* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: 27th March, 2015*

\+ **CRL.M.C. 5863/2014, Crl.M.A.Nos.19972/2014 & 20254/2014**

PRADEEP KUMAR GATHANIA ..... Petitioner
Through Mr. Mandeep Singh Vinaik, Adv.

versus

STATE & ANR .....Respondents
Through Mr.M.N.Dudeja, APP for the State.
Mr.Gopal Subramanian, Sr. Adv. &
Mr.Ramesh Gupta, Sr. Adv. with Mr.Niraj Singh, Mr.Saif Khan, Mr.Shobit A. & Mr.Achutan Sreekumar, Advs. for R-2.

\+ **W.P. (CRL.) 2585/2014, Crl.M.A.Nos.20167/2014, 20168/2014 & 497/2015**

SHAIKH ALLAUDDIN PACKIR MAIDEEN ..... Petitioner
Through Mr.Mandeep Singh Vinaik, Adv.

versus

STATE & ANR .....Respondents
Through Mr.Rajesh Mahajan, ASC for State.
Mr.Gopal Subramanian, Sr. Adv. & Mr.Ramesh Gupta, Sr. Adv. with Mr.Niraj Singh, Mr.Saif Khan, Mr.Shobit A. & Mr.Achutan Sreekumar, Advs. for R-2.

+ CRL.M.C. 3736/2014, Crl.M.A.Nos.12871/2014, 12872/2014, 2282/2015 & 3012/2015

SHAIKH ALLAUDDIN PACKIR MAIDEEN ..... Petitioner
Through Mr. Mandeep Singh Vinaik, Adv.

versus

STATE & ANR .....Respondents
Through Mr.M.N.Dudeja, APP for the State.
Mr.Gopal Subramanian, Sr. Adv. & Mr.Ramesh Gupta, Sr. Adv. with Mr.Niraj Singh, Mr.Saif Khan, Mr.Shobit A. & Mr.Achutan Sreekumar, Advs. for R-2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I propose to decide the above referred three petitions by a common order.

2. The petitioners are seeking quashing of FIR No. 93/2014 dated 19th August, 2014 registered under Section 420/467/468/471/384/120B IPC pending before the EOW, Delhi Police through CRL. MISC. MAIN No. 3736 of 2014 and CRL. MISC. MAIN NO. 5863 of 2014.

3. In WP (Crl.) NO. 2585 OF 2014, the petitioner sought stay of the EOW FIR No. 93/2014 dated 19th August, 2014 and the proceedings before the ACMM, Patiala House Courts. He is also seeking transfer of the said proceedings to Ghaziabad Court where the proceedings

are pending against the respondent No.2 which were initiated by him through attorney on filing of complaint and later on FIR was registered.

4. Relevant facts of the case are that the respondent No.2 on 30th June, 2014 filed the complaints and the same came up for hearing on 8th July, 2014, before ACMM, Patiala House, New Delhi. After hearing the arguments ACMM passed an order directing the Economic Offences Wing, Delhi Police, to investigate the matter and put the said matter up on 14th July, 2014, for orders. By order dated 14th July, 2014, the ACMM, Patiala House Courts, New Delhi, has directed the Economic Offences Wing of Delhi Police, to investigate the offences. On the basis of report on 16th August, 2014 directed the concerned police officials to register the FIR against the petitioner.

5. Mr. M.S. Vinaik, learned counsel appearing on behalf of petitioners in the matter has referred pleadings and various orders passed by the Courts on petitioner's earlier complaint against the respondent No.2 filed in Ghaziabad Court. He has also referred the judgment of Supreme Court delivered on 1st February, 2012 whereby the SLP filed by the respondent No.2 was dismissed by a detailed order.

6. He submits that fresh complaint filed by respondent No.2 before the Court of the ACMM at Patiala House, New Delhi, and subsequently FIR by the order of the ACMM, for the same subject matter are not maintainable and the same are liable to be quashed.

