Email no. 1223, Date 13.04.2026

Through Email

1469

From,

Manjeet Singh Sheoran, H.J.S
Registrar General
High Court of Judicature at
Allahabad

To,

All the District and Sessions Judges/OSD
All the Principal Judges, Family Courts
All the Presiding Officers of Commercial Courts, MACTs & LARRAs
State of Uttar Pradesh

No. 5096 /Admin. G-II/Allahabad Dated: 10/4/ 2026

Sub: Compliance of Judgment/ Order dated 24.11.2025 passed by the Hon'ble Court in Criminal Appeal U/s 413 BNSS 666 of 2025 Smt. Indrawati Devi Vs. State of UP & 6 Ors.

Madam/Sir,

During the course of hearing of abovementioned case, Hon'ble Court has taken into consideration the defective investigaion by the Investigating Officer & role of the Judicial Officers in bringing the same into the notice of higher authoritites.

Accordingly, vide instant judgement dated **24.11.2025**, Hon'ble Court has been pleased to direct that:-

> **".... all the Judicial Officers to ensure their active impartial role while deciding trial(s) and whenever any dereliction of duty or designedly defective investigation or intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution, are found then a specific finding in such cases be returned and the same shall be brought to the notice of Senior Superintendent of Police/Superintendent of Police and District Magistrate concerned in compliance to Rule 53 of the General Rule (Criminal) and directions of Apex Court issued in State of Gujarat Vs. Kishanbhai 2014 (5) SCC 108 and Dayal Singh and others Vs. State of Uttranchal 2012 (8) SCC.263"**

In this regard, I am directed to send herewith a **pdf copy** of instant judgement dated **24.11.2025** for onward circulation of the same amongst all the Judicial Officers in your judgeship for **information and strict compliance.**

Encl:- As above

Seen. Circulate amongst all the Judicial officers for information and strict compliance hereto. Put up in Monthly meeting 13-4-26

Yours faithfully,

9.4.26

Registrar General

No. /Admin. G-II/Allahabad Dated: 2026

Copy forwarded to the **Director, Judicial Training & Research Institute, Lucknow** for information.

Registrar General

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HIGH COURT AT ALLAHABAD

2025:AHC:209756-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL U/S 413 BNSS No. - 666 of 2025

Smt Indrawati Devi .....Appellants(s)

Versus

State of U.P. And 6 others .....Respondents(s)

Counsel for Appellants(s)	:	Mahesh Prasad Yadav
Counsel for Respondent(s)	:	G.A.

Court No. - 47

HON'BLE RAJEEV MISRA, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Dictated by Hon. Dr. Ajay Kumar-II, J.)

1. Heard Mr. M.P. Yadav, the learned counsel for appellant and the learned A.G.A. for State respondent-1.

2. Challenge in this Criminal Appeal is to the judgment dated 10.09.2025 passed by the Additional Sessions Judge/ Special Judge (E.C. Act), Prayagraj in Sessions Trial No. 222 of 2016 (State Vs. Pankaj Mishra and others) acquitting the accused opposite parties 2 to 5 of the charges under Sections 302/149, 120-B/149 IPC and in Sessions Trial No.541 of 2016, arising out of Case Crime No.253 of 2015, acquitting the accused opposite parties 6 & 7 of the charges under Sections 302/149 and 120-B/149 IPC and in Sessions Trial No. 223 of 2016 (State of U.P. Vs. Pankaj Mishra) arising out of Case Crime No. 13 of 2016, under Section

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3/25 of the Arms Act, P.S. Utraon, District Prayagraj acquitting the accused opposite party-2 of the charge under aforementioned sections of the Arms Act.

3. Brief facts of the case as per prosecution story is that the informant/appellant Smt. Indravati Devi (wife of the deceased) had given a written report on 22.11.2015 at 21:52 hours, alleging therein that today i.e. on 22.11.2015 at about 07:30 PM, her husband Sarju Prasad Patel was standing in front of her house beneath a Neem tree and was rubbing tobaco (khaini) in his hand, meanwhile three persons came from the north side on a motorcycle and parked their motorcycle, bought cigarettes from Rakesh Kumar (Bhagat)'s shop and smoked. Thereafter all the three accused persons started the motorcycle, but the motorcycle remained stationed and then pillion rider shot a fire on her husband twice in the chest, and after some time the accused shot at him again in the back (near waist) and ran away by the motorcycle. The husband of informant died on the spot. The informant stated that she and her maternal uncles-in-law, Randhir Singh and Mahendra Singh Patel and several other neighbours witnessed this entire incident and said that they don't know the names of the accused, but they can identify them by sight. The husband of informant was murdered out of a rivalry because he had taken a liquor contract.

4. On the basis of aforementioned written report of informant, an FIR was registered on 22.11.2015 at 21:52 hours, bearing Case Crime No.253 of 2015 under Section 302 IPC, P.S. Utraon, District Prayagraj against three unknown accused persons.

5. During course of investigation of Case Crime No.253 of 2015, accused Pankaj Mishra was arrested a .32 bore pistol alongwith magazine was recovered from the left pocket of his trouser. On opening a magazine with four live cartridges of .32 bore were also recovered. Accused Pankaj Mishra was driving a Super Splendor Motorcycle bearing Registration No. UP62AR8385 with accused Akhilesh Mishra as pillion rider. On the basis of recovery of .32 bore pistol and four live cartridges of .32 bore an FIR bearing Case Crime

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No.13 of 2016 under Section 3/25 of Arms Act, P.S. Utraon, District Prayagraj was registered against accused Pankaj Mishra.

