

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

Judgment reserved on: 24.02.2015

% **Judgment delivered on: 25.04.2016**

+ **CRL.M.C. 2565/2013 and Crl. M.A. Nos. 9892/2013, 15214/2013, 16523/2013 & 2605/2014**

ZEE NEWS LTD

..... Petitioner

Through: Mr. Aman Lekhi, Senior Advocate
along with Mr. Vijay Aggarwal,
Mr.Mudit Jain, Ms. Chaitali Jain,
Mr.Puneet Jaiswal, Ms. Samprikta
Ghosal & Mr.Nakul Choudhary,
Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr. Rajat Katyal, APP along with
Inspector Ramavtar, STF/Crime
Branch for the respondent No.1/State.

Mr. Sandeep Sethi, Senior Advocate
along with Mr. Mohit Mathur,
Mr.Ujjwal Kr. Jha, Mr. Madhav
Khurana, Mr. Ajay Gulati &
Mr.Aalam Nijjar, Advocates for
respondent No. 2.

AND

+ **TR.P.(CRL.) 45/2014 & CrI. M.A. No. 10317/2014**

SUDHIR CHAUDHARY

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Mudit Jain,
Ms. Chaitali Jain, Mr. Arjun Taneja &
Ms. Samprikta Ghosal & Mr.Nakul
Choudhary, Advocates.

versus

STATE & ORS

..... Respondents

Through: Mr. Rajat Katyal, APP along with
Inspector Ramavtar, STF/Crime
Branch for the respondent No.1/State.

Mr. Ravi Gupta, Senior Advocate
along with Mr. Mohit Mathur,
Mr.Ujjwal Kr. Jha, Mr. Madhav
Khurana, Mr. Ajay Gulati &
Mr.Aalam Nijjar, Advocates for
respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. Criminal Miscellaneous Case (CrI. M.C.) No. 2565/2013, preferred by the petitioner Zee News Ltd. under Section 482 Cr.P.C., is directed against the order dated 04.05.2013 passed by Sh. Dharmesh Sharma, learned ASJ-

01, New Delhi dismissing the revision petition bearing CR No. 62/13 filed by the petitioner herein.

2. Criminal Transfer Petition 45/2014, under Section 407 read with Section 482 Cr.P.C., has been preferred by the petitioner Sudhir Chaudhary to seek transfer of CC No. 81/02 of 2013 titled as “State v. Samir Ahluwalia and Ors.”, filed in relation to FIR 240/2012 registered at P.S. Crime Branch, Distt. Crime & Railway, and CC No. 14/1/13 titled as “M/s Jindal Steel and Power Ltd. v. Zee News Limited and Ors.”, pending in different courts, to be assigned to one and the same court.

3. The background in which Cr.M.C. 2565/13 is preferred is that respondent no. 2 M/s Jindal Steel and Power Ltd. filed a complaint under Section 200 Cr.P.C. against 14 accused persons – including the petitioner-M/s Zee News Ltd., alleging commission of offences under Section 500, 501 and 506 IPC read with Section 34/120B IPC, which was initially registered as Complaint Case no. 82/1/12. The same stands re-numbered as CC No.14/1/13. While the said complaint was still at the stage of recording the pre-summoning evidence in the Court of Sh. Sudesh Kumar, M.M., an application was filed by the petitioner under Section 210 Cr.P.C. on the ground that in respect of the same allegations – which is the subject matter of the said complaint case, FIR No. 240/2012, P.S. Crime Branch is already pending investigation. The petitioner claimed that the subject matter of both the cases viz. the complaint case and the FIR are the same. Initially, the said application was not taken up for consideration by the learned M.M. on 16.01.2013, and the recording of pre-summoning evidence continued. A criminal Revision being Cr.Rev. No. 16/13 was preferred by the petitioner

Zee News Ltd. in the Court of learned ASJ in respect of the order dated 16.01.2013, and vide order dated 07.02.2013 passed by the learned ASJ, the learned M.M. was directed to dispose of application seeking stay, before proceeding in the matter. On 25.02.2013, the application for stay under Section 210 Cr.P.C. was dismissed by the learned M.M. on the ground that the said application was premature, as the accused in the complaint case had not even been summoned, and thus they had no right to be heard even on an application under Section 210 Cr.P.C. Reliance was placed on *Nagawwa v. Veeranna & Ors.*, AIR 1976 SC 1947. The Criminal Revision Petition to assail that order was also dismissed by the learned ASJ vide the impugned order dated 04.05.2013. The learned ASJ relied on *Chandra Deo v. Prokash Chandra*, 1963 (2) Cri.L.J. 397, wherein the Supreme Court held that an accused person does not come into the picture till he is summoned, i.e. till process is issued. He may remain present only to remain informed of the progress of the case. The Magistrate cannot put questions to the witnesses, who appear at the pre-summoning stage at the instance of the accused. Reliance was also placed on, *inter alia*, *Pal v. State of U.P.*, (2010) 10 SCC 123, wherein the Supreme Court, *inter alia*, observed that Section 210 Cr.P.C. contemplates a situation where, having taken cognizance of an offence in respect of an offence in a complaint case, in a separate police investigation such person is again made an accused. The learned ASJ also returned a finding, though *prima facie*, that the nature of offences in the police case and the complaint case “*are not congruent*”.

4. The background facts in which the transfer petition has been preferred is as follows:

5. The petitioner Sudhir Chaudhary filed an application under Section 410 Cr.P.C. before the learned C.M.M. for withdrawing, transferring, clubbing and consolidating together both the cases, viz. CC no. 81/02 of 2013 titled “State v. Samir Ahluwalia and Ors.” (arising out of FIR No. 240/2012 registered with P.S. Crime Branch), and CC No. 14/1/13 titled “Jindal Steel and Power Ltd. Vs. Zee News Ltd & Ors.”. The petitioner sought that the two cases be assigned to one and the same court for Trial and adjudication. The same was dismissed by the learned C.M.M. vide order dated 31.03.2014. The learned C.M.M. essentially held that the complaint case was still at the initial stage inasmuch, as, the accused had still not been summoned. Similarly, in the FIR case, further investigation had been ordered and cognizance had not yet been taken by the learned Magistrate. It is still not clear which of the accused would be summoned, and for which offence and, eventually, who would face the trial. He held it would be premature at this stage to reach the conclusion as to the actual accused and offences alleged. Thus, it was premature to conclude that the offences in the complaint case and the FIR case arose out of the same transaction or not. He placed reliance on *M/s Alfa Graphics v. Arjun Kohli*, Cr.M.C. No.4259/2006, Cr.M.A. No.7268/2006 in support of his conclusions. Thereafter, a transfer petition, being Transfer Petition No.19/2014, was preferred under Section 408 Cr.P.C. before the learned District and Sessions Judge for the same purpose. This petition was also dismissed vide order dated 01.06.2014 by the learned District and Sessions Judge by holding the same to be premature. However, liberty was granted to move the same at the appropriate stage. Hence, the present transfer petition.

6. Since the parties in the two petitions are substantially the same, and same and similar issues arise in the two cases, common arguments were addressed in both the matters and, consequently, both are being disposed of by this common judgment.

7. The case of the petitioners in both these petitions is that in May 2012, the CAG submitted its report on Coal Block allocation to the Government of India, and the same was placed by the Government in the Parliament. The said report became a topic of general debate and discussion. The Press Trust of India (PTI) and ANI published news regarding allocation of coal blocks. On 07.09.2012, the Zee Business channel of the petitioner M/s. Zee News Ltd. for the first time aired a report regarding involvement of Jindal Companies in the coal scam. The petitioners claim that further telecasts were made on their channels in relation to the said scam, thereafter. As a result of the same, the aforesaid First Information Report (FIR) No.240/2012 came to be registered on 02.10.2012 under sections 384, 120B and 511 IPC. This was followed by the filing of a complaint case being CC No.82/1/12 (renumbered as 14/1/13) on 05.11.2012 for offences under section 500, 501, 506 read with section 120B/34 IPC. The petitioners state that the allegations contained in the FIR No. 240/2012 dated 02.10.2012, and Complaint Case No.14/1/13 substantially the same. They alleged that the accused entered into a criminal conspiracy, the purpose of which was to intentionally put the complainant company JSPL and its management into grave fear of serious injury to its business and to malign the reputation and to dishonestly extort substantial sums of money. In furtherance of the conspiracy, Zee News/ Zee Business channels allegedly aired shows/reports with respect to the

allocation of Coal Blocks to Jindal Steel & Power Ltd (herein referred as 'JSPL'). The shows/reports aired on the channels were claimed to be false, malicious, misleading and defamatory by the JSPL/complainant. The alleged purpose of these shows was to target the management and to put them in fear of injury. The allegation was that the channels continued with the vilification campaign through distortion of facts and dishonest/fraudulent concealment of the truth without even verifying the facts from JSPL or the concerned agencies. The efforts of the complainant/JSPL to communicate the infirmities in their portrayal of the accused was of no avail.

8. The complainant, in paragraph 26 of the complaint, stated as follows:-

“The aforesaid acts and omissions of these accused persons amount to an offence of criminal conspiracy, extortion, criminal intimidation and defamation. The complainant filed a complaint dated 02.10.2012 with the Commissioner of Police, Delhi pursuant to which FIR No.240 dated 02.10.2012 under Section 384/511/120B of Indian Penal Code has been registered with Crime Branch police station, New Delhi. The police have already seized all electronic devices along with original chips/ memory cards, used for said recordings and CDs. Investigation in the said FIR is still pending. Copies of FIR and seizure memo are hereto annexed and marked as Annexure C-11 Colly”.