7. It is submitted by him that no forgery has been committed by any of the accused of the said Bill of exchange No SM 1C. The bill is the subject of the criminal proceeding before the Court of ACJM II at Ghaziabad. The Supreme Court has reaffirmed the order of trial court. The petitioner during the process of trial would prove his case beyond doubt. The respondent No. 2 is now abusing the process of Court by making baseless allegations in the fresh complaint who is aware that Bill No.SM1C was executed by their authorized signatory. The report of the Dubai police dated 5th April, 2007 addressed to the Dubai Court is already on record. The report confirms that the bills were genuine. In fact, it is the respondent No. 2 who has forged and fabricated few documents in order to create the jurisdiction of Delhi Courts. The issue of alleged accusation of forging document is sub-judice at Ghaziabad as well as in the application by respondent No 2 under Section 340 Cr.P.C. before the Ghaziabad courts raising similar allegations as mentioned in its complaint on the basis fresh FIR is registered against the petitioners.

8. In nut shell, it is alleged by Mr. Vinaik that the filing of fresh complaint and initiating proceedings and registering of an FIR by the respondent No. 2 is an afterthought. The respondent No.2 has suppressed many facts and orders passed in the litigation pending in Ghaziabad court which is initiated by the petitioner i.e. Shaikh Allhuddin Pakir Maideen (hereinafter referred to as the Pakir).

9. Mr. Vinaik has given such details and submitted that the respondent No. 2 has also suppressed the fact that they preferred a

Special Leave Petition before the Supreme Court who has passed the order against the respondent No.2 and directed Lee Kun Hee to surrender before the Trial court on or before 12th May, 2014. The respondent No. 2 has suppressed the fact that his exemption application dated 5th May, 2014, was denied on 2nd June, 2014 by the Ghaziabad Trial Court and Non Bailable arrest warrant has been reordered. The High Court of Allahabad has also passed the order dated 30th May, 2013 that the respondent No. 2 prior to surrender cannot be heard in defence against any material arising from complaint dated 7th January, 2005. Under the guise of a complaint against the petitioner before another Court, the respondent No.2 is, in fact, attempting to abuse the process of the Courts. It is also submitted by the petitioner that the chairman of the respondent no. 2 company namely Lee Kun Hee who is the Chairman of the respondent No.2, and is one of the accused person filed Special Leave Petition (Crl.) No.4905/2013 assailing the order of 30th May, 2013 passed by the Allahabad High Court. The Special Leave Petiti*on* was dismissed by the Supreme Court on 31st March, 2014 and the warrant of arrest issued against the petitioner shall not be executed for a period of six weeks from today and the petitioner was asked to appear before the trial court in seisin of the case and seek bail and/or exemption from appearance in accordance with law**.** Thereafter, an exemption application under the provisions of Section 205 Cr.P.C. was filed on behalf of accused no. 3, Lee Kun Hee, before the ACJM, Ghaziabad. The same was dismissed vide order dated 2ndJune, 2014. After the dismissal of the exemption application, respondent No 2 filed the fresh complaint along with an application under Section 156(3) Cr.P.C. which resulted in FIR No.93/14 being registered.

10. It is submitted that the said order and ensuing FIR is bad in law, and deserves to be quashed. The petitioner is also seeking transfer of FIR 93/14 from Delhi to Ghaziabad, where the complaint of the petitioner is pending. It is submitted that while issuing the direction for investigation into the allegations made before the EOW, New Delhi, the ACMM was in grave error in continuing to proceed to direct the police officials to register the FIR against the petitioner.

