate; Sh. Vindhavasini Rai, Addl. District Magistrate; and Sh. Surendra Dutt Singh, ACM-IV.

What is interesting to note is that Sri Prabhat Ranjan, the District Probation Officer, Varanasi, who filed the complaint to the City Magistrate stated in his statement recorded under Section 161 of the CrPC that the people in the hostel premises attacked the official team, and thereafter, the FIR was lodged. However, when the FIR was lodged soon after the alleged incident of attack on the officials, nothing was mentioned in the complaint filed by him about the attack, which was the basis for registering the FIR, which we are unable to comprehend. If indeed there was an attack as alleged, it should have found mention in the FIR or the written complaint filed before the City Magistrate soon after the incident.

29. We have also perused the statement of Sri Satyendra Nath Shukla, the City Magistrate who in his statement recorded under Section 161 of the CrPC on 20.06.2015, stated that the people in the hostel premises "were creating obstruction in the government work in the proceeding being carried out. In such a situation, when asked to submit the records again, the husband, wife and some other people along with them became aggressive by speaking loudly, due to which, while somehow trying to escape, around 5:30 pm, the husband, the wife and others created a difficult situation by obstructing the work, which did not allow the rescue to be completed successfully. After this some children were rescued by the Women District Program Officer with the help of the District Horticulture officer, and the children were sent to Ramnagar, after which they were freed. Then when we asked for the record, Ben John spoke loudly, and his wife and other children got very angry and seemed to be intent on becoming forceful. After this, the District Probation Officer came to me with an application regarding obstruction and assault in government work, on which I passed the order and the SHO Cantt registered a case." On examination of the said statement of the City Magistrate, we are of the view that even if the said statement is taken at its face value, it does not disclose any ingredient of criminal force or assault to make the offence under Section 353 of the IPC, except for making a bald statement that they were aggressive without disclosing in what manner the officials were obstructed or attacked.

30. We have also gone through the statement made by Sri Surendra Dutt Singh, ACM, 4th District. While he mentions that the appellant and others became aggressive and attacked all the officers, nothing has been mentioned as to how they were attacked, but only a very generalized allegation has been made without specifics.

Similarly, the other witnesses also stated the same effect.

31. We do not see any reason why the aforesaid alleged assault or attack was not mentioned in the FIR since soon after the alleged incident happened in the hostel premises, the FIR was lodged. On the other hand, the written complaint to the City Magistrate only uses the expression of "creating obstruction" by stating that "Mr. B.N. John, Ms. Susan John and their people are creating

obstruction in the process of sending the minor children residing in the non-legal institution run by the Sampoorna Development Trust to other institutions legally. Please take cognizance of this and take further legal action".

32. There can be no doubt that there is a sea of difference between "creating disturbance" and the "assault" and "criminal force" terms mentioned under Section 353 of the IPC and defined under Sections 350 and 351 of the IPC respectively.

"Criminal force" has been defined under Section 350 IPC, which reads as follows:

> "350. Criminal force. —Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other." "Assault" has been defined under Section 351 of the IPC which reads as follows:
>
> "351. Assault. —Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
>
> Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault."

33. If "disturbance" has to be construed as "assault" or "criminal force" without there being specific acts attributed to make such "disturbance" as "assault" or "criminal face" within the scope of Section 353 of the IPC, it would amount to abuse of the process of law. While "disturbance" could also be caused by use of criminal force or assault, unless there are specific allegations with specific acts to that effect, mere allegation of "creating disturbance" cannot mean use of "criminal force" or "assault" within the scope of Section 353 of the IPC.

34. As noted and discussed above, nothing was mentioned in the complaint/FIR of any specific acts apart from alleging that the appellant and his party were creating disturbance. Nothing has been mentioned how disturbance was created because of assault or use of criminal force.

Thus, the contents of the statements recorded later under Section 161 of the CrPC clearly appears to be an afterthought and the allegation of assault/attack was introduced later on, which is inconsistent with the contents of the original FIR.

35. Under the circumstances, we are of the view that non mentioning of these vital facts in the FIR/first complaint, which would indicate assault or criminal force within the scope of Section 353 of the IPC, would vitiate the cognizance taken by the CJM. These vital facts, which constitute the

ingredients for offence under Section 353 of the IPC, were not revealed in the FIR. On the other hand, the contents of the FIR would reveal the commission of only non-cognizable offence of obstructing the discharge of official duties of public servants, which would fall within the scope of Section 186 of the IPC, in which event, without the order of the Judicial Magistrate, no investigation could have been launched by the police against the appellant in the said FIR.

It is also to be noted that in the said FIR, Section 186 of the IPC was not even mentioned. We have already found that no complaint was lodged by a public servant against the appellant and his party before the Magistrate/court alleging commission of offence under Section 186 of the IPC as required under Section 195 (1) of the CrPC read with Section 155 of the CrPC. The written complaint filed by the District Probation Officer was not to a Judicial Magistrate but to an Executive Magistrate, hence was not valid. The police could not have investigated the said offence under Section 186 of the IPC. Thus, the very act of taking cognizance at the initial stage by the CJM, Varanasi, on the basis of the FIR under Section 353 of the IPC, which does not disclose the ingredients and commission of cognizable offence under Section 353 of the IPC, appears to be contrary to law. If the initial process is vitiated, the subsequent process would also stand vitiated.