Submissions of the petitioner in Crl.M.C. No.2565/2013

9. Mr. Aman Lekhi, learned senior counsel for the petitioner Zee News Limited submits that the application under Section 210 Cr PC was maintainable at the instance of the petitioner, even though the petitioner had not been summoned when the said application was preferred. He submits that the learned Magistrate ought to have followed the procedure prescribed

in Section 210(1) and called for a report from the police officer investigating FIR No.240/2012 registered at P.S. Crime Branch. The inter-relationship between the programmes show that the acts alleged are separate, but not distinct and, therefore, they form part of the same transaction.

10. He invokes the principle of '*ex visceribus actus*', i.e. the statute has to be read as whole. Therefore, Section 210 Cr.P.C. (which prescribes the procedure to be followed when there is a complaint case and police investigation in respect of the same offence) cannot be read in isolation from the rest of the provisions of the Code. Section 210 Cr PC has to be read along with Sections 220 (which deals with the aspect of trial for more than one offence), 223 (which deals with the aspect of what persons may be charged jointly) and 184 Cr.P.C. (which deals with the aspect of place of trial for offences triable together). He also places reliance on ***Dashrath Rupsingh Rathod v. State of Maharashtra & Anr.***, (2014) 9 SCC 129, to submit that Section 220 Cr.P.C. is also applicable at the stage of inquiry –in view of Section 184 Cr.P.C.

11. He submits that the object of the alleged conspiracy was extortion, and the same object is the root of both the FIR and the complaint. In fact, the complaint specifically uses both the expressions – 'conspiracy' and 'extortion', though not mentioning the inherent section of the IPC in a vain attempt to conceal the actual identity in the allegation. Reliance is placed on ***S. Swamirathnam v. State of Madras***, AIR 1957 SC 340, ***Purushottamdas Dalmia v. State of W.B.***, AIR 1961 SC 1589, and ***Babu Lal v. Emperor***, AIR 1938 PC 130. Reliance is also placed on ***Banwarilal Jhunjunwala v.***

Union of India & Anr., AIR 1963 SCC 1620, to elaborate the meaning of ‘distinct offence’.

12. Mr. Lekhi submits that the FIR and the complaint deals with the offences committed in the course of same transaction. He submits that the complaint, while dealing with the telecast of 19.10.2012 states that the same was ‘in furtherance of’. Hence, this shows unity of purpose so as to form part of the same transaction. He submits that Section 210 Cr.P.C. is in relation to the offence which is the ‘*subject matter of the inquiry or trial*’. He submits that the requirement that the private case should be at inquiry stage is fulfilled in the present case. By referring to Section 2(n), read with Section 33 Cr.P.C., he states that an offence includes both a single act, and also a series of acts. Mr. Lekhi submits that when the language of the section is clear and unambiguous, marginal notes are not to be used in aid to interpret a section. Reliance is placed on *State v. Har Narain*, 1976 Cri.L.J. 562, wherein it was observed:

“(6) As long as the facts under investigation by the police include the facts mentioned in the complaint case, then it will make no difference if the police comes to the conclusion that offence not mentioned in the complaint have been committed by the accused. In the instant case a bare reading of the police report and the complaint shows that the facts complained of are the same. It is true that the period covered by the police report is longer than the period covered by the complaint case. But that is because after the matter had been reported to the police the assessee filed further Income Tax returns for the succeeding periods and the police found that similar offences had been committed by the respondents in the succeeding periods.

(7) *Once the criteria laid down in sub- section (1) are satisfied, then if the Magistrate takes cognizance of 'any offence' against 'any person who is an accused in the complaint case' on the basis of police report, it is the duty of the Magistrate under sub-section (2) to try two cases together as if they were instituted on a police report. The respondents contend that the words 'any offence' used in sub-section (2) show that the offence cognizance of which is taken on the basis of the police report should be the same which is being enquired into or tried in the complaint case. In my opinion this contention is not well-founded. The word 'any' does not denote or refer to a particular or a specific offence. On the other hand, it suggests that it is sufficient if cognizance of 'an offence' is taken. The Concise Oxford Dictionary gives the meaning of 'any' thus : "One, some (no matter which), as have you any wool ? have you any of them ? were any Frenchmen there ? "The Shorter Oxford Dictionary gives its meaning when used as singular equivalent to 'a' thus : "no matter which, or what"; when used as plural equivalent to 'some' it means "no matter which, of what kind or how many." It, Therefore, follows that if, on the basis of a police report, cognizance of an offence, though it may be different from the offence mentioned in the complaint, is taken, the first ingredient of sub-section (2) is satisfied. The second ingredient of the sub-section is that cognizance of offence should be taken against 'any person who is an accused in the complaint case. This would be satisfied if cognizance of the offence is taken against even only one of the person accused in the complaint case. Where both the ingredients are satisfied, the procedure to be followed in the two cases is as if both were instituted on a police report."*

13. Reliance is placed on ***Namathoti Sankaramma v. State of A.P. & Ors.***, 2000 Cri.L.J. 4831, to submit that “*it is the commonality of the incident which are the subject matters of the complaint and the first information report under investigation by the police which is relevant, and not the labels of a particular transgression of law affixed by the complainant*

in the complaint or in the first information report which, if it were not so, the provisions of Section 210 of Cr. P.C. can be evaded by a mere device of labelling the transaction with different offences.”

14. Reliance is placed on **Rajat Mittal v. State & Anr.**, 94 (2001) DLT 162, to submit that Section 210 is applicable when the complaint and investigation are on the same facts. It was held that offence under Section 138 NI Act and Section 420 IPC can be clubbed together. Reliance is also placed on the Delhi High Court judgment in **A.K. Jajodia v. State**, (Crl.Rev.P. 737/2007 decided on 27.05.2009), wherein, this Court has followed the view taken in **Sankaran Moitra v. Sadhna Das**, 2006 (4) SCC 584, and **Har Narain** (supra). Reliance was also placed on **Naresh Batra v. State & Ors.**, 2012 SCC OnLine P&H 10655 (Crl. Misc. M No. 18899/2015 decided by the Punjab & Haryana High Court on 29.05.2012), wherein the provisions of Section 210 Cr.P.C. are dealt with in light of the above cited judgments.

15. Learned senior counsel further submits that a bare look at both – the FIR and the criminal complaint shows the complete identity in the two cases. The complainant and accused persons are the same. The allegations in the FIR and the complaint case are the same. The identity of the witnesses and the statement of witnesses recorded under Sections 161 and 200 Cr.P.C. are the same. Moreover, the documents relied on in both cases are also same. Admittedly, both the alleged offences of extortion and defamation are part of same transaction. He submits that the *prima facie* finding of the Ld. ASJ that the nature of offence in the police case and the complaint case is

not congruent is erroneous, as the Trial Court records of the two cases were not before the Court, and the Court did not compare the relevant documents.

16. Reliance is placed on *Ushaben v. Kishorbhai Chunilal Talpada*, (2012) 6 SCC 353, to submit that if a police complaint contains allegations about commission of a cognizable offence (in this case it was under Section 498A IPC), apart from allegations about commission of an offence of which cognizance could be taken only at the instance of the aggrieved person (in this case the offence was under Section 494 IPC), the Court can take cognizance of such later offence even on the basis of a police report. Thus, the learned Magistrate while taking cognizance of the charge-sheet filed by the police in the FIR case, can take cognizance of the offences complained of in the private complaint filed by the complainant. It was held that where two offences are alleged, and one of them is non-cognizable, which cannot be segregated from the other – both being continuation of and manifestation of each other, the police can conduct the investigation and file police report for both the offences and the Magistrate is not barred from taking cognizance of the Police Report in respect of the non-cognizable offence.

17. Mr. Lekhi also submits that there is no issue of locus standi of the petitioner under Section 210 Cr.P.C. in the present case. He relies on the judgment in *Chandra Deo* (supra), which acknowledges that a prospective accused is not precluded from being present when an inquiry is held by a Magistrate. The only bar that is imposed is that the defence of the accused cannot be inquired into by the Magistrate. It is further submitted that the purpose of invoking Section 210 Cr PC is not to hold a ‘mini-trial’ but to present facts which obligate stay of proceedings, on an issue collateral to

merits, and not the merits of the complaint. He relies on ***K. Anbazhagan v. Superintendent of Police***, (2004) 3 SCC 767, to submit that the expression “*it is made to appear*” used in Section 210 Cr.P.C. encompasses within it the information furnished by an accused who has not yet been summoned. This right recognised by ***Chandra Deo*** (supra) and guaranteed by Article 21, i.e. ‘*procedure prescribed by law*’, also flows from the terms of Section 210 Cr.P.C. Reliance is also placed on ***Md. Shamim and Ors. v. State of Bihar and Ors.***, 2002 (4) PLJR 829, wherein it was held that the accused has locus for the limited purpose of bringing to the knowledge of the Magistrate the facts which would enable him to invoke his jurisdiction under Section 210 Cr.P.C. He submits that Section 210 Cr.P.C. is applicable at the stage of inquiry. In this regard, he relies on ***Hardeep Singh v. State of Punjab***, 2014 (3) SCC 92. Reliance is also placed on ***Tej Kishan Sadhu v. State and Anr.***, 201 (2013) DLT 359, for the same proposition.

Submissions of the petitioner in the Transfer Petition Tr.P.(Crl.) No.45/2004

18. Mr. Vijay Aggarwal, learned counsel for the petitioner Sudhir Chaudhary in the Transfer Petition submits that an order for transfer and clubbing of the two cases aforesaid would tend to the general convenience of the parties and witnesses, and is even otherwise expedient to meet the ends of justice and to avoid conflicting findings and decisions. He submits that the expression ‘cases’ used in Section 407 Cr.P.C., includes the cases pending at the stage of inquiry as well. Section 407 (1)(a) makes a reference to transfer of cases at the stage of ‘inquiry or trial’.