11. Mr. Gopal Subramanian, learned Senior counsel appearing on behalf of respondent No.2 has raised the preliminary objection about the maintainability of the present petitions and submitted that the Court should not interfere with the investigation which has started on the basis of lodging of the First Information Report till the investigation is complete and report is submitted under Section 173 (2) Cr.P.C. He has relied upon the following judgments in support of his preliminary objection :

a) ***Union of India v. Prakash P Hinduja****;* (2003) 6 SCC 195 it was held that Courts should not interfere when the investigation is ongoing. (para 20)

b) ***Satvinder Kaur v. State****;* (1999) 8 SCC 728 it was held that Courts should not interfere when the investigation is ongoing. (*paras 8, 10, 12, 14 & 16)*

c) ***Sushil Suri v. CBI****;* (2011) 5 SCC 708 deals with the inherent powers of the court under Section 482 Cr.P.C (*paras 16, 17, 18,* *20, 23, 24, 35 & 36*)

12. Mr. Subramanian, learned Senior counsel submits that the investigation ordered by the Court after registering FIR No. 93/2014 dated 19th August, 2014 would reveal a deep-rooted conspiracy of the petitioners along with the other accused persons named in the FIR i.e. Sheikh AllauddinPakirMaiddin (hereinafter referred to as 'Pakir' being the sole proprietor of JCE Consultancy), Sukhmeet Singh Anand, Pradeep Kumar Ghathania, Melina Wilby (all being directors of M/s Sky Impex Ltd.) with an objective to extract undue gains from respondent No.2. All the accused persons have forged and fabricated valuable securities i.e. including Bills of Exchange in New Delhi and they used the said fabricated documents to make false monetary claims against respondent No.2 before the Ghaziabad District Court. They together with S.C. Baek (being respondent No.2 ex-financial controller) have cheated respondent No.2 by using forged documents in Dubai.

When respondent No.2 came to know about such fictitious transactions and fraud a criminal complaint on 6th January, 2004 was filed with the Dubai Police for cheating and misappropriating the funds of respondent No.2. While investigation was pending, respondent No.2 appointed M/s PriceWaterhouseCoopers ("PWC") to investigate the aforesaid fraudulent transactions. On 14th January, 2004, PWC submitted its report with regard to the aforesaid investigation. It was revealed that all the documents relating to the purported transactions were false and fictitious and the said transactions concerned goods for which the respondent No.2 never dealt with and same transactions caused losses to respondent No.2 to the extent of US$ 8,599,757. The report dated 14th January, 2004 was given over to the Dubai Police on 18th January, 2004. In Case No.751/2004 Sukhmeet Singh Anand and Pradeep Kumar Ghathania contested the proceedings before the Dubai Court through their Counsel and later Dubai Criminal Court by order dated 18th July, 2005 convicted all the accused persons as guilty of offences of cheating, forgery, criminal misappropriation and criminal conspiracy due to which the respondent No.2 suffered a financial loss of US$ 8,599,757 and have been sentenced to two years imprisonment followed by deportation. Along with the reply filed by respondent No.2 in Crl.MC No.3736/2014, various documents are also filed which are referred by Senior counsel during the course of hearing. It is denied by the respondent No.2 that the contents of two complaints are similar. The fresh complaint has disclosed serious allegations against the petitioners which are backed by evidence. The same are not the subject matter of earlier complaint filed by the Pakir on the basis earlier FIR was registered.

13. In order to demonstrate, such details referred by him which are the subject matter of the complainant filed by respondent No.2 are as under :

i) The said Sukhmeet Singh Anand and Pradeep Kumar Ghathania in order to intimidate and harass respondent No.2 and Samsung in General for initiating action against them in Dubai Criminal Courts further conspired with Pakir purporting to be the sole proprietor of a fake entity by the name of M/s JCE Consultancy having its office at 108, Rohini Complex WA-121, Shakarpur, Delhi.

ii) In pursuance to the above said conspiracy, JCE Consultancy (apparently through Pakir) filed a false complaint as counterblast on 7th January, 2005 in the Court of VIIth Additional Chief Judicial Magistrate, Ghaziabad being Complaint No.30/2005 re-numbered as 1086 of 2009 against respondent No.2 and the top management of Samsung Electronics Co., Ltd. (the parent company of respondent No.2 based in South Korea).

iii) It has been alleged in the said Ghaziabad complaint that one Bill of Exchange No. SM1C dated 1st February, 2002 for US$ 1,432,745 has been purportedly signed off and accepted by the respondent no.2 stating that respondent no.2 is liable to pay US$ 1,432,745 to M/s Sky Impex and the said Bill of Exchange has been further endorsed by M/s Sky Impex in favour of M/s JCE Consultancy to claim the said amount directly from respondent no.2.