6. After completion of investigation, charge-sheet (Ext. Ka-3) in Case Crime No.213 of 20215 was submitted against accused persons i.e. opposite parties 2 to 5, namely Pankaj Mishra (Harraipur, Sujanganj), Akhilesh Mishra, Hariom Pandey and Pankaj Mishra (Mugarsan, Utarao). Thereafter, cognizance was taken upon the said charge-sheets and the case was committed to the Court of Sessions.

7. After completion of investigation a separate chargesheet against accused Pankaj Mishra under Section 3/25 of the Arms Act was also filed.

8. Concerned Sessions Judge framed charges in Case Crime No. 253 of 2015, under Sections 302/149, 120-B/149 IPC against accused Pankaj Mishra (Harraipur, Sujanganj), Akhilesh Mishra, Hariom Pandey, Pankaj Mishra (Mugarsan, Utarao), Pramod Patel and Neel Kamal and under Section 3/25 of Arms Act in Case Crime No. 13 of 2016 against accused Pankaj Mishra resident of Hararaipur, Ramnagar, Sujanganj, Jaunpur.

9. In order to prove it's case, prosecution adduced PW-1 Smt. Indrawati (informant and wife of deceased), PW-2 Ramsurat Patel, PW-3 Rakesh Kumar, PW-4 Mahendra Kumar, PW-5 Rajendra Prasad, PW-6 Shamsher Bahadur, PW-7 Randheer Singh Patel, PW-8 Nagendra Kumar Nagar, PW-9 SI Narendra Pratap Singh, PW-10 Inspector Vashisth Yadav, PW-11 Dr. Dayanand, PW-12 HC Saurabh Rai, PW-13 retired inspector and PW-14 SO Nagendra Kumar Nagar. The witnesses adduced by the prosecution have given their respective oral evidences and also proved 13 prosecution papers and seven material objects which were marked as exhibits. The same is tabulated herein below:-

Sl. No.	Name	Nature of evidence	Documents proved
PW-1	Indrawati	Informant (wife of deceased)/ Witness of fact	Written Tehrir in Hindi as Ext. Ka-1
PW-2	Ram Surat Patel	Witness of fact	-
PW-3	Rajesh Kumar	Witness of fact	-

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		(Hostile)	
PW-4	Mahendra Kumar	Witness of fact (Hostile)	-
PW-5	Rajendra Prasad	Witness of fact	-
PW-6	Shamsher Bahadur	Panch witness of Panchayatnama	Panchayatnama as Ext. Ka-2
PW-7	Randheer Singh Patel	Witness of fact.	-
PW-8	Nagendra Kumar Nagar	2nd Investigating Officer and the then Station House Officer, who submitted charge-sheet in Case Crime No.253 of 2015 against accused Pankaj Mishra (Harraipur Sujanganj), Hariom Pandey and Pankaj Mishra (Mugarsan Utarao)	Charge-sheet in Case Crime No. 253 of 2015 as Ext. Ka-3
PW-9	SI Narendra Pratap Singh	Ist Investigating Officer.	Site Plan in Case Crime No. 253 of 2015 as Ext. Ka-4 and Site Plan in Case Crime No. 13 of 2016 as Ext. Ka-5
PW-10	Vashistha Yadav	IIIrd Investigating Officer and the then SHO, who submitted chargesheet against remaining accused i.e. Neel Kamal and Pramod Patel.	Charge-sheet In Case Crime No. 213 of 2015 (S.T. No. 541/2016) as Ext. Ka-6
PW-11	Dr. Dayanand	Autopsy Surgeon	Post-mortem report as Ext. Ka-7.
PW-12	Head Constable Saurabh Rai.	Formal witness, who prepared FIR No. 13 of 2016, u/s 3/25 of Arm Act and made entry in G.D.	Chik FIR as Ext. Ka-8 Kayami G.D. as Ext. Ka-9
PW-13	Retd. SI Ramakant Yadav	Formal witness, who prepared FIR No. 253 of 2015 and made entry in G.D.	Chik FIR as Ext. Ka-10 and Kayami G.D. as Ext. Ka-11.
PW-14	Nagendra Kumar Nagar	Station House Officer, who recovered alleged weapon of offence and informant of Case Crime No.253 of 2015.	Recovery memo of bike and pistol as Ext. ka-12, recovery memo of one blank cartridge and bullet as Ext. Ka-13 in Case Crime no. 253/2015, Pistol as material Ext-1 and one blank cartridge and one bullet recovered from murder spot jointly as material Ext.2. This witness proved four live cartridge(bullets)recovered from

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			magazine of pistol, however no Ext. was marked on these bullets.

10. After the prosecution evidence was over, all the adverse /incriminating circumstances relied upon by the prosecution were disclosed to the accused in question answer form for their version of the occurrence as per the mandate of Section 313 Cr.P.C. The accused denied all the questions put to them by repeatedly saying that it is false or they have been falsely implicated due to enmity or the prosecution case is false. They also stated that they are innocent and have been falsely implicated in a blind murder by police. In support of their defence, they have adduced 02 defence witnesses of fact i.e. Vijay Shankar as DW-1 and Dharmendra Kumar Mishra as DW-2.