19. Under sub-clause (i) Section 407(1) the High Court can order that “any offence be inquired into or tried” by any Court not qualified under section 177 to 185 (inclusive), but otherwise competent in other respects to “inquire into or try” such offence. He submits that Section 184 Cr PC deals with the aspect of place of trial for offences, triable together. Section 184(a) provides that where –

“(a) the offences committed by any person are such that he may be charged with and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221,

the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences”.
(emphasis supplied)

20. He submits that Section 220 Cr.P.C. provides for trial for more than one offence. It, *inter alia*, provides that:

“220. Trial for more than one offence.

1. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

2.

3. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

4.

5. *Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).*

Illustrations ...” (emphasis supplied)

21. Thus, if more than one offence is committed by the same person in the series of acts so connected together as to form the same transaction, or if the acts alleged constitute an offence falling within two or more separate definitions of any law, the same ought to be inquired into by the same Court, in one trial, in terms of Section 184 read with Section 220.

22. Mr. Aggarwal submits that an “offence” *inter alia*, denotes a series of acts and omissions. Reliance is placed on ***Joseph v. Joseph***, 1982 Cri.L.J. 595 for this proposition.

23. On the aspect of applicability of Section 184 read with Section 220 Cr.P.C. to the inquiry stage, reliance is placed on ***Dashrath*** (supra), wherein it has been held that:

*“Having said that we must hasten to add, that in cases where the offence under Section 138 is out of the offences committed in a single transaction within the meaning of Section 220(1) Cr.P.C. then the offender may be charged with and tried **at one trial for every such offence and any such inquiry or trial may be conducted by any Court competent to enquire into or try any of the offences as provided by Section 184 of the Code.** So also, if an offence punishable under Section 138 of the Act is committed as a part of single transaction with the offence of cheating and dishonestly inducing delivery of property then in terms of Section 182(1) read with Sections 184 and 220 of the Cr.P.C. such offence may be tried either at the place where the inducement took place or where the cheque forming part of the same transaction was dishonored or at the place where the property which the person cheated was dishonestly induced to*

deliver or at the place where the accused received such property.” (emphasis supplied)

24. Mr. Aggarwal submits that a transfer can be sought of a matter pending even at the stage of inquiry, as the use of the expression ‘whenever’ used in Section 407(1) makes it clear that the powers under Section 407 Cr.P.C. can also be exercised at the stage of inquiry, and the same is not restricted in a narrow sense to a trial.

25. Mr. Aggarwal submits that the term ‘case’ used in Section 407 Cr.P.C. has to be given a wider meaning. Reliance is placed upon ***Ganesh Prasad Singh v. State of Bihar***, 2009 (3) PLJR 1034, wherein it was held that the word ‘case’ used in Section 407 has been used in reference to an ‘enquiry or trial’. Reliance is also placed upon ***Dharma Ram v. Ram Karan & State***, 1970 Cri.L.J, 984, wherein it was observed that the High Court under Section 407 can transfer cases at the stage of enquiry, or trial. Reliance is placed on ***Rahmatullah v. State of U.P. and Ors.***, 1994 (18) ACR 91, wherein it was observed that if the word ‘case’ is given a narrow interpretation, it may lead to injustice and hardship. It was further observed that the word ‘case’ includes variety of proceedings, including proceedings of a bail application. Reliance is also placed on ***Popular Muthiah v. State Represented by Inspector of Police***, (2006) 7 SCC 296, to submit that this Court has the jurisdiction, and has the inherent power, to do substantial justice and hence, there is no embargo on the power of this Court to transfer the matters to one Court. Mr. Aggarwal submits that since there is a single conspiracy alleged in both – the FIR case and the complaint case, there has to be a single adjudication, i.e. a single inquiry and trial. In this regard, he

places reliance on *A.E. Pinto v. CBI*, 98 (2002) DLT 438, *Adnan Bilal Mulla v. State of Maharashtra*, 2006 Cri.L.J. 564.

26. Mr. Aggarwal further submits that the charge-sheet in the police case has already been filed, and the matter is pending for further investigation. From the orders dated 30.07.2013 and 13.09.2013 passed in CC No. 81/02 of 2013, it is evident that the Trial Court has applied its judicial mind and ordered for further investigation in view of the material lacunae in the investigation. Therefore, the case is at the stage of ‘inquiry’, and pendency of further investigation does not change the character of the proceedings – from the stage of inquiry, back to the stage of investigation. Reliance is placed on *Babulal Yadav and Ors. v. State of Bihar*, 1980 PLJR 396, wherein it has been held that the proceedings before the Magistrate after the receipt of the charge-sheet and before taking cognizance is “inquiry”. He submits that in *Nawal Sahni v. State of Bihar*, 1989 Cri.L.J. 733, it has been observed that where charge-sheet has been submitted within the statutory period, without any formal orders for cognizance, ‘inquiry’ shall be deemed to have commenced with the filing of the charge-sheet. Mr. Aggarwal submits that in *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609, and *Devendra and Ors. v. State of U.P. and Anr.*, (2009) 7 SCC 495, it was observed that for taking cognizance, *sin qua non* is the application of mind by the Magistrate. Thus the Trial Court, upon filing of charge sheet applied its mind before passing the order dated 13.09.2013. Reliance is placed on *Suresh Kumar Bhikamchand Jain v. State of Maharashtra and Anr.*, (2013) 3 SCC 77, to submit investigation is concluded by the filling of the charge-sheet.

27. Mr. Aggarwal submits that the Supreme Court in **Hardeep Singh** (supra), held that after filing of the charge-sheet, the matter is at the stage of ‘inquiry’. The judgment of this Court in **Dr. Rajni Palriwala v. Dr. D. Mohan & Anr.**, 162 (2009) DLT 126, is also relied upon to submit that further investigation in the matter does not change the character of the proceedings from one under inquiry, to one under investigation.

28. On the aspect of the petitioner’s *locus standi* to file the Transfer Petition, Mr. Aggarwal submits that the words ‘*party interested*’, used in Section 407 (2) is wide enough to cover a prospective accused. The words used in Section 407 are “*whenever it is made to appear to the High Court*”, and sub-Section (2) provides that the High Court may act, *inter alia*, on the application of a ‘*party interested*’. The usage of these words makes the intention of the legislature evident, so as to give wide powers to the High Court to act under Section 407 Cr.P.C. Reliance is placed upon **K. Anbazhagan** (supra), wherein it was observed that the term “party interested” has to be given a wider meaning. If the legislature intended to narrow the scope of the said power, the words used would have been “*party to the proceedings*”. Reliance is placed on **State of Jharkhand & Anr. v. Govind Singh**, (2005) 10 SCC 437, wherein the Supreme Court has observed that where the words are clear, there is no obscurity or ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to innovate or to take upon itself the task of amending or altering the statutory provisions. A fine line between adjudication and legislation has to be observed. Reliance is also placed on **Swaran Singh & Ors. v. State of Punjab & Ors.**, (1994) 3 SCC 544, and **Dharma Ram** (supra), wherein it

was held that ‘*party interested*’ means a person who is directly interested in the outcome of the dispute. Thus, in the present case, the petitioner comes within the meaning of ‘*party interested*’, and has the *locus standi* to seek transfer.

29. Mr. Aggarwal submits that the petitioner is not seeking a right of audience before the learned Trial Court on the issue of summoning, by seeking transfer and consolidation of the two cases aforesaid. He places reliance on ***Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel & Ors.***, (2012) 10 SCC 517, to submit that the Supreme Court has recognized the right of the accused to be heard in revision proceedings under Section 401(2) Cr.P.C. preferred by the complainant, against the dismissal of the complaint even without issuance of process under Section 204 Cr.P.C. He submits that, similarly, the right of the petitioner as a “party interested” to seek transfer cannot be denied. In the above case, the Supreme Court observed:

“The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

30. Mr. Aggarwal further submits that Section 407 Cr.P.C. can be invoked even before issuance of process to the accused under Section 204 Cr. P.C. It is not that an accused has no standing before process is issued. If that were so, then even application under Section 437 Cr.P.C. would not be maintainable by him, until summoned. He submits that the Supreme Court in *Directorate of Enforcement v. Deepak Mahajan*, 1994 (3) SCC 440, has held that the word ‘*accused*’ used in Cr.P.C., at different places, has different meaning and the same cannot be given a single restrictive meaning.

Submissions of the respondent No.2 in CrI.M.C. 2565/2013

31. Mr. Sandeep Sethi, learned senior counsel appearing on behalf of respondent no. 2 submits that in the complaint case, the petitioner has not been summoned as yet. He submits that application under Section 210(1) Cr.P.C. is misconceived, as Section 210(1) Cr.P.C. applies only when the offence alleged in the complaint and the FIR are substantially the same. In other words, to attract Section 210(1) Cr.P.C., the essential ingredients of the offence under investigation in the FIR and under inquiry/trial in the complaint case should have the same subject matter. He submits that there are numerous differences in the FIR and the complaint case. The date of registration of FIR is 15.01.2013, whereas the complaint is of 05.11.2012. The offences alleged in the FIR are that of extortion, cheating and criminal conspiracy that have taken place on 13.09.2012, whereas the offences alleged in the complaint case are that of defamation, criminal intimidation and criminal conspiracy that have taken place from 07.09.2012 to 13.09.2012, 24.09.2012 to 26.09.2012 and 19.10.2012 to 25.10.2012. It is further submitted that there are four accused persons in the police case,

whereas in the complaint case, in addition to the said four accused persons, ten others have been accused. Therefore, the two matters are not congruent at all. He submits that the allegations leveled in the complaint are with respect to defamation only, and the facts dealing with extortion are only incidental. In support of the submission that for Section 210 Cr.P.C. to be invoked, the offences in both cases must be the same, reliance was placed on the following:

- i. *State of Bihar v. Murad Ali Khan*, 1988 (4) SCC 655;
- ii. *Ramji Shukla v. State of U.P.*, 2009 Cr.L.J. 3495;
- iii. *Peter Mathew v. Berry John & Anr.*, 2001 Cr.L.J. 4555;
- iv. *T.S. Sawhney v. State*, 1987 Cr.L.J. 1079;
- v. *Del Agha v. Rakesh Gupta*, 97 (2002) DLT 87, and;
- vi. *S. Khushboo v. Kanniammal and Anr.*, (2010) 5 SCC 600.