iv) It has been further alleged in the said Ghaziabad complaint that respondent no.2 has intentionally refused to pay US$ 1,432,745 to M/s JCE Consultancy when demanded on the basis of the said Bill of Exchange, and therefore, has cheated M/s JCE Consultancy. This purported complaint has been filed by Pakir on the basis of forged and fabricated documents which he created along with other accused persons in its office(s) at located in New Delhi.

v) The entire exercise of M/s Sky Impex endorsing the said Bill of Exchange in favour of M/s JCE Consultancy is frivolous and the alleged endorsement is also forged as the same was done with the *malafide* intention after the proceedings in Dubai criminal courts were initiated by respondent No.2. This fact would be apparent from the fact that another unendorsed Bill of Exchange bearing the same number SM1C dated 1st February, 2002 for US$ 1,432,745 is also part of PWC Report.

vi) Pakir along with the other accused persons who have been named in the FIR, in pursuance of a criminal conspiracy, have dishonestly and fraudulently forged various documents such as bill of exchange, agreement, purchase order, delivery receipt. The entire forgery has been committed within the jurisdiction of the Court of the Ld. ACMM.

vii) The above fact would clearly establish that the accused persons including Pakir have forged documents in Delhi to harass respondent No.2 and its principal officers and make false claims of huge amounts of money. Thus, in-depth investigation is imperative to put the matter to rest.

viii) M/s JCE Consultancy has also filed an agreement dated 1st December, 2001 in the Ghaziabad proceedings which has allegedly been entered by and between M/s Sky Impex and JCE

Consultancy whereby M/s JCE Consultancy has been authorized to claim payment of US$ 1,432,745 from respondent No.2 for supply of Coke Calcination Packages which is a petro chemical by product. Respondent No.2 has nothing to do with the said heavy industrial product. Respondent No.2 is only engaged in the local sale of televisions, refrigerators, phones and other consumer electronics products.

ix) The said agreement was made by Sukhmeet Singh Anand and Pradeep Kumar Ghathania in connivance with Pakir in 2005 along with a forged bill of exchange No. SM1C dated 1st February, 2002(which bore a hand written endorsement) to support the false claim against respondent No.2. The said Bill of Exchange with hand written endorsement, the alleged agreement along with Purchase Order dated 25th November, 2001, and a Delivery Receipt dated 28th January, 2002 are also all forged and fabricated in 2005 in order to file false complaint against Samsung to harass its top management.

x) Pradeep Kumar Ghatania, the petitioner in CRL. MISC. MAIN No.5863/2014 filed a Criminal Writ Petition before this Court being W.P. (Crl) No.1234/2006 which was dismissed by this Court on 13th August, 2007 with the observation that Pradeep Kumar Ghatania is a fugitive and relief seeking restrain on his arrest is not maintainable. The respondent No.2 has, thereafter, initiated a proceeding seeking extradition of said Pradeep Kumar Ghatania before this Court through WP (Crl.) No.1052/2012 which is *sub-*

judice and vide order dated 3rd February, 2015, Union of India has sought time to take instructions whether to expedite or prosecute Pradeep Kumar Ghatania in terms of Section 34A of the Extradition Act 1962.

14. It is submitted by the respondent No.2 that the petitioners have till date placed on record three different versions of the same document (i.e. the Bill of Exchange bearing no. SM1C dated 1st February, 2002 all for US$ 1,432,745/-). The details of the said three versions of the same Bill of Exchange are :

a) Filed in the proceedings before the Supreme Court of India and which finds mention in the PWC Report, the said Bill of Exchange bore no endorsement in favour of JCE Consultancy of which Pakir is the sole proprietor.

b) The second version of the said Bill of Exchange was placed before the Ghaziabad District Court. This Bill of Exchange bore a hand-written endorsement which read as "ENDORSED IN FAVOUR OF JCE CONSULTANCY".

c) The third version of the same Bill of Exchange was relied upon in the civil recovery case filed in Dubai. This Bill of Exchange bore a typed endorsement which read as "ENDORSED TO JCE CONSULTANCY [INDIA] ON 12TH FEBRUARY 2002".