In State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, it was held as follows:

> ”107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.
>
> 108. In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] and State of Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.”

36. What is evident from the records is that the police entertained the FIR under Section 353 of the IPC and investigated the same by conferring jurisdiction upon itself as if it was a cognizable offence as provided under Section 156 of the CrPC, when commission of any cognizable offence was not made out in the FIR, which is not permissible in law. The police added Section 186 of the IPC later, and the CJM, Varanasi, took cognizance of the offence of Section 186 of the IPC along with Section 353 of the IPC when no complaint was made by any public servant to the CJM or any court as required under Section 195 (1) of the CrPC.

37. We are mindful of the position that where, during the investigation of a cognizable or non-cognizable offence on the basis of an FIR lodged, new facts emerge that will constitute the commission of a non-cognizable offence under IPC, in which event, the police can continue with the investigation of the non-cognizable offence of which there cannot be any dispute.

Thus, even if it is assumed that in the course of the investigation of a cognizable offence, the ingredients of a non-cognizable offence are discovered then the police could have continued the investigation without the written complaint to the court or the order of the court in respect of such non-cognizable offence, as it would also be deemed to be a cognizable offence under Section 155(4) of the CrPC, but where the investigation of the cognizable office itself suffers from legal infirmity and without jurisdiction from the initial stage, the entire investigation would be vitiated. For this reason, the police cannot seek the shield under Section 155 (4) of the CrPC when the FIR did not disclose the commission of a cognizable offence.

38. As discussed above, the offence allegedly committed by the appellant as disclosed in the FIR can, at best, be that of a non-cognizable offence under Section 186 of the IPC, though Section 186 of the IPC is not even mentioned in the FIR. It is evident that Section 186 of the IPC was added subsequently, of which the CJM took cognizance later. The FIR does indicate that a letter was written by the District Probation Officer to the City Magistrate, but the said letter pertains to the filing of the FIR under Section 353 of the IPC and not for offence under Section 186 of the IPC. Further, the said letter dated 03.06.2015 was not addressed to the CJM, Varanasi, before whom such a written complaint was supposed to be made to enable the Court to take cognizance of the offence under Section 186 of the IPC.

39. We have also perused the order dated 13.10.2015 passed by the High Court in the earlier case filed by Mrs. Susan John, the co-accused, wherein the High Court declined to quash the charge sheet No. 162 of 2015 dated 20.6.2015 in the same Case Crime No. 290 of 2015 pending before the Court of CJM, Varanasi, on the ground that perusal of the material on record and looking into the facts of the case at that stage, it cannot be said that no offence is made out against the applicant, and all the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated by the court under Section 482 of the CrPC, and at that stage only the prime facie case is to be seen in the light of the law laid down by this Court in the cases of R P Kapoor vs. State of Punjab, AIR 1960 SC 866; State of Haryana vs. Bhajan Lal (supra); State of Bihar vs. PP Sharma, 1992 SCC (Cr) 192; and Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haq and another, 2005 SCC(Cr) 283.

40. However, it is noticed that the High Court did not examine any of the issues as discussed above in this appeal. The said decision of the High Court was not interfered with by this Court, and the SLP filed against the said order dated 13.10.2015 was dismissed in limine by this Court.

This Court has reiterated that in limine dismissal of a Special Leave Petition at the threshold without giving any detailed reasons does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution. In State of Punjab vs. Davinder Pal Singh Bhullar (2011) 14 SCC 770, it was held as follows:

> “113. A large number of judicial pronouncements made by this Court leave no manner of doubt that the dismissal of the special leave petition in limine does not mean that the reasoning of the judgment of the High Court against which the special leave petition had been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply

> means that this Court did not consider the case worth examining for a reason, which may be other than the merit of the case. An order rejecting the special leave petition at the threshold without detailed reasons, therefore, does not constitute any declaration of law or a binding precedent." We are, thus, of the view that said decision of the High Court and dismissal in limine by this Court will not come in the way of disposal of this appeal on merits.

41. Under the circumstances, we are of the opinion that taking cognizance by the CJM, Varanasi, of the offences under Section 353 of the IPC and 186 of the IPC was not done by following the due process contemplated under the provisions of law, and accordingly, the same being contrary to law, all the orders passed pursuant thereto cannot be sustained and would warrant interference from this Court.

42. For the reasons discussed above, we are satisfied that the appellant has been able to make out the case for quashing the criminal proceedings pending against the appellant before the CJM, Varanasi.

43. Accordingly, we allow this appeal by quashing Case No. 9790 of 2015 arising out of Case Crime No. 290 of 2015 under Sections 353 and 186 of the IPC, under P.S. Cantt, District Varanasi, pending before the Court of the CJM, Varanasi, and the consequent orders passed by the CJM, Varanasi in taking cognizance and issuing summon to the appellant.

Consequently, the impugned order dated 22.09.2023 passed by the Allahabad High Court in Application Under Section 482 No. 35311 of 2023 is also set aside.

……J. (B. V. NAGARATHNA) ……J. (NONGMEIKAPAM KOTISWAR SINGH) New Delhi;

January 02, 2025.