32. Furthermore, no cognizance of the charge-sheet has yet been taken by the learned Magistrate, and the FIR is under further investigation. The offence under inquiry in the complaint case is defamation on account of the telecasting of “operation Media ka Sauda”, which is not the subject matter of the investigation in the pending FIR/charge-sheet. What was being investigated by the police under the FIR are the acts of accused in extorting Rs. 100 crores in their meeting with officers of JSPL. He submits that the petitioner in the present case is a company, who is not even an accused in the said FIR or charge-sheet.

33. Mr. Sethi submitted that the police can neither investigate, nor have actually investigated into the offence of defamation, firstly because it is a

non-cognizable offence and, secondly, because of the bar contained under Section 199 Cr.P.C., which mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. In an FIR case, the final report/ charge-sheet will be a complaint by the police, and not a complaint by an aggrieved person. Mr. Sethi, thus, submits that Section 210 Cr PC cannot be invoked as the offences alleged in the complaint case cannot be investigated by the police.

34. Mr. Sethi also submitted that the petitioner had no *locus standi* to file an application under Section 210 Cr.P.C. in the first place, since they have not been summoned yet to participate in the proceedings. It is premature. No right of hearing inheres in an accused prior to the issuance of process under Section 204 Cr.P.C.. He has no right to interfere with the inquiry or investigation. It is further submitted that even if it was to be assumed that Section 210(1) Cr.P.C. may have applicability in the facts of the present case, even then there is no merit in the said application, as the FIR case is still at the stage of investigation and the learned Magistrate is yet to take cognizance on the police report. He submits that in chapter XVI, Section 210 Cr.P.C. is placed after Section 204 Cr.P.C. Thus, Section 210 Cr. P.C. cannot be invoked at the stage prior to issuance of process under Section 204 Cr.P.C. Reliance was placed on *Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1, in which the Supreme Court while giving due weightage to the placement of the sections/provisions in the Statute, held as under:

“...a significant change that took place by the way of the 1898 Code was with respect to the placement of Section 154 i.e. the provision imposing requirement of recording the first information regarding commission of a cognizable offence in

the special book prior to Section 156 i.e. the provision empowering the police officer to investigate a cognizable offence. As such, the objective of such placement of provisions was clear which was to ensure that the recording of the first information should be the starting point of any investigation by the police.” (emphasis supplied)

35. Reliance is also placed on the following judgments:

- i. *Nagawwa* (supra);
- ii. *Smt. Laxmi Kishore Tonsekar v. State of Maharashtra*, 1993 Cr.L.J. 2772, and;
- iii. *Chitra Narain v. NDTV*, 109 (2004) DLT 394.

36. Mr. Sethi further submitted that the recording of pre-summoning evidence of the complainant and its witnesses under Section 200 Cr.P.C. is not “inquiry” as contemplated under Section 210(1) Cr.P.C. The four phrases “investigation”, “inquiry”, “trial” and “other proceedings” have been used distinctively in various Sections of Cr.P.C. such as Sections 91 & 267 Cr.P.C., and all have different and distinct meanings. Plain reading of Section 210 Cr.P.C. makes it clear that it can be invoked only during “inquiry” or “trial”. Reliance is placed on *Harshad Mehta v. CBI*, 1993 JCC 118 to submit that the recording of pre-summoning evidence of the complainant and his witness under Section 200 Cr.P.C. is not an “inquiry”.

37. Learned senior counsel submits that the present petition is not maintainable as it is nothing but a second revision petition under the grab of a petition under Section 482 Cr.P.C., and more so against an interlocutory order, which is not permissible under Section 397 Cr.P.C. The Supreme

Court in *Amar Nath v. State of Haryana*, (1977) 4 SCC 137, explained the meaning of the term interlocutory order as under:

“... .. It seems to us that the term “interlocutory order” in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties... ..”

38. The Courts below have not decided any important right or liability of the parties by the orders assailed herein. In fact, the application filed by the petitioner has been rejected primarily on the ground of being premature. Thus, the right of the petitioner to move the same, if and when the occasion arises, is preserved.

39. Mr. Sethi submits that the test applicable- to decide the nature of the order, i.e. whether it is final or interlocutory, is the likely right of the accused, which the order will affect. Therefore, there must first exist a right in favor of the accused before he can claim that the passing of an order has prejudiced him, so as to bring it within the definition of a final order. In the present case, the petitioner has no right to file an application under Section 210 Cr.P.C. because his right to be heard on any point will only arise once he has been summoned.

40. Mr. Sethi also submitted that the conduct of petitioner clearly demonstrates a *malafide* intent. The petitioner is trying to stall and delay the proceedings before the Ld. Magistrate by moving misconceived applications. The same is evident by the fact that after the first application under Section 210 Cr.P.C. was dismissed by the impugned orders, the

petitioner thereafter waited till the next date of hearing before the Trial Court, and then filed another application under Section 210 Cr.P.C. Thereafter, on the next date of hearing, the petitioner filed an application under Section 340 Cr.P.C. against the complainant. He further submitted that both the said applications are still pending before the Trial Court, and the petitioner has intentionally suppressed the said facts from this Court. The petitioner has also falsely stated that the Trial Court on 16.01.2013, despite being informed of the order dated 14.01.2013 passed by the Ld. ACMM, did not abide by it. The statement is a patent misrepresentation of what transpired on 16.01.2013 before the Trial Court. Order dated 16.01.2013 clearly shows that the counsel for the petitioner did not appear on time. The Trial Court – conscious of the existence of the application under Section 210 Cr.P.C., categorically records that no prejudice will be caused to the petitioner if the pre-summoning evidence is recorded. The Trial Court was also aware of the FIR, since the same was exhibited by the complainant. The suppression, concealment and misrepresentation of the aforesaid material facts and documents from this Court itself disentitles the petitioner to seek any indulgence of this Court under Section 482 Cr.P.C. Reliance was also placed on the following:

- i. ***General Manager, Haryana Roadways v. Jai Bhagwan***, (2008) 4 SCC 127;
- ii. ***Arunima Baruah v. Union of India***, (2007) 6 SCC 120;
- iii. ***Bhaurao Dagda Paralkar v. State of Maharashtra***, (2005) 7 SCC 605;
- iv. ***Gowrishankar v. Joshi Amba Shankar Family Trust***, (1996) 3 SCC 310;

- v. *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar*, (2004) 7 SCC 166;
- vi. *Meghmala v. G. Narasimha Reddy*, (2010) 8 SCC 383;
- vii. *M/s V.L.S. Finance Ltd. v. S.P. Gupta & Anr.*, (2016) 3 SCC 736, and;
- viii. *Oswal Fats and Oil Mills v. Addl. Commissioner (Admin), Bareilly Div., Bareilly & Ors.*, (2010) 4 SCC 728.

Submissions of respondent No.2 in Tr.P.(Crl.) No.45/2014

41. Mr. Ravi Gupta, learned senior counsel for the respondent no. 2 submits that the transfer petition is not maintainable and is liable to be dismissed since the orders of the Ld. M.M. and A.S.J. are well reasoned and cannot be faulted. The petitioner's apprehensions were found to be premature by the courts below. He was found to be interfering at a stage when he was not permitted to participate. The Ld. M.M. as well as the Ld. ASJ held that the factual matrix in the Complaint case and the FIR is very different. The petitioner has to show the prejudice that would be suffered if both matters proceed separately.

42. He submits that prayer of the petitioner for transfer of aforesaid two cases for joint trial to one Court is misconceived as there are no "two cases" pending. A "case" is said to be instituted in a Court only when the Court takes cognizance of the offence. It is admitted case of the petitioner that, till date, no cognizance has been taken in the FIR case. Hence, there is no second case which can be transferred by this Court. Furthermore, the term "case" used in Section 407 Cr.P.C. does not include investigation in FIR

under Section 156(3) Cr.P.C. In any case, there can be no transfer of the FIR. Therefore, prayer of the petitioner is bad in law. Reliance was placed on:

- i. ***Jamuna Singh & Ors. v. Bhadai Sah***, AIR 1964 SC 1541
- ii. ***Nirmaljit Singh Hoon v. State of West Bengal***, (1973) 3 SCC 753
- iii. ***Major S.J. Dubey v. State of Punjab & Ors.***, 1986 (Supp) SCC 675
- iv. ***Ganesh Prasad*** (supra)

43. He further submits that the present petition under Section 407 Cr.P.C. is filed on frivolous grounds and is misconceived, as Section 407 Cr.P.C. is applicable only when the conditions mentioned in Section 407(1) (a), (b) or (c) Cr.P.C. are satisfied, and reliance on the second part of clause (1) is misplaced. Assuming that the present petition is maintainable, a perusal of the grounds raised by the petitioner show that it is not the petitioner's case that a fair and impartial '*inquiry or trial*' is not being held in the complaint case, since FIR is neither under inquiry nor trial. Furthermore, the petitioner has not been able to demonstrate as to how it would be "*expedient in the interest of justice*" if the present petition is allowed, particularly at this stage. His apprehension of multiplicity of proceedings; of the chance of there being conflicting decisions; of disclosure of his defence and possibility of him being summoned twice, are highly pre-mature as he has not yet been summoned. Reliance was placed on ***Himmat Singh v. State of Punjab***, 2012 SCC OnLine P&H 82 (Crl.Misc. M. No. 45/2012 decided by Punjab & Haryana High Court on 03.01.2012). It is submitted that none of the circumstances, as provided under Section 407(1) Cr.P.C. exist in the present case. Rather, proviso to Section 407(2) Cr.P.C. creates a specific embargo

on the power of the High Court to transfer a criminal case from one criminal court to another criminal court in the same Sessions Division, till the time an application for such transfer has been made to the Sessions Court and rejected.