It is submitted that the 3 different version of the same Bill of Exchange would alone indicates that the same is a forged and fabricated document and has been prepared in criminal conspiracy by all the accused persons to cause wrongful loss to respondent No.2 and wrongful gain to themselves. They have created all the aforesaid documents after respondent No.2 had initiated criminal proceedings in Dubai. This fraudulent and illegal act was carried out to make false claims against respondent No.2, and its Parent Company in order to put pressure on them to withdraw all the pending proceedings against the accused persons in Dubai.

15. It is informed by Mr.Subramanium that in the year 2005, M/s JCE Consultancy also filed civil recovery proceedings in Dubai against respondent No.2 based on five Bills of Exchange (one of them being SM1C dated 1st February, 2002 which was used by Pakir on behalf of M/s JCE Consultancy in the criminal complaint filed in Ghaziabad) along with order sheet dated 25th November, 2001, Delivery Receipt dated 28th January, 2002 and Performance Certificate dated 1st February, 2002. In Dubai civil proceedings, the Bill of Exchange No.SM1C and other Bills of Exchange on the basis of which the suit was filed by M/s JCE Consultancy before the Court of First Instance, UAE were endorsed after the Judgment passed in the Dubai criminal proceedings dated 18th July, 2005 wherein Sukhmeet Singh Anand, Pradeep Kumar Ghathania and others were sentenced. The Dubai Court also gave a finding that the Bills of Exchange had not been endorsed as of the time of the investigation, which meant that endorsement, if any, of the Bill of Exchange submitted to the Indian Court had been made no earlier than 5th August, 2005. Endorsement was forged in order to achieve a certain malicious purpose that is

claiming value of the bills (including the Bill of Exchange No. SM1C) after being endorsed. The suit of M/s JCE Consultancy was dismissed.

16. Mr. Subramaniam, learned Senior counsel for respondent No.2 submits that it is evident from the documents that M/s JCE Consultancy/M/s Sky Impex have been established without practicing any commercial activities and M/s JCE Consultancy does not have the requisite permissions from the relevant governmental authorities for conducting import/export activities or are have paid tax to the relevant department. Letters received from the relevant Govt. departments confirming the said facts have been filed. The status report that has already been placed on record by the Investigation Officer (IO) of Economic Offences Wing, Delhi Police also very categorically noted that the IO has already conducted appropriate investigation with the relevant government authorities and the IO has received a written confirmation that the entities owned and controlled by the accused persons i.e. SKY Impex and JCE Consultancy are non-existent entities. It is stated that Pakir on one hand and Sukhmeet Singh Anand, Pradeep Kumar Ghathania and Melina Wilby of M/s Sky Impex on the other hand in connivance with each other have been regularly threatening respondent No.2 and thereby demanding withdrawal of the criminal cases in Dubai along with extradition proceedings by sending FAX messages on various dates and upon enquiry, respondent No.2 has come to know that one of the FAX has been sent from R.K.Puram, New Delhi. Earlier also, the respondent No.2 had received legal notices on behalf of Sukhmeet Singh Anand and Pradeep Kumar

Ghathania, which are similar in tone and tenor to the aforesaid FAX messages.

17. It is also argued that all the above-mentioned forged and fabricated documents have been created by Pakir along with other persons in his office at Shakarpur, Delhi and it is also apparent from the agreement dated 1st December, 2001 between JCE Consultancy and Sky Impex that the same was made after Sukhmeet Singh Anand and Pradeep Kumar Ghathania absconded from Dubai. The aforesaid mentioned FAX messages were sent from Delhi. The original forged documents are also in possession of the petitioners.