11. By the impugned judgment dated 10.09.2025, Court below has acquitted all the accused in Case Crime No. 253 of 2015 (S.T. No. 222 of 2016 and 541 of 2016) of the charges under Sections 302/149, 120/149 IPC, and further acquitted the accused/opposite party-2 in Case Crime No.13 of 2016 (S.T. No. 223 of 2016), under Section 3/25 of Arms Act.

12. Thus, feeling aggrieved by the impugned judgment passed by Court below, present appeal has been preferred by appellant, who is the informant and wife of deceased Suraj Prasad Patel.

13. Learned counsel for appellant submits that impugned judgment is illegal and erroneous and, therefore, liable to be set-aside by this Court. He further submits that Court below without appreciating the evidence adduced by the informant-appellant, has illegally and erroneously, acquitted the accused-opposite parties of the charges framed against them. The prosecution version stands corroborated by the medical evidence on record, but Court below by ignoring the same, has concluded that no case as alleged by the prosecution, is made out against the accused opposite parties. As such the accused have been wrongly acquitted. Learned counsel for appellant thus submits that the impugned judgment is illegal and perverse. The same is therefore, liable to be set-aside by this Court.

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14. Learned A.G.A. for State, has however vehemently opposed the present appeal. He submits that the impugned judgment passed by Court below does not suffer from any illegality of law or fact, so as to warrant interference by this Court. Court below has examined the prosecution case in the light of evidence on record threadbare, without leaving any aspect of the matter untouched. No perversity can be attached to the impugned judgment inasmuch as court below has neither ignored any material piece of evidence nor has it misconstrued any vital evidence. The conclusion drawn by court below commensurate with the weight of evidence on record. In view of the findings/reasons recorded by the Court below on the various aspects of present case, the conclusion drawn by Court below is clearly sustainable. Court below has correctly appreciated the testimonies of the eye-witnesses and therefore, rightly come to conclusion that none of prosecution witness from PW-1 to PW-7 is an eye-witness of the incident. As present case is based on direct evidence and none of prosecution witnesses from PW-1 to PW-7 have been found to be an eye-witnesses of the occurrence therefore, Court below has rightly acquitted the accused of the charges framed against them. Lastly, it has been urged that no ground to interfere with the impugned judgment and order is made out. Learned A.G.A. thus urged for the dismissal of present appeal.

15. We have heard the learned counsel for appellant as well as the learned A.G.A. for State-opposite party-1 and perused the record.

16. Court below while acquitting the accused-opposite parties has recorded the following findings:

i. Informant and wife of deceased Smt. Indrawati Devi, PW-1 is not an eye-witness of the incident.

ii. Ramsoorat Patel-PW-2 in his deposition has stated that he arrived on the spot after an hour of the incident, therefore, this witness is also not an eye-witness.

iii. Rakesh Kumar PW-3 has not supported the prosecution story, therefore, declared hostile.

iv. Mahendra Kumar PW-4 also do not supported the prosecution story, therefore, declared hostile.

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v. Rajendra Prasad PW-5, who is the son of deceased has stated in his deposition that he arrived on the spot after receiving a call from Randheer Singh and found his father murdered. This witness is thus also not an eye-witness.

vi. Shamsher Bahadur PW-6 in his deposition has also stated that he arrived at the scene shortly after the incident, therefore, this witness is also not an eye-witness of the incident.

vii. Randheer Singh PW-7 has stated in his deposition that at the time of incident, he was sitting in his home and watching television. He went to the place of incident after about half an hour, therefore, this witness is also not an eye-witness of the incident.

viii. Prosecution has failed to prove any motive behind commission of the alleged crime.

ix. Prosecution has also failed to prove any conspiracy.

x. No independent witness of alleged recovery of fire arm was produced, and the said recovery was also found to be completely suspicious.

xi. Recovered pistol and four live cartridges, empty cartridge from spot as well as bullet recovered from the body of deceased were not sent to Forensic Science Laboratory for examination.

17. After recording above findings, Court below came to the conclusion that prosecution has failed to prove the charges levelled against the accused persons beyond all reasonable doubt and thus acquitted them of the charges framed against them.

18. While considering the scope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by Court below. Reference in this regard be made to the judgment of Supreme Court in **Bharwad Jakshibhai Nagjibahi and others vs. State of Gujarat, (1995) 5 SCC 602**, and paragraph-9 of the report is relevant, which is reproduced herein-below:-

" Law is now well settled that though the Cr.P.C. does not make any distinction between the powers of the Appellate Court while dealing with an order of conviction or of acquittal, normally the Appellate Court does not disturb an order of acquittal in a case where two views of the evidence are reasonably possible. But the above principle is not applicable where the approach of the trial Judge in

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dealing with evidence is manifestly erroneous and the conclusions drawn are wholly unreasonably and perverse. In the instant case, we find that the High Court was fully conscious and did not transgress the bounds, of its appellate powers while dealing and reversing the order of acquittal."