44. Mr. Gupta submits that the petitioner has no locus standi in the matter before the issuance of process under Section 204 Cr.P.C. In this regard, he places reliance on *Dr. S.S. Khanna v. Chief Secretary, Patna & Anr.*, (1983) 3 SCC 42, *Union of India & Anr. v. W.N. Chadha*, 1993 Supp (4) SCC 260, *Markandey Singh Kushawaha & Ors. v. State of U.P. & Anr.*, 1994 SCC online All 413, *Shri Birendra Singh v. State of Jharkhand & Ors.*, 2003 SCC Online Jhar 593, *Prabha Mathur & Anr. v. Pramod Aggarwal & Ors.*, (2008) 9 SCC 469. He further submits that the current transfer petition and the previous applications are nothing but tactics of the petitioner to delay the proceedings in the Trial Court. There are two concurrent findings of the courts below. The courts under Section 482 Cr.P.C. should not interfere unless the finding is perverse.

Submissions in rejoinder in the Crl.M.C. No.2565/2013

45. In the rejoinder, learned counsel for the petitioner submits that the reliance placed upon *Murad Ali* (supra) is wholly misplaced. The learned counsel submits that the relief sought in this case was for quashing of proceeding. However, the petitioner is not seeking the quashing of the proceedings on the ground that section 210 of the Cr.P.C. applies. The petitioner in its application under section 210 Cr.P.C. had only invoked the procedure prescribed in that section. *Murad Ali* (supra), dealt with offences

with different ingredients under different enactments. It was for this reason that the Court rejected the plea of double jeopardy. It is in the aforesaid context that the Supreme Court held that cognizance could be taken only in the way prescribed, i.e. on the complaint of the specified statutory functionary. In the instant case, it has been specifically pleaded and argued that the acts and omissions constituting the offences alleged in the complaint case, and the FIR/charge-sheet are the same. It was for this reason that the Supreme Court in ***Ushaben*** (supra) held that where, during the subsistence of a marriage, a wife alleges offence under Section 498-A, contracting of another marriage by the husband (which will attract Section 494 of the I.P.C.) cannot be segregated from Section 498-A of the IPC, and the Magistrate is not barred from taking cognizance on the Police Report which also discloses the commission of offence under Section 494 I.P.C.

46. It is further submitted that the reliance placed upon ***Ramji Shukla*** (supra), is wholly irrelevant. The FIR in the said case was registered under Section 279, 304 A and 427 of the I.P.C. while the complaint alleged murder, and the court rightly held that the said “*charge of murder is an independent charge causing death but not by rash and negligent act*”. The judgment in the ***T.S. Sawhney*** (supra), in fact, supports the case of the Petitioner. The court held that section 210 of the Cr.P.C. will be attracted when “*the facts constituting the offence or offences in the police case must include the facts constituting the offence/offences in the complaint case*”. This is precisely the case of the Petitioner.

47. The judgment in ***Del Agha*** (supra), is distinguishable because ingredients of the Sections 132 and 135 of the Customs Act are different

from Section 420 and 13(1)(d) of the Prevention of Corruption Act, 1988. The former are statutory offences, and triable by a Special Judge only under the Act by which they are defined. The case has got no similarity whatsoever with the case at hand.

48. The judgment in *Peter Matthew* (supra) is contrary to *Rajat Mittal* (supra). This Court in *Rajat Mittal* (supra) has held that complaint under Section 138 of the Negotiable Instruments Act, 1881 can be clubbed with the case of Section 420 IPC. Reliance is placed on *Dashrath* (supra) for the same purpose.

49. The judgment of *Sankaran Moitra* (supra) again supports the case of the petitioners. The ingredients of Section 210 are clearly attracted. Reliance upon the judgment of *Nagawaa* (supra) is also misplaced. Similarly *Smt. Laxmi Kishore* (supra) does not help the case of the Respondent, since the court held that Section 202 Cr.P.C. is meant to prevent harassment of the accused.

50. Insofar as the nature of the order being “interlocutory” is concerned, the argument is academic, as the same was not held to be so by the Ld. ASJ in the impugned orders. The learned Additional Sessions Judge entertained the revision petition, and there was no challenge to the order of the Ld. ASJ by the Respondent on the ground that the revision was barred under Section 397(2) of the Cr.P.C.

51. It is argued that the respondent has been making contradictory statements, as would appear from the status report dated 24.03.2014 filed by State in the CrI.M.C. No. 643/2014. No evidence has been found against

Puneet Goenka by the police. Stay of, or transfer of the proceedings has not been shown to be prejudicial to the respondent. Moreover, cases arising out of same transaction should be placed before same court, so that the whole facts of both cases are before the court. The transfer would also avoid multiplicity of proceeding and conflicting decisions. Calling same records to different courts would delay the matters, hence, prejudice the right to speedy adjudication provided under Article 21 of the Constitution of India.

52. Mr. Lekhi further submitted that *Banwarilal* (supra), *Swamirathnam* (supra), *Purushottamdas* (supra) and *Babu Lal* (supra) have not been distinguished. Furthermore, the FIR clearly states about the alleged extortion and defamation. The facts with respect to defamation are not merely background facts in the FIR/ charge-sheet. In *Popular Muthiah* (supra), it has been held that the High Court, under its inherent power to do substantial justice, may transfer the matters to one court. Reliance is placed on *State of M.P. v. Suresh Kaushal and Anr.*, (2003) 11 SCC 126.

Discussion

53. I have carefully considered the submissions of learned counsel for either side and perused the record laid in the case.

54. Section 210 Cr.P.C. reads as follows:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or

trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.” (emphasis supplied)

55. From the reading of Section 210 Cr.P.C., it is evident that the said provision is applicable to proceedings initiated on a private complaint, i.e., a complaint case. The second aspect which emerges is that Section 210 Cr.P.C. can come into play when the stage of the proceedings before the learned Magistrate is, ‘inquiry’ or ‘trial’. In the facts of the present case, the application under Section 210 Cr.P.C. had been moved in the complaint case. Thus, the first ingredient – that an application under Section 210 Cr.P.C. would lie in a complaint case, stood satisfied. It, therefore, needs examination whether the stage of, ‘inquiry’ or ‘trial’ had commenced in the complaint case when Section 210 Cr.P.C. was sought to be invoked by Zee News Ltd. The definition of ‘inquiry’ contained in Section 2(g) of the Cr.P.C., which means, ‘every inquiry, other than a trial, conducted under

this Code by a Magistrate or Court’. Thus, an “inquiry” is different from a “trial” and it is conducted by the Magistrate or Court (and not by the police or any other authority legally entrusted with investigation). Sections 200, 202, 203 and 204 of Cr.P.C., insofar as they are relevant, may now be taken note of, which read as under:

“200. Examination of complainant - A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that

... ..

(emphasis supplied)

202. Postponement of issue of process. - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that

... ..

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that

... ..

(emphasis supplied)

203. Dismissal of complaint - If, after considering the statements on oath (if any) of the complainant and of the wit

nesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. (emphasis supplied)

204. Issue of process – (1) *If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*

- (a) *a summons-case, he shall issue his summons for the attendance of the accused, or*
- (b) *... ..*
- (2) *... ..*
- (3) *In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.*
- (4) *... ..*
- (5) *... ..”*

56. The Scheme envisaged by Section 200 Cr.P.C. read with Section 202(1) and 202 (2) Cr.P.C. appears to be that when a private complaint i.e. a complaint case is laid before the Magistrate, he may take cognizance of the same and if he does so, the Magistrate would take the evidence of the complainant and the witnesses present. After recording the statement of the complainant and his witnesses on oath, he may either straightway issue process under Section 204 Cr.P.C. or, he may postpone the issue of process against the accused and inquire into the case himself, or direct an investigation to be made by police officer, or by such other person as he deems fit for the purpose of deciding, whether or not, there is sufficient

ground for proceeding. The act of the Magistrate of his examining the complainant and the witnesses on oath would initiate and constitute an, ‘inquiry’.

57. The Supreme Court in *Nirmaljit Singh Hoon* (supra) analyzed the scheme provided for in the Cr.P.C. in relation to the manner in which a Magistrate would take cognizance of a private complaint, or a police report, or on information otherwise received and the manner in which he would thereafter proceeded in the matter. The Supreme Court in paragraph 22 of this decision, *inter alia*, observed as follows:

“22. Under Section 190 of the Code of Criminal Procedure, a Magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can under Section 200 take cognizance of the offence made out therein and has then to examine the complaint and the witnesses. The object of such examination is to ascertain whether there is a *prima facie* case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. Under Section 202, a Magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a Magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under Section 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under Section 202, there is in his judgment “no sufficient ground for proceeding”. The words “sufficient ground” used also in Section 209 have been construed to mean the satisfaction that a *prima facie* case is made out against the

person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. (See R.C. Ruia v. State of Bombay [AIR 1958 SC 97 : 1958 SCR 618 : 1958 SCJ 266] .) In Vadilal Panchal v. Ghadigaonker [AIR 1960 SC 1113 : (1961) 1 SCR 1 : (1961) 2 SCJ 39 : 1960 Cri LJ 1499] this Court considered the scheme of Sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint.”