Therefore, it can be seen that the aspect of forging Bills of Exchange in Delhi is the main issue to be cracked vide the pending investigation FIR. No.93/2014 dated 19th August, 2014.

18. It was informed on behalf of respondent No.2 that there are criminal investigations pending in Spain as well against the said Sukhmeet Singh Anand for offences such as money laundering. It is verily believed that the petitioners are part of an international cartel involved in illegal activities such as money laundering and siphoning funds from business conglomerates such as the respondent. Therefore, the matter requires thorough investigation on part of the Economic Offences Wing, Delhi Police. The petitions filed by the petitioners should be dismissed with costs directing them to join the investigation before the EOW, Delhi Police.

19. It is submitted that the petitioners whose names have been mentioned in the F.I.R. have committed various offences amongst

other more prominently under Sections 120B, 420, 467, 471 and 384 IPC which offences are schedule offences as mentioned in Paragraph 1 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002. As far as non-appearance of respondent No.2 is concerned, the said aspect would be considered by the Ghaziabad Court where the petitioner's complaint is pending which in fact is filed only to extract money from the respondent No.2 in order to put pressure. The law would take its own course in that case.

20. The present proceedings are materially different proceedings which have hardly much bearing on the issues raised by the petitioner in his complaint. The scope in the second FIR is much, the allegations have to be investigated and once the FIR is registered against the petitioners, they can avail their remedy before the trial court.

21. Mr. Subramaniam has referred the status report which indicates that some of the accused persons did not join investigation and have not cooperated with the investigation process and the whereabouts of some of the accused are also not known. Thus, in view of non-cooperation on part of the petitioners, it is submitted by him, that the only solution is investigation to reach its logical conclusion.

22. It was stated in the status report dated 27th February, 2015 that Pakir confirmed to the IO in writing that he does not know anyone by the name of Ranjeet Kumar or Santosh Kumar Varma (though they have been shown his attorney in Ghaziabad and Dubai Court respectively). Pakir does not know Melina Wilby (though she was the person who signed the endorsement side of the bill of exchange).

When the IO visited Pakir at Tanjovore, he was accompanied by a local police official visited the Pakir's office.

23. It was also mentioned that Pakir also confirmed that he worked as a driver for a person named Anand i.e. one of the accused in Dubai and Delhi and that he was made to sign various papers by Anand in Delhi stating that Anand is opening a new company. Pakir thereafter stated to the IO that he did not read or go through any of the papers that he has signed and that he did not know any company by the name of JCE Consultancy or SKY Impex. Pakir further stated that when he was in Dubai, the Dubai police took Anand in custody.

24. Pakir as per status report, has stated that he initially did not know anything of the Ghaziabad complaint and got to know about it only5 years after the complaint was filed and most importantly that he visited Ghaziabad, but never visited Ghaziabad District Court to record any statement before the Court. Pakir goes on to state that he was fluent only in Tamil and further that he can read English but cannot understand the meaning of English words and he can speak Hindi but cannot read/write Hindi.

25. Learned Senior counsel has also referred the reports of a police official in Ghaziabad who in his writing gave a opinion to the petitioners by stating that and interpreting certain orders passed by the Allahabad High Court and the Supreme Court, the said police official, gave its opinion that the complaint is not maintainable in New Delhi and that Ghaziabad is the right jurisdiction. When respondent No.2 brought the same to the notice of the Senior Police Officials, Ghaziabad the said

police official who has prepared the earlier report has now been suspended and a departmental enquiry has been initiated against him and a written confirmation has been given in this regard to respondent No.2.

26. The main objection of petitioners is that the second complaint filed by the respondent No.2 was not maintainable on various reasons and one of the reasons is about the earlier complaint filed by the petitioner on the same subject matter. The facts of the referred complaint are that the petitioners on 7th January, 2005 filed a criminal complaint before a Judicial Magistrate, District Ghaziabad, Uttar Pradesh for the offences allegedly with which the accused were charged under Sections 403, 405, 420, 423, and 120B of the Indian Penal Code.