19. While considering the cope of interference in an appeal against acquittal, it has been held by the Supreme Court that if two views are possible, one supporting the acquittal and other indicating conviction, the High Court should not, in such a situation, reverse the order of acquittal recorded by the trial court except for well accepted reasons. Reference in this regard be made to the judgment of Supreme Court in **Chandrappa and Ors. vs. State of Karnataka, 2007 (4) SCC 415 : AIR 2007 SCC (SUPP) 111**, wherein Apex Court has observed as under:

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

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20. While dealing with an appeal against acquittal the Apex Court in **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC OnLine SC 561,** has observed as under:

> *"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-*
>
> *(a) That the judgment of acquittal suffers from patent perversity;*
>
> *(b) That the same is based on a misreading/omission to consider material evidence on record;*
>
> *(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*
>
> *40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*

21. It has also been observed in above-mentioned judgment that an Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by Court below. It has further been observed that the Appellate Court can interfere with the order of acquittal only if it comes to a finding that the only conclusion, which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond all reasonable doubts and no other conclusion was possible.

22. The Supreme Court in **Gamini Bala Koteshwara Rao vs. State of Andra Pradesh, (2009) 10 SCC 636**, has observed that interference in an appeal against acquittal should be rare and in exceptional circumstance. It was further held that it is open to the High Court to reappraise the evidence and conclusion arrived at by Court below. However, it is limited to those cases where the

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judgment of Court below was perverse. Apex Court went to declare that the word "perverse", as understood in law, has been understood to mean, "against the weight of evidence". If there are two views and Court below has taken one of the views merely because another view in plausible, the Appellant Court will not be justified in interfering with the verdict of acquittal.

23. Perusal of the impugned judgment in the light of above-noted well settled legal position reveals that present case relates to murder of Sarju Prasad Patel, who is the husband of informant-appellant Indrawati Devi. It is an admitted fact that no person was named as an accused in the written report Ext. Ka-1. The alleged incident happened at about 07:30 PM on 22.11.2015 and an FIR of the same was lodged at 21:52 hours on the same day. In the written report Ext. Ka-1 informant who is the wife of deceased has stated that she herself, her maternal-uncle-in-law Randheer Singh and Mahendra Singh Patel and several other neighbours witnessed the entire incident, they do not know the name of assailants, but they can identify them. Therefore, basic prosecution story as disclosed in written report Ext. Ka-1 is that deceased Sarju Prasad Patel was murdered by unknown persons in front of his wife and other witnesses

24. During the course of trial, informant Smt. Indrawati deposed as PW-1. In her examination-in-chief she has clearly stated that she did not witness this incident, her neighbour Rakesh and his wife had witnessed the incident. When she arrived at the spot, the killers had already fled. Therefore, as per her testimony, informant Smt. Indrawati Devi is not an eye-witness of the incident. She in her deposition also stated that her neighbours Rakesh Kumar and Mahendra Singh Patel informed her that the killers arrived in a grey splendor, motorcycle.

25. As informant Smt. Indrawati PW-1 has stated on oath that her neighbour Rakesh Kumar and his wife had witnessed the incident, therefore, said Rakesh Kumar was examined as PW-3. In his deposition this witness-PW-3 has clearly stated that he was loading coal for the furnace situated behind his shop, when some person shouted that someone had shot Sarju Prasad Patel. Therefore, this

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witness is not an eye witness and this witness has not supported the prosecution story. On the request of prosecution, this witness was declared hostile. Wife of this witness has not been examined. This witness was cross-examined by prosecution, but nothing material came out in his testimony.

26. The informant Smt. Indrawati Devi-PW-1 in her deposition has also stated that her neighbours Rakesh Kumar and Mahendra Singh Patel informed her that killers arrived in a grey splendor motorcycle. Rakesh Kumar-PW-3 has not supported the prosecution story. Mahendra was examined as PW-4. Mahendra Kumar PW-4 in his deposition has clearly stated that on the date and time of incident he had come to Srinath Filling Station (petrol pump) to get petrol in his bike, and at that time a commotion arose that Sarju Prasad had been shot and he returned to the place and saw that Sarju Prasad had died. This witness has also not supported the prosecution story, therefore, on the request of prosecution, this witness was declared hostile. In cross-examination, nothing substantive came out of, his testimony.

27. Ramsoorat Patel PW-2 in his deposition has stated that he arrived at the place of incident approximately an hour after the incident. Therefore, this witness is also not an eye-witness of the incident. This witness has however stated that Rakesh Kumar and Mahendra had informed him that they saw the accused in the light of petrol pump, sitting on a grey Splendor Plus Motorcycle bearing registration No.UP62AR8385 and the words "Jai Maa Vindhyavasini" was written on the front frame of motorcycle in a red tape. This witness is thus not an eye-witness of the incident. However, as per the deposition of this witness he received information regarding involvement of grey colour Splendor Plus Motorcycle from Rakesh Kumar and Mahendra Singh. However, Rakesh Kumar PW-3 and Mahendra Kumar PW-4 have not supported the prosecution story. Therefore, testimony of this witness Ramsurat Patel-PW-2 is based on hearsay evidence, and the said hearsay, is also not supported by the concerned witnesses namely Rakesh Kumar and Mahendra Kumar.