58. The Karnataka High Court in *Noorunnisa Begum v. Gopal and Another*, ILR 2013 Karnataka 3717, considered the aforesaid issued and, *inter alia*, observed as follows:

“15. In the case of *Vadilal Panchal vs. Dattatraya*, AIR 1960 SC 1113, it is indicated that procedure prior to an order of dismissal under Section 203 of Cr.P.C., is enquiry. Even otherwise, there cannot be any dispute that at the stage of Section 200 Cr.P.C., the Court would be applying its mind by considering the matter based on the material available before it to find out as to whether there are sufficient grounds to proceed against the accused or not. At that stage, the materials available before the Court would be the complaint, sworn statement of the complainant and the documents, if any furnished by the complainant. **The Court would apply its mind to these materials judiciously to decide as to whether further**

proceedings would be taken or to dismiss the complaint. All these proceedings prior to issuance of process in our considered opinion would certainly qualify to be inquiry as defined under Section 2(g) of the Cr.P.C. Under Section 2(g) of Cr.P.C., 'inquiry' means every inquiry, other than a trial, conducted under the Cr.P.C., by a Magistrate or Court. Up to the stage of 204 Cr.P.C., the trial will not commence. Therefore all the proceedings up to the stage of Section 204 Cr.P.C., would either fall under the definition of "enquiry" or definition of "other proceedings" as mentioned in Section 145 of the N.I. Act. Even while dismissing the complaint, the Magistrate would judiciously consider the material placed before him and will come to the conclusion. Thus it is clear that only the material collected during the course of inquiry would be looked into by the Magistrate while issuing the process or while dismissing the complaint. Therefore it cannot be said that the procedure relating to receiving of the complaint or recording of the sworn statement as the case may be would not come within the ambit of "inquiry", cannot be accepted." (emphasis supplied)

59. From the aforesaid, it is clear to me that the stage at which the application under Section 210 Cr.P.C. was moved by the petitioner Zee News Ltd. was the stage of 'inquiry' in the complaint case. The learned Magistrate had taken cognizance and had initiated the inquiry by recording the statements of the complainant and his witnesses. The decisions relied upon by Mr. Agarwal on the said aspect, namely, **Babulal Yadav** (supra), **Hardeep Singh** (supra), **Nawal Sahni** (supra) and **Suresh Kumar** (supra) are not relevant, since they do not deal with the cases of a private complaint i.e. a complaint case, and they all relate to a police case. These judgments state that the inquiry commences after the charge-sheet i.e. a final report under Section 173 Cr.P.C. is filed. The decision in **Harshad Mehta** (supra), in my view, is of no avail since it does not deal with the meaning of the

expressions, ‘inquiry’ or ‘trial’ as used in Section 210 Cr.P.C. The said decision deals with the expressions used in Section 267 Cr.P.C., namely, ‘inquiry’, ‘trial’ or ‘other proceedings’ under this Code. In any event, since I am of the view that the proceedings in the complaint case were at the stage of ‘inquiry’, there is no need to delve into the other decisions relied upon by Mr. Lekhi or Mr. Agarwal any further.

60. Reliance placed by the petitioner on ***Dr. Rajni Palriwala*** (supra) appears to be completely misplaced. That was a decision rendered in a petition under Section 482 Cr PC to assail the order passed by the learned MM, by which the learned MM after directing investigation by the police and receiving the report - which stated that no cognizable offence is made out, ignored the said report by permitting withdrawal of the application under Section 156(3), and proceeded to put up the case for the complainants evidence. This Court held that the MM was bound to discuss the police report and come to a definite conclusion that it was not acceptable and thereafter proceed in the matter. The said decision has no application or relevance in the present case.

61. The next issue that requires consideration is whether the petitioner Zee News Ltd., had the *locus standi* to file the application under Section 210 Cr.P.C. before the learned Magistrate in the complaint case, or not. This issue arises in the context that, according to the respondents, the petitioner Zee News Ltd. not having been summoned in the complaint case, has no right of audience before the learned Magistrate. On this aspect, heavy reliance has been placed by the respondent on the judgment of the Supreme Court in ***Chandra Deo*** (supra). ***Chandra Deo*** (supra) was a case where,

even before being summoned by issue of process under Section 204 Cr.P.C., the accused sought to and was permitted to inter-meddle with the proceedings which were at the pre-summoning stage. At the behest of the prospective accused (who were not even summoned), the learned Magistrate posed questions to the complainant/witnesses examined at the stage of inquiry under Sections 200 and 202 Cr.P.C. The learned Magistrate also examined the evidence of other persons at the instance of the prospective accused. The learned Magistrate, on the basis of the examination of witnesses undertaken with the interference/participation of the prospective accused, dismissed the complaint qua some of the prospective accused. In this background, the Supreme Court in *Chandra Deo* (supra), *inter alia*, observed:

“5. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under s. 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an

offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.” (emphasis supplied)

62. Reliance on *Chandra Deo* (supra) has been countered by Mr. Lekhi. He submits that even in *Chandra Deo* (supra), the Supreme Court has observed that the accused person is not precluded from being present when an inquiry is held by a Magistrate. He submits that the only bar imposed is that the accused cannot participate in the inquiry proceedings and the defence of the accused cannot be inquired into at the pre-summoning stage. He submits that in the present case, the petitioner was not seeking to intervene in the proceedings on merits at the pre-summoning stage. Section 210 Cr.P.C. does not limit as to who may bring it to the notice of the learned Magistrate (dealing with the complaint case) the relevant facts, so as to make it “*appear to the Magistrate*” that an investigation by the police is in progress in relation to the offence, i.e. in relation to the same acts and omissions which are the subject matter of the inquiry or trial held by him.

63. The respondents have placed reliance on *Lalita Kumari* (supra), to submit that the placement of Sections in the Cr.P.C. is of great relevance. Section 210 is placed after Section 204 Cr.P.C. This suggests that the former cannot be invoked prior to the latter one. The respondents have also relied upon *Smt. Laxmi Kishore* (supra) and *Nagawwa* (supra). The Supreme Court in *Nagawwa* (supra), while considering the observations made in *Chandra Deo* (supra) and *Vadilal Panchal v. Dattatrya Dulaji Ghadigaonker and Anr.*, [1961] 1 SCR 1, held as follows:

“4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Sections 202 of the Code of Criminal Procedure is extremely limited—limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint: (i) on the materials placed by the complaint before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. In fact it is well settled that in proceedings under Sections 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

6. At any rate, at the stage of Sections 202 or Sections 204 of the CrPC as the accused had no locus standi the Magistrate had absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused who could be present only to watch the proceedings and not to participate in them. Indeed if the documents or the evidence produced by the accused is allowed to be taken by the Magistrate then an inquiry under Sections 202 would have to be converted into a full-dress trial defeating the very object for which this section has been engrafted.” (Emphasis Supplied)

64. Reliance is also placed on **Chitra Narain** (supra), wherein the following was observed:

“16. As is apparent, there is no conflict in the aforesaid judgments. Ratio of these judgments lays down the following--

(i) Section 202, CrPC does not require any adjudication to be made about the guilt or otherwise of the person against whom complaint is made.

(ii) Section 202, CrPC does not bar the presence of any person including a person against whom complaint has been made either in person or through Counsel or his agent.

(iii) No person has a right to participate in the proceedings nor has the Magistrate power to allow him to do so as unless a person becomes accused after process is issued against him, his presence is like any member of public.

(iv) No person unless summoned as accused has a right to either produce any evidence oral or documentary nor has a right to cross-examine the witness of the complainant.

(v) Even the Magistrate has no jurisdiction to put any question to the witnesses of the complainant at the instance of such a person or a person named as accused.

(vi) Participation of a person named as accused in the proceedings is like a member of the public and not as an accused through legally such a person cannot be called upon to participate in the proceedings.

17. In nutshell, the legal position is that an inquiry under Section 202 is not in the nature of a trial for there can be in law only one trial in respect of any offence and that trial can commence only after process is issued against the accused as prior to this stage, said proceedings are not strictly proceedings between the complainant and the accused. A person against whom a complaint is filed does not become an accused until Court decides to issue process against him. Even if he participates in the proceedings under Section 202 he does so not as an accused but as a member of the public. The object of the inquiry under Section 202 is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is filed. Strictly speaking such a person cannot even be legally called to participate in the proceedings under Section 202.” (Emphasis Supplied)

65. As noticed hereinabove, ***Chandra Deo*** (supra) itself observes that it is open to the prospective accused to remain present when the inquiry is underway before the Magistrate at the pre-summoning stage. He certainly has, *‘no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so’*, as observed by the Supreme Court in ***Chandra Deo*** (supra). Whatever defence the accused may have can only be inquired into at the trial. An accused has no right to intervene during the inquiry, as that would frustrate its very object.

66. However, when any person, be it the complainant, or the police, or the prospective accused, moves an application under Section 210 Cr.P.C, can it be said that he is seeking to interfere with or participate in the “inquiry”?

67. The “inquiry” conducted by the Magistrate is to ascertain the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. However, when Section 210 Cr.P.C. is invoked before the Magistrate inquiring into a complaint case, the person who lays the information before the Magistrate with regard to the pendency of an investigation by the police, *‘in relation to the offence which is the subject-matter of the inquiry or trial held by him’*, does not seek to delve into the question as to whether, or not, *‘there is no sufficient ground for proceeding with the complaint’*. (See Section 203 Cr.P.C.). Thus, the person who is instrumental in making it appear to the Magistrate that an investigation is pending in relation to the offence which is pending at the stage of inquiry or trial before him, does not touch upon any aspect which the Magistrate would deal with in the course of his inquiry or trial.

68. Section 210 Cr.P.C. provides that when, in a complaint case, ‘*it is made to appear to the Magistrate.....*’. It does not define, specify or limit as to who, or in what manner, makes it appear to the Magistrate during the course of inquiry or trial being held by him on a complaint case, that an investigation by the police is in progress in relation to the same offence. Therefore, on a plain reading of Section 210, no embargo can be read into the right of a prospective accused to invoke Section 210 Cr.P.C. It would be rather strange that, while others may lay information relevant to attract Section 210 Cr PC before the Magistrate, the prospective accused is barred from doing so. The only bar against the prospective accused is a bar against his delving into the merits of the complaint itself. The accused cannot, at the pre-summoning stage, try to pick holes in the complainant’s case, or bring to the notice of the Magistrate his own defence.