27. After taking pre summoning evidence, the Judicial Magistrate, District Ghaziabad, in the year 2005 by order dated 12th January, 2005, summoned the accused persons including the respondent No. 2 in the present petition put in appearance through Advocates in the Court at Ghaziabad. They filed a revision petition challenging the passing of the said summoning order before the Sessions Court at Ghaziabad. The revision petition filed by the petitioners was dismissed. The summoning order was then sought to be challenged before the High Court of Allahabad by filing a petition under Section 482, Cr.P.C. which was dismissed vide order dated 13th November, 2009. The said order passed by the Allahabad High Court and Judgment of the High Court was challenged in the Supreme Court of

India by filing Special Leave Petition No 9168 of 2009 by all the accused, including the respondent No. 2 which was granted and converted into a Crl. Appeal No.304/2012. The Supreme Court by the judgment delivered on 1st February, 2012, upheld the summoning order. It was also observed in the judgment that the Apex Court has not expressed any opinion in regard to the merit of the case. In para 26 of the judgment delivered on 1st February, 2012, part of said para reads as under :

> ***"xxx xxx xxxx***
>
> ***It would not be appropriate for us to delve into the culpability of the appellants at the present juncture on the basis of the factual position projected by the rival parties before us. The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn at the present juncture is that even on the basis of the last submission canvassed on behalf of the appellants it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law after allowing the rival parties to lead evidence to substantiate their respective positions."***

28. The review petition and curative review filed by the respondent No.2 were also dismissed. Mr. Lee Kun Hee was directed to appear before the trial court in seisin of the case and seek bail and/or exemption from the appearance in accordance with law.

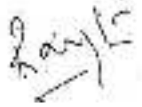
29. When the previous bench this Court took up the matter for hearing

on 10th December, 2014, this Court found that there were certain irregularities in the POA of Pakir that was placed on record. In light of the same, Pakir as well as his Attorney i.e. Ranjeet Kumar were directed to appear in Court on 5th February, 2015.

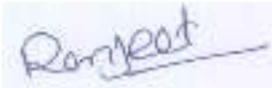
30. On 5th February, 2015, this Court also noticed that the signatures of Ranjeet Kumar appearing on instant petition was substantially different as compared to his signatures appearing on a pleading that he had filed before the Ghaziabad Court. The counsel appearing for Pakir (i.e. the petitioner) also agreed to this fact and this court recorded the same in the order. The Public Prosecutor informed the Court that the other accused i.e. Pradeep Kumar Ghatania is not cooperating with the IO even though he joined investigation. Despite the specific directions of this Court, the petitioner did not appear in person on 5th February, 2015. At the request of the Counsel of the petitioners, the Court again directed the petitioner to appear in person on 27th February, 2015 and the IO was directed to present the accused persons whilst providing them an interim protection against coercive action.

31. The scanned copies of specimen signatures of Ranjeet Kumar who has signed the complaint as attorney of S.A. Packir Maideen as well as present petition are as under :

<u>Specimen signatures on Affidavit of Ranjit Kumar filed in the case of Complaint filed in Ghaziabad Court (which was filed by Pakir through Power of Attorney)</u>



Specimen signatures of Ranjit Kumar available in W.P. (Crl.) No.2585/2014 which is filed before this Court wherein the quashing of proceedings is sought



Pertaining to two specimen signatures of Ranjit Kumar are concerned, this Court does not want to express any opinion. But, the same may be the case of *res ipsa loquitor*. When Ranjit Kumar appeared before this Court on 27th February, 2015, he has not denied that the signatures are different, rather he has confirmed that both are his signatures.

32. Even on 27th February, 2014 the petitioner Pakir again did not appear and who on 26th February, 2014 filed an application with the supporting affidavit of his lawyer stating that the I.O. had abused and harassed him stating that he was a Muslim and thereby he was forced to give a statement to the IO.

33. During the arguments on 27th February, 2014, a copy of the passport of Pakir as filed before the Ghaziabad court was produced. The passport was different as compared to what was handed over to the IO in Thanjavore. The spelling of the full name of the accused i.e. Pakir as appearing in the passports and the instant petition are different.