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28. The son of deceased Rajendra Prasad was examined as PW-5. In his deposition he has clearly stated that he received a call from Randheer Singh and thereafter he arrived on the spot and found his father dead. Therefore, this witness is also not an eye-witness to the incident. However, this witness in his deposition has stated that approximately about two hours after the incident, Randheer Singh informed him that two man had arrived on a motorcycle and they had killed his father. He further stated that two or three days after the incident Rakesh told Randheer Singh that the killers were Pankaj Mishra and Hariom Pandey, which fact was told by Randheer Singh to this witness on the same day.

29. Rakesh Kumar PW-3 has not supported the prosecution story and Randheer Singh has been examined by the prosecution as PW-7. Randheer Singh PW-7 in his deposition has clearly stated that at the time of incident he was sitting at his home and watching television. He went to the spot after about half an hour of the incident. Therefore, Randheer Singh PW-7 is not an eye-witness. However, this witness has stated that it was Rakesh Kumar alias Bhagat who told him that Sarju Prasad had been shot dead. This witness has specifically stated that he did not witness the incident, as he was not present on the spot and was watching television at home. Therefore, the deposition of this witness Randheer Singh PW-7 also does not support the prosecution story. This witness has further stated in his deposition that no one told him that something was done by Pankaj Mishra (Mugarsan, Utarao), Akhilesh Mishra, Neel Kamal, Pramod Patel, Pankaj Mishra (Harraipur, Sujanganj). The testimony of this witness and PW-5 therefore, also do not support the prosecution story regarding involvement of accused-opposite parties at all.

30. Shamsher Bahadur PW-6 in his deposition has also stated that he was informed about the death of Sarju Prasad after 3-4 hours. He arrived at the spot, shortly thereafter. Therefore, this witness is also not an eye-witness of the incident. This witness is a witness of inquest report.

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31. From the depositions of PW1, PW-2, PW-3,PW-4, PW-5, PW-6 and PW-7, it is explicitly clear that none of the aforesaid prosecution witnesses had seen the incident, therefore, from the testimonies of these witnesses no involvement of accused-opposite parties in the alleged crime is found.

32. As far as evidence regarding conspiracy is concerned, the prosecution story rests upon statement given by Randheer Singh (under Section 161 Cr.P.C.) during the course of investigation to the Investigating Officer. He stated that accused Hariom Pandey made an extrajudicial confession before him. However, Randheer Singh PW-7 in his deposition has clearly denied that some one had told him about the incident. This witness further stated that except Pramod Patel, name of no other witness was known to him and he even did not recognized the accused till date of his deposition. Therefore, deposition of this witness failed to prove any conspiracy.

33. As far as confession made by accused Hariom Pandey regarding conspiracy to Investigating Officer N.K. Nagar-PW-8 is concerned, the same is an alleged confession recorded by police officer, and the same is hit by Section 27 of the Evidence Act. As a necessary corollary, the prosecution has failed to prove any conspiracy behind the crime.

34. The prosecution has not produced any independent witness of alleged recovery of Splendor Motorcycle, .32 bore pistol and four live cartridges. The prosecution has also not proved the ownership of said motorcycle. No attempt was made by the investigating officer during course of investigation to find out the ownership of said motorcycle from R.T.O Office. The recovered firearm i.e. pistol and live cartridges were also not sent for examination to Forensic Science Laboratory. No identification parade was got conducted to establish the identity of accused. As such Court below has rightly come to the conclusion that the said recovery is completely suspicious.

35. Moreover, two bullets were recovered from the dead body of deceased Sarju Prasad Patel. As per the prosecution story recovered pistol was used in

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the commission of crime with four live cartridges, but surprisingly the said pistol, live cartridges and two bullets recovered from the dead body were not sent to Forensic Science Laboratory for examination and that is a very serious lapse on the part of the prosecution, which could have probably strengthened the prosecution case. However, when there is no FSL examination report to prove or indicate that the said alleged pistol was used in the commission of crime and /or the bullet recovered from the body of the deceased were actually fired from the said recovered pistol, therefore, involvement of the alleged recovered pistol and accused Pankaj Mishra (Harraipur) from whom the said pistol was recovered is not proved.

36. Therefore, no involvement of accused-opposite parties in the alleged crime is apparent as per the depositions of PW1, PW-2,PW-3,PW-4,PW-5,PW-6 and PW-7. The prosecution has failed to prove the factum of conspiracy. The alleged recoveries i.e. grey Splendor Motorcycle, .32 bore pistol and four live cartridges are also suspicious. There is no independent witness of recovery. Nor the basis of recovered articles is corroborated by other evidence. Therefore, in the totality of circumstances, no offence against any of the accused-opposite parties has been duly proved. Thus, this appellate court has no hesitation to hold that the finding recorded by Court below are justified and same are liable to be upheld by this Court.

37. Apex Court in the case of "**Bhaskarrao and others Vs. State of Maharashtra", (2018) 6 SCC 591** has observed in Paragraph Nos. 14,15, and 23 as under:-

> *"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in* ***Tota Singh and Anr. v. State of Punjab,1987 Cri LJ 974.***
>
> *"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW 6 were either unreasonable or perverse. What the High*

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Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach conclusion different from the one recorded by the learned Sessions Judge.

This Court has repeatedly pointed out that the mere fact that the Appellate Court in inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse.

Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal evgen if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In ***Ramesh Babulal Doshi v. State of Gujarat, 1996 CriLJ 2867,*** *this Court observed:*

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

"23. Before we proceed to analysis of the case, we must first focus on the aspect concerning the standard the High Court has to apply, while hearing a case against an acquittal order of the trial court. In the case on hand, the trial court, followed by a fullfledged trial, comes to the conclusion and by cogent reasoning acquits the accused. In such a case the appellate Court is further burdened with the task of reaffirming the innocence of the accused. In such cases, the appellate Court is expected to be very cautious and its interference with the order of acquittal is called for only when there are compelling reasons

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and substantial grounds. In other words, the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for 23 very substantial and compelling reasons (**refer Surajpal Singh & Ors. v. The State, 1952 Cri LJ 331)**".

38. Keeping in view the above referred observations of Apex Court and discussion of facts made above, it can be safely concluded that reasons recorded by Court below to conclude that the guilt of accused does not stand established beyond reasonable doubt cannot be said to be illegal or perverse. The findings/reasons returned by Court below are based upon due evaluation of allegations made in the FIR in the light of evidence on record. Court below has assigned specific reasons for coming to the conclusion that no offence under any of charging Section is made out against accused. Upon examination by us of the said findings in the light of depositions of the prosecution witnesses as noted in the impugned judgment, we could not come across any such fact on the basis of which, any of the findings qua the charging sections recorded by Court below can be said to be illegal, perverse or erroneous. As such, the conclusion drawn by Court below that no criminality as alleged to have been committed by the accused-opposite parties 2 to 6 is borne out from the record is neither illegal nor perverse.

39. In view of the discussion made above, we do not find any perversity in the impugned judgment so as to interfere with the findings returned by Court below. The conclusion drawn by Court below is the outcome of due appreciation of evidence on record. No misreading or omission could be pointed out by the learned counsel for appellant. Being the last Court of fact, we have ourselves evaluated the evidence on record to find out whether there is any perversity in the impugned judgment or Court below has misconstrued any material evidence. However, we could not gather any such fact from the record so as to conclude that the conclusion drawn by Court below is against the weight of evidence on record. It thus, cannot be said that only the view consistent with the guilt of accused is possible as per the evidence on record.

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We, therefore, do not find any good ground to entertain the present appeals filed under Section 413 BNSS, which consequently fail and are, accordingly, **dismissed**.

40. We cannot loose sight of the fact that informant-appellant Smt. Indrawati Devi has lost her husband in a brutal murder. Informant's husband Sarju Prasad Patel was murdered in the evening, in presence of several neighbourers of informant and opposite parties-2, 3, 4, 5, 6 and 7 were prosecuted for the murder of said Sarju Prasad Patel. However, prosecution has failed to prove the charges levelled against accused-opposite parties and therefore the trial Court has acquitted them. The acquittal of accused-opposite parties has also been affirmed by this Appellate Court, but who the real killers are, is a mystery even at this juncture.

41. We would like to point out that a presiding judge plays a pivotal role in upholding the sanctity of the rule of law and ensuring equitable dispensation of justice between prosecution and defence. It is the public duty of a judge to ensure that no innocent man is punished and a guilty man should not escape.

42. The role of a trial judge is of great importance as it has to not only to protect individual interests but also the larger interest of society. As a neutral umpire, a judge has to perform daunting task of reassessing public confidence in our legal system. Actually, the role of Judge is not that of a mute spectator, but far more than a neutral umpire, i.e. of an active impartial player embodying the right spirit of ensuring justice.

42A. In the present case, murder of Sarju Prasad Patel was committed in the evening of 22.11.2015 by unknown accused, and till 11.01.2016 no improvement regarding the name of unknown assailant was made. However in the evening of 11.01.2016 the then S.H.O. Police Station Utraon caught accused Pankaj Mishra, and recovered weapon of murder, that is the alleged .32 bore country made pistol with four live cartridges. It is for the first time that the said S.H.O. received information from police informer that two

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accused persons are coming to receive remaining contract money for the murder of Sarju Prasad Patel, and on this information said accused Pankaj Mishra was apprehended and thereafter recoveries made. Upon arrest, the confessional statement of accused Pankaj Mishra was recorded. It is thereafter that the investigation took speed, and this witness filed charge sheet against accused Pankaj Mishra (Harraipur, Sujanganj), Akhilesh Mishra, Hariom Pandey and Pankaj Mishra (Mugarsan, Utarao). The FIR of the incident was registered against unknown persons and it was specifically stated in the first information report that informant-appellant and her other witnesses could identify the assailants. But this investigating officer took no steps for identification of accused persons, so arrested by him.

43. From the murder-spot an empty cartridge and one bullet was recovered by first Investigating Officer Nagendra Pratap Singh, PW-9 and two bullets were also recovered from the dead body of deceased Sarju Prasad Patel. The Inspector Nagendra Kumar Nagar, second Investigating Officer recovered alleged weapon of murder i.e. .32 bore country made pistol with a magazine having four live cartridges (bullets). It would have been very easy to connect accused Pankaj Mishra with the said crime, if alleged country made pistol, live cartridges and one empty cartridge alongwith one live cartridge recovered from the spot were sent to Forensic Science Laboratory for scientific examination with two bullets recovered from the dead body of the deceased Sarju Prasad Patel.