69. The observations in *Nagawwa* (supra) itself show that the scope of the inquiry that the Magistrate undertakes is limited to the ascertaining of truth or falsehood of the allegations made in the complaint on the basis of the material placed by the complainant before the Court, the limited purpose is to find out whether a *prima facie* case for issuance of process is made out for deciding the said question, purely from the point of view of the complainant and without, at all, adverting to the defence that the accused may have. However, the scope of examination that the Magistrate would undertake, if Section 210 Cr.P.C. is invoked, when he is conducting an inquiry or trial in a complaint case, is completely *dehors* the merits of the complaint or the defence that the accused may have. A bare reading of Section 210 Cr.P.C. shows that it has absolutely nothing to do with the merit or demerit of the

case of the complainant, or the defence of the accused, and that is not an aspect which the Magistrate is required to touch upon while considering the aspect of Section 210 Cr.P.C.

70. When, in *Chandra Deo* (supra), *Chitra Narain* (supra) etc., the Courts observed that, no prospective accused has a right to participate in the proceedings, nor has the Magistrate power to allow him to do so unless he becomes an accused after process is issued against him, and that his presence at the pre-summoning stage is like any member of public, to my mind, the Courts had in mind the “inquiry” proceedings i.e. the proceedings underway before the Magistrate to decide whether, or not, to issue process under Section 204 Cr.P.C. Section 210 Cr.P.C. has absolutely no bearing on the said aspect i.e. whether, or not, process should be issued to the prospective accused.

71. It is well settled that the decisions of the courts should be read in the context in which they are rendered. In *Bank of India & Anr. v. K. Mohandas & Ors.*, (2009) 5 SCC 313, the Supreme Court observed:

54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in Quinn v. Leathem [(1901) 1 AC 495 (HL)], is worth recapitulating first: (AC p. 506)

“... before discussing ... Allen v. Flood [1898 AC 1 : (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed

and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

This Court has in long line of cases followed the aforesaid statement of law.

55. *In State of Orissa v. Sudhansu Sekhar Misra [AIR 1968 SC 647] it was observed: (AIR p. 651, para 13)*

"13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. *In the words of Hidayatullah, J.: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)*

"19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. *It was highlighted by this Court in Ambica Quarry Works v. State of Gujarat[(1987) 1 SCC 213] : (SCC p. 221, para 18)*

"18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. *In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision”.*

72. All the aforesaid decisions rendered by the courts, and relied upon by the respondents to oppose a right of the petitioner Zee News Ltd. to invoke Section 210 Cr.P.C., are decisions rendered in situations where the accused either sought to, or was permitted to participate in the inquiry proceedings on merits i.e. when the Magistrate was considering the issue whether or not a *prima facie* case is made out for issuance of process under Section 204 Cr.P.C. None of these decisions deals with the situation where a prospective accused sought to invoke Section 210 Cr.P.C. during the pendency of an inquiry, in a complaint case. Thus, the aforesaid decisions cannot be pressed into service by the respondents.

73. A bare perusal of Section 210 Cr.P.C. would show that the purpose of the said provision is only to ensure streamlining of the justice dispensation system when there are more than one proceeding, namely, a private complaint i.e. a complaint case and one arising out of a police case in relation to the same offence. The expression “offence” has been explained and interpreted broadly in *Har Narain* (supra) and *Namathoti* (supra) and *Joseph* (supra). In *Har Narain* (supra), this Court observed:

“... .. As long as the facts under investigation by the police include the facts mentioned in the complaint case, then it will make no difference if the police come to the conclusion that offences not mentioned in the complaint have been committed by the accused.”

74. The purpose of Section 210 Cr.P.C. has been commented upon by the Supreme Court in ***Sankaran Moitra*** (supra). The said decision has been taken note of by the High Court of Punjab & Haryana in ***Naresh Batra*** (supra). The observations made in ***Naresh Batra*** (supra) in relation to the judgment of the Supreme Court in ***Sankaran Moitra*** (supra), *inter alia*, reads as follows:

“.....the Hon’ble Supreme Court has observed that this Section is intended to ensure that the private complaints do not interfere with the course of justice. It is meant to prevent harassment to the accused twice. This is also to obliterate anomalies, which might arise from taking cognizance of the same offence more than once. It is further noted that this Section can be invoked, when the following conditions are satisfied i.e. :-

- (i) there must be a complaint pending for enquiry or trial.*
- (ii) investigation by police must be in progress in relation o same offence;*
- (iii) a report must have been made by the police officer under Section 173;*
- (iv) Magistrate must have taken cognizance of an offence against a person who is accused in the complaint case.” (emphasis supplied)*

75. I may also refer to the judgment of this Court in ***T.S. Sawhney*** (supra) in relation to Section 210 Cr.P.C. This Court observed as follows:

“18. This section is new and has been enacted to secure that private complaints do not interfere with the course of justice. The object of including these provisions has been stated by the joint committee as follows :- "If has been brought to the notice of the committee that sometimes when a serious case is under investigation by the police, some of the persons concerned file a complaint and quickly get an order of acquittal either by

collusion or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the committee has provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such report is received, the Magistrate would be free to dispose of the complaint case.

*19. If on a private complaint the Magistrate has taken cognizance of an offence and during the course of trial or inquiry in that case he comes to know that police investigation in relation to that offence is in progress, he is required under Clause (1) to stay the proceedings in the complaint case and call for police report. This is a preventive measure. **It is to avoid as far as possible taking cognizance of the offence again to avoid separate trial for the same offence.** Provisions under Clause (2) provide for the trial of the complaint case and the police case together if cognizance of offence is taken on police report as well. **The purpose is to avoid the anomalies arising from taking cognizance of the same offence more than once.***

20. The conditions for clubbing together the two cases - One based on private complaint and the other on police report, are (a) there must be a case instituted otherwise than on police report pending inquiry or trial; (b) there must be a report made by investigation police officer under S. 173, Cr.P.C. and (c) the Magistrate on such report has taken cognizance of any offence against any person who is an accused in the complaint case.” (emphasis supplied)

76. If the aforesaid objective of Section 210 Cr.P.C. is kept in view, it cannot be said that a prospective accused in a complaint case is precluded

even from bringing to the notice of the Magistrate dealing with the complaint case, the relevant information about the progress of an investigation in a police case in relation to the offence (which has been interpreted broadly), which is the subject matter of inquiry or trial before the Magistrate dealing with a complaint case. By doing so, the prospective accused cannot be said to be interfering in the “inquiry” underway under Section 200 read with Section 202 Cr.P.C. before the Magistrate dealing with the complaint case. A prospective accused is certainly interested in ensuring that his conduct is not called in question in two separate proceedings, namely, in a private complaint case as also in a police case. A prospective accused, in a complaint case, is entitled to take steps so as to avoid the anomalies arising from taking cognizance of the same offence more than once.

77. I may also observe that the Patna High Court in ***Md. Shamim*** (supra) speaking through Shiva Kirti Singh, J., (as His Lordship then was), while dealing with a similar argument - that the accused had no *locus standi* to invoke Section 210 Cr.P.C. as cognizance had not been taken by the court i.e. they had not even been summoned, observed as follows:

“4. The materials on record which have not been controverted by any of the parties support the contention that a Police Case is pending regarding the same allegation which are subject matter of the present complaint case. In such circumstances, learned Magistrate was required to follow the procedure laid down under Section 210 of the Code of Criminal Procedure and accordingly, stay the proceedings of enquiry or trial in the complaint case and should have proceeded further only after calling for a report on the matter from the police officer conducting the investigation. Obviously, such a course

as required by law has not been adopted by the Magistrate because the complainant concealed the relevant facts in the complaint petition. In such circumstances, if the contention of the petitioners is correct that they wanted to bring the relevant facts to the notice of the learned Magistrate then the learned Magistrate should have taken note of such limited submission in the interest of justice because such a submission of relevant facts related to an important matter relating to manner of exercise of jurisdiction by the Magistrate. Otherwise also where certain relevant facts are brought to the notice of a court which can cure the ill effects of suppression of vital facts by one of the parties then the court concerned will always have jurisdiction to examine such facts and prevent play of any kind of fraud upon the court.” (emphasis supplied)

78. The decisions relied upon by Mr. Gupta in *Dr. S.S. Khanna* (supra); *W.N. Chadha* (supra); *Markandey Singh Kushawaha* (supra); *Shri Birendra Singh* (supra); *Prabha Mathur* (supra) have no application in the facts of the present case. All the aforesaid decisions, primarily, follow *Chandra Deo* (supra) and none of them deal with the right of a prospective accused to move an application under Section 210 Cr.P.C. before his pre-summoning.

79. The submission of Mr. Sethi is that Section 210 Cr.P.C. cannot be invoked in the present case since, the complaint case relates to an offence punishable under Chapter XXI of IPC, namely, the offence of defamation. He has submitted that since the Court is debarred from taking cognizance of such an offence, except upon a complaint made by a person aggrieved by the said offence, the clubbing of the complaint case and the FIR case would not be permissible. This submission also has no merit. This is for the reason that, firstly, the learned Magistrate has already taken cognizance of the

offence punishable under Chapter XXI of IPC in the present case. Secondly, the stage when Section 210 Cr.P.C. becomes applicable is “*during the course of the inquiry or trial*” held by the Magistrate, which stage would come post the taking of cognizance by the Magistrate. The purpose of Section 199 only appears to prevent the police from conducting investigation into an offence under Chapter XXI of IPC on its own, unless so directed by the Magistrate on the basis of a private complaint, i.e. a complaint case.