34. It is settled law that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of allegations made in the

complaint or the documents accompanying with the complaint. In the present case, the allegations made in the complaint are serious in nature. The scope of the complaint filed by the respondent No.2 is much larger i.e. the forging of the said Bill of Exchange and other documents in New Delhi by the petitioners. At present, no express opinion can be formed as to whether such allegations are true or not. The same have to be investigated and to be proved by respondent No.2 at the time of trial. There is no other avenue where the said allegations can be investigated. All the allegations are not the part of petitioners' complaint which is filed prior in time by the petitioners. Though in normal course this Court would have considered the prayer made by the petitioners and pass an order of transfer the proceedings initiated by the respondent No.2 but the situation in the present case is different as one of the petitioners, Pradeep Kumar Ghatania filed Transfer Petition No. 63/2015 before the Supreme Court seeking transfer of the said underlying FIR No.93/2014 to Ghaziabad. The said transfer petition was dismissed as withdrawn vide order dated 20th February, 2015 and a copy of the said order is filed. The Supreme Court by judgment while dismissing the respondent No.2's SLP against the summoning order has observed that they are not giving any findings on merits of the case. The observations of the Allahabad High Court in the order dated 30th May, 2013 have no bearing on the FIR registered with the EOW. The said matter has to be considered as per law and its own merit. In case Lee Kun Hee is not appearing in the said case, the law has to take its own course against him. However, it appears from the FIR registered against the petitioners that the allegations need thorough investigation and this Court has no jurisdiction to examine the correctness of the said complaint.

35. It is a settled law even otherwise that the FIR filed subsequently can be investigated.

i) In the case of ***Upkar Singh v. Ved Prakash****;* (2004) 13 SCC 292, the Supreme Court held that 2 FIRs/counter-case possible can simultaneously be filed and investigated. (*PARAS 17,21 & 23*)

ii) In the case of ***M Krishna v. State of Karnataka****;* (1999) 3 SCC 247 the Supreme Court held that a second FIR is possible and under which circumstances the same is possible. (**PARA 5**)

iii) In the case of ***Ram Lal Narang v. State (Delhi Administration)*** (1979) 2 SCC 322 the Supreme Court held that 2 FIRs/counter-case possible can simultaneously be filed and investigated. (*PARA 11*)

36. When there are cases of cross FIRs between the parties, no doubt some overlapping of facts and allegations are always there but it does not mean the subsequent FIR has to be quashed. It depends upon case to case basis. The Court has to examine the overall allegations and contents of two complaints on the basis of which the FIRs are registered then the appropriate order is to be passed.

37. In the case of ***State of Bihar v. JAC Saldhana****;* (1980) 1 SCC 554 it was held that Courts should not interfere when the investigation is ongoing. Extract of the same is reproduced hereinunder:

> "25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime

punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in *King Emperor* v. *Khwaja Nazir Ahmad* [AIR 1944 PC 18 : 1944 LR 71 IA 203, 213] where the Privy Council observed as under:

"In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any

> authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then."

38. In view of aforesaid facts and settled law, I am of the considered view that the allegations made by the respondent No.2 in its complaint and the orders passed for investigation as the investigation is still pending, it appears to the Court that all allegations made by the respondent No.2 cannot be investigated in the complaint filed by the petitioner i.e Pakir. The FIR *prima-facie* discloses the commission of offence, the said offence needs to be enquired into, the same cannot be interfered with at this stage. Some of the accused are not cooperating as per status report filed. However, the petitioners are entitled to raise all pleas and their objections to the allegation before the trial court who would form its own opinion about the objections to be raised by the petitioner without being influenced by any observation made in my order. They shall appear before the trial court and seek

bail in accordance with law. Thus, without expressing any opinion on merit, the present petitions are liable to be dismissed along with all pending applications.

39. No costs.

40. Dasti, under the signatures of the Private Secretary.

(MANMOHAN SINGH)
JUDGE

MARCH 27, 2015