44. Inspector Nagendra Kumar Nagar who was the second Investigating Officer of the present case has been examined twice by the prosecution as PW-8 and PW-14. While deposing as PW-14 Inspector Nagendra Kumar Nagar has proved alleged murder weapon i.e. country made pistol, which was recovered from accused Pankaj Mishra as material Ext.-1. This witness also proved four live cartridges recovered from the said pistol. However, there is no mention of the marking on those life cartridges as material exhibits in the impugned judgment. This witness also proved one empty cartridge and one bullet recovered from the spot, which have been jointly marked as material Ext.-2.

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All above stated material exhibits were kept in a sealed cloth bearing Crime No.253/ 2015 and Crime No.13/2025, as well as having an endorsement:- 580-B.A.L.-16 and Report No.9 dated 31.05.2018. Court below in paragraph No.37 of the impugned judgment has returned a categorical finding that said alleged murder weapon and the bullets recovered from the body of the deceased were not sent to FSL for examination.

45. Inspector Vashisth Yadav PW-10 in his deposition has stated that he directed Head Moharir Ramakant to sent the case property to FSL, Lucknow. However, there is nothing on record of this appellate Court that whether case property was sent to FSL for examination or not. Perusal of the deposition of Inspector Nagendra Kumar Nagar as PW-8 and PW-14, as mentioned in the impugned judgment reveals that when the case property was brought before Court below in a sealed cloth, the said sealed cloth was not having two bullets recovered from the body of the deceased as well as no test bullet or test cartridge were there. Meaning thereby that the case property was not sent for examination to FSL. In case, the case property was sent to FSL for examination, in that eventuality the sealed cloth must have test bullet and test cartridge in it alongwith FSL report. Therefore, in our considered opinion, prima facie the said case property was not sent to FSL for examination.

46. In the backdrop of above circumstance, we are of considered opinion that the 2nd Investigating Officer failed to perform his statutory duty for reasons best known to him. There are only two probabilities that either the alleged recovered pistol was the actual murder weapon or it was not the actual murder weapon. In first scenario i.e. recovered pistol not being an actual murder weapon, certainly in that eventuality, if said alleged recovered pistol was sent for FSL examination for comparison with two bullets found from the body of deceased, in that event the FSL report might have prejudiced the prosecution case. In the second scenario i.e. the said pistol being the actual murder weapon, the FSL report might have strengthened the prosecution case. The Investigating Officer, therefore intentionally did not sent the same for FSL examination. The reasons for the same are either, he attempted to save poor prosecution case or

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intentionally tried to save accused, both ways he has not performed his duties diligently. Second and third Investigation Officers have also failed to get identifications of accused asserted by them from informant and other witnesses. There is clear dereliction in the performance of duty by the police officers. If identifications of accused was done and the alleged pistol was actual murder weapon and the same would have been sent for FSL examination, in that eventuality prompt identification of accused and positive FSL report might have motivated prosecution witnesses to depose fearlessly and when no identification was done as well as when no FSL report has come before Court below, then certainly the moral of the prosecution witnesses might have been adversely affected, resulting in their half hearted depositions not supporting the prosecution version, and thereby administration of justice has been adversely affected.

47. Expressing deep anguish on defective investigation the Apex Court in **State of Gujarat Vs. Kishanbhai 2014(5) SCC 108** observed as under:-

> *" 20. **Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted.** It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of*

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fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/ prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

*21. **On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for.** Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."*

48. The Apex Court taking note of the lapses on the part of I.O. on his failure to carry out proper investigation in a case involving heinous offence in **Dayal Singh and others Vs. State of Uttaranchal 2012 (8) SCC 263 had made the following direction :-**

47.5) We hold, declare and direct that it shall be appropriate exercise of jurisdiction as well as ensuring just and fair investigation and trial that courts return a specific finding in such cases, upon recording of reasons as to deliberate dereliction of duty, designedly defective investigation, intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution. Further, the Courts would be fully justified in directing the disciplinary authorities to take appropriate disciplinary or other action in accordance

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with law, whether such officer, expert or employee witness, is in service or has since retired.

49. Murder like present one is indeed a reprehensible act and every perpetrator should be punished, but the 2nd Investigating Officer has prima facie intentionally misconducted himself by not sending the alleged recovered pistol with four live cartridges, one empty cartridge and one live cartridge recovered from spot and two bullets recovered from the dead body of the deceased for FSL examination. The 2nd Investigating Officer has also failed to ensure the identification of accused arrested by him. Therefore, in our opinion, there is a deliberate dereliction of duty as well as designedly defective investigation by the second Investigating Officer. The third Investigating Officer who has filed chargesheet against accused Neelkamal and Pramod Patel also could have sent aforesaid recovered pistol and cartridges for examination to FSL and also could have got identified accused arrested by him from informant-appellant and her witnesses, but he has also failed to do so, resulting into defective investigation. Both 2nd and 3rd Investigating Officers have failed to perform their statutory duties as enshrined under Rule 107 and 116 of U.P. Police Regulations read with Section 23 of U.P. Police Act.

50. The Circle Officer(s) who has/have supervised the investigation conducted by aforementioned Investigating Officers has also not performed his statutory duty, resulting in miscarriage of justice. Circle Officer has thus failed to perform his statutory duty as contemplated under Rule 40 of U.P. Police Regulations as well as instructions issued vide D.G. Circular Letter No.66/2015 dated 26th September, 2015 read with Section 23 of the U.P. Police Act.

51. Therefore, in order to preserve the faith of public in criminal justice of our country, we deem it appropriate to direct the Director General of Police, UP to initiate, and expeditiously complete, disciplinary proceedings against Inspector Nagendra Kumar Nagar PW-9/PW-14, Inspector Vashisth Yadav PW-10, and the Circle Officer(s), who has/have forwarded two separate charge sheets, first against Pankaj Mishra (Harraipur, Sujanganj), Akhilesh Mishra, Hariom

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Pandey and Pankaj Mishra (Mugarsan, Utarao), and second against accused Neelkamal and Pramod Patel for above mentioned acts of omission and commission, deliberate dereliction of duty (in not sending two bullets recovered from the dead body of deceased, one empty cartridge and one bullet recovered from spot, recovered pistol and four live cartridge to FSL as well as not getting identification of accused). It is clarified that in the event of officers having been retired on attaining the age of superannuation, the embargo of limitation, if any under the rules shall not be an impediment. The departmental enquiry shall be conducted in furtherance of the orders of this Court for deducting/stoppage of pension.

52. The object of finding designed defective investigation and informing concerned authorities as well as directing competent authorities in appropriate cases regarding initiation of disciplinary departmental proceeding is to ensure that in future investigations are conducted in a fair manner. The message should go loud and clear that whenever there is any designed defective investigation, either to cause dent in the prosecution story or is designed to help the accused, will not be taken lightly and a serious note of the same will be taken by the Court concerned so that fair investigations are conducted to restore faith of the common man in the investigating agency. If faith of the common man is restored in investigating agency, certainly it will strengthen the criminal justice system, of which investigating agency is also a part.

53. We also direct Director General of Police to find out what action has been taken in compliance to letter dated 5.8.2019 of the Chief Secretary of Government of UP issued in compliance to direction of Apex Court issued in **State of Gujarat Vs. Kishanbhai, 2014 (5) SCC 108.**

54. We hope and trust that all judgments of acquittal are being reviewed regularly by committee constituted in compliance of the direction of Apex Court in State of Gujarat Vs. Kishanbhai (Supra) and direct Chief Secretary Government of U.P. to ensure regular and periodical compliance of aforesaid directions of Apex Court.

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55. Copy of this judgment be circulated to all the Judicial Officers of the State of UP to remind them of their duties as observed in paragraph Nos. 41, 42, 47, 48 of this judgment as well as Rule 53 of the General Rule (Criminal) UP, which is quoted as under:

> *" When in any case of which a court has taken cognizance, the Presiding Officer has occasion to notice any erroneous practice on the part of the police, or has reason to believe that a confession has been elicited by the police from an accused person by the use of force or undue influence, or that any other grave irregularity has occurred, he shall bring the matter to the notice of the Senior Superintendent of Police or Superintendent of Police as the case may be."*

56. **It is the duty of every Presiding Judge, while conducting the trial to see that, if any intentional defective investigation is found to have been done by the Investigating Officer, he shall inform the same to the Senior Superintendent of Police/Superintendent of Police and if any stricture is passed against the Police Officer, the same should be sent to District Magistrate concerned as soon as judgment is pronounced in compliance to Circular Letter No.27 dated 19th March,1957.**

57. We direct all the Judicial Officers of State of Uttar Pradesh to ensure their active impartial role while deciding trial(s) and whenever any dereliction of duty or designedly defective investigation or intentional acts of omission and commission prejudicial to the case of the prosecution, in breach of professional standards and investigative requirements of law, during the course of the investigation by the investigating agency, expert witnesses and even the witnesses cited by the prosecution, are found then a specific finding in such cases be returned and the same shall be brought to the notice of Senior Superintendent of Police/Superintendent of Police and District Magistrate concerned in compliance to Rule 53 of the General Rule (Criminal) and directions of Apex Court issued in **State of Gujarat Vs. Kishanbhai 2014 (5) SCC 108 and Dayal Singh and others Vs. State of Uttranchal 2012 (8) SCC 263.**

58. This Court will be failing in it's duties if all Commissioners/SSPs/ SPs are not reminded of their duties of ensuring fair investigations as mandated by law.

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Prevention of crime, detection of crime, registration of crime and fair investigation of crime are fundamental duties of police personnels. However, no innocent should be prosecuted and no culprit should be left is the sacrocent duty of every law enforcing agency be it investigative or adjudicative authority. Therefore, any attempt for a designed defective investigation should be dealt with firmly by supervising authorities of investigations and most particularly by Commissioner/SSP/SP of concerned district and they can not be allowed to say that chargesheet is not forwarded through them. It is their duty to ensure fair investigations to maintain faith of ordinary citizens of India in investigative agencies too. Therefore, let a copy of this judgment be sent to Police Commissioner/SSPs/SPs of State of Uttar Pradesh for ensuring compliance through Registrar (Compliance).

59. Copy of this judgment be sent to Chief Secretary, Government of Uttar Pradesh and Director General of Police, Uttar Pradesh for ensuring compliance at their end, through Registrar (Compliance). A copy of this judgment be circulated amongst all the Judicial Officer of State through Registrar (Compliance) to ensure compliance of directions issued herein above, so as to maintain the faith of common man in judicial system.

(Dr. Ajay Kumar-II,J.) **(Rajeev Misra,J.)**

November 24, 2025
Ashish/-

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