80. From the aforesaid discussion, it appears to me that the learned MM erred in dismissing the petitioner’s application under Section 210 Cr.P.C. on the premise that the petitioner Zee News Ltd., being a prospective accused who had not been summoned, had no *locus standi* to move the application. Not only the petitioner had the *locus standi*, but even the stage of the proceedings before the learned Magistrate being the stage of, ‘inquiry’, the application under Section 210 Cr.P.C. was maintainable by the petitioner Zee News Ltd. Learned MM should have, therefore, stayed the proceedings in terms of Section 210(1) Cr.P.C. and should have called for a report on the matter from the police officer conducting the investigation in the police case arising out of FIR No. 240/2012.

81. However, as observed in *T.S. Sawhney* (supra), the stay of the proceedings is a preventive measure, and the stay of the proceedings in the complaint case by the Magistrate is only to ensure that the Magistrate before proceeding further, has acquired the knowledge and gathered the information with regard to the status of the police case. As it transpires in the present case, the police report filed under Section 173 Cr.P.C. in FIR No.

240/2012 was not taken cognizance of, and the learned MM dealing with the said FIR case directed further investigation. Further investigation is continuation of the previous investigation. (See *Vinay Tyagi v. Irshad Ali and Ors.*, (2013) 5 SCC 762). In *Sunil Bharti Mittal* (supra), the Supreme Court, *inter alia*, observed that:

“48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance.” (emphasis supplied)

82. Thus, when the Magistrate orders further investigation at that stage, there is no *prima facie* satisfaction arrived at by him that the allegations, if proved, would constitute an offence. If that were so, there would be no occasion to order further investigation.

83. Thus, it transpires that, as a matter of fact, cognizance of an offence has not been taken by the learned Magistrate in the police case. Consequently, the ingredients of Section 210(2) Cr.P.C. are not satisfied. That being the position, by force of Section 210(3) Cr.P.C., the Magistrate dealing with the complaint case is obliged to proceed with the “inquiry” or “trial” in accordance with the provisions of the Code.

84. Consequently, I am of the opinion that even though the petitioners’ contention that he had the *locus standi* to move an application under Section 210 Cr.P.C. is correct and, therefore, accepted, in the facts of the present

case taken note of hereinabove, the petitioner is not entitled to any relief in Crl.M.C. No. 2565/2013. However, if and when conditions of Section 210(2) Cr.P.C. are found to be satisfied, at that stage, it shall be open to the petitioner to again approach the learned MM dealing with the complaint case under Section 210 Cr.P.C., even if the petitioner has not been summoned by issuance of process under Section 204 Cr.P.C. by then.

85. The petitioner has made extensive averments in the petition, and arguments supported by case law taken note of hereinabove were also advanced in support of the plea that the transactions forming the subject matter of the complaint case and the police case are the same. However, since I am not inclined to allow the petition in the facts of the present case (on account of non-fulfilment of the conditions prescribed in Section 210(2) Cr.P.C.), I do not consider it necessary to delve into the said issue at this stage. The learned Additional Sessions Judge, in his impugned order dated 04.05.2013, in Cr. Rev. No. 66/2013 has observed that the nature of offence in the police case and the complaint case, *prima facie*, are not congruent. In my view, that was no occasion for the ASJ to make any such observation, since the view taken by the learned MM, and affirmed by the learned ASJ, was that the petitioner Zee News Ltd. had no *locus standi* to move an application under Section 210 Cr.P.C., since process had not been issued in the said complaint case. The said observations made by the learned ASJ to the effect that the nature of offence in the police case and the complaint case are, *prima facie*, not congruent is, therefore, set aside and the said observations shall not come in the way of the learned MM examining the

said aspect on its own merits, without in any manner being influenced by what was observed by learned Additional Sessions Judge, in future.

86. The submission of the respondent that the order passed by the learned Magistrate rejecting the application under Section 210 Cr.P.C. was an interlocutory order and, therefore, a revision under Section 397 did not lie is academic. The learned ASJ had entertained the criminal revision and dismissed the same. The respondents have not assailed that order with the grievance that the said revision was not maintainable at all. So far as this Court is concerned, the petitioner Zee News Ltd. has preferred the present petition under Section 482 Cr.P.C. i.e. by invoking the inherent jurisdiction of this Court. The issue raised by the petitioner and considered by the Court being an issue of law involving some complexity, I am not inclined to dismiss the petition without dealing with the same on merits, merely because the order passed by the learned Magistrate was an “interlocutory order”, or because the ASJ has also dismissed the criminal revision under Section 397 Cr PC. If the submission of the respondent that the criminal revision under Section 397 Cr.P.C. was not maintainable were to be accepted, it would follow that the impugned order passed by the learned MM dated 25.02.2013 could be directly assailed before this Court in a petition under Section 482 Cr.P.C. The petitioner, Zee News Ltd., cannot be left remediless. Consequently, the decision in *Amar Nath* (supra) is of no avail to the respondent.

87. Now I turn to the transfer petition preferred by Mr. Sudhir Chaudhary. A perusal of Section 407 shows that the High Court may act in exercise of its jurisdiction under Section 407 of the Cr.P.C. “*either on the report of the*

lower Court, or on the application of the *party interested*, or on its own initiative;”. The expression “*party interested*”, as held in **K. Anbazhagan** (supra) is of wide import. It is not limited in its meaning to include only the complainant or the accused, i.e. the person against whom the complaint has been made either by a private entity, or by the police. Pertinently, Section 407 (4) & 407 (5) specifically deal with cases where the application under Section 407 is made by an accused person. This also shows that the expression “*party interested*” used in Section 407(2) is of wider import. Even though the petitioner in the transfer petition cannot be labeled as an “accused” inasmuch, as, process has not yet been issued in the complaint case, and the petitioner has also not been summoned upon taking of cognizance in the police case, in my view, the petitioner is certainly a “*party interested*” within the meaning of Section 407(2). In view of my aforesaid conclusion, I do not consider it necessary to elaborately deal with the other decisions relied upon by the petitioner on the said aspect. The respondent No.2 represented by Mr. Ravi Gupta, Senior Advocate, has not been able to seriously counter the submission of the petitioner that the petitioner Sudhir Chaudhary is a “*party interested*” under Section 407(2) Cr.P.C., and thus, has the *locus standi* to move the present transfer petition. However, it would need examination whether the transfer petition, on its own merits, deserves to be allowed, or not.

88. The use of the words ‘whenever’ in Section 407(1) shows that the powers under Section 407 can be exercised even when the proceedings in the criminal court subordinate to the High Court are at the stage of inquiry.

Reliance may be placed upon **Ganesh Prasad** (supra) decided by the Patna High Court, wherein it was held as follows:

“21. the conjoint reading of Section 407(1)(a)(b) & (c) would show that the word 'Case' occurring in Section 407 has been used in reference to enquiry or trial and the legislature in its wisdom has omitted the word 'investigation' in Section 407(1)(a) of the Code. It may be noticed that word investigation and the manner in which it has to be conducted has been used in same enactment namely Cr.P.C.

22. In view of above, Section 407 Cr.P.C. refers to circumstances and at an stage under which the High Court can transfer cases viz. at the stage of enquiry or trial, if conditions mentioned in sub-clause (a)(b) & (c) so justifies.

23. Section 407 of the Code deals with the power of the High Court to transfer cases and appeal. Such power can be exercised on the report of the lower court or on the application of party interested or even on its own initiative.

24. Section 407(1)(a) of Cr.P.C. states that if High Court is satisfied that a fair and impartial enquiry or trial cannot be had in any subordinate criminal court it can transfer the case from one court to the other. Section 407(1)(a) confers power on High Court to transfer a proceeding of enquiry also.

25. Though Section 407(1)(b)(c) do not repeat the term enquiry and trial, the provision evidently refers to the stage of enquiry and trial and are in continuation of sequence referred to in Section 407(1)(a) Cr.P.C.

26. Section 407(1)(b) provides the second situation in which appeal and cases at stage of enquiry or trial can be transferred if question of law of unusual difficulty is likely to arise.

27. The third circumstances is provided in Section 407(1)(c), which confers power on High Court to transfer a case, if it is so required by any provisions of this court or the same will tend to

the general convenience of the parties or witnesses, or if the same is required for the ends of justice.

28. Thus I am not in agreement with submission of learned counsel for the petitioner that clause 407(1)(a)(b) & (c) Cr.P.C. confers power on High Court to transfer a case at stage of investigation from one Sessions Division to another Sessions Division.” (emphasis supplied)

89. Thus, while a case which is pending at the stage of inquiry may be transferred under Section 407 Cr.P.C., a case which is still at the stage of investigation cannot be so transferred by resort to Section 407 Cr.P.C. In the present case, the police case arising out of FIR No. 240/2012 is still at the stage of investigation. Consequently, the petitioner cannot seek transfer of the police case under investigation to any other court, including the court dealing with the private complaint i.e. the complaint case. If the petitioner cannot seek a transfer of the police case which is under investigation, he cannot achieve the same objective by seeking transfer of the complaint case to the court of the learned MM who would have jurisdiction over the police station where the police case is registered and is under investigation. Reliance has been placed by Mr. Agarwal on ***Rahmatullah*** (supra) to submit that “case” in clause (ii) of Section 407(1) Cr PC cannot be given a narrow interpretation and it would include a “case” at the stage of investigation. However, even in ***Rahmatullah*** (supra), the Allahabad High Court sought to invoke Article 227 of the Constitution and in that regard referred to the decision in ***Badruddin and Party v. State***, 1992 (1) UP LB EC 639. Thus, in my view, the decision in ***Rahmatullah*** (supra) does not advance the case of the petitioner. No doubt, even at the pre-summoning stage, the accused has been held to be entitled to approach the court by invoking the inherent

power of the High Court under Section 482 Cr.P.C. or the extraordinary jurisdiction of the Court under Article 226/227 of the Constitution of India, or under Section 483 of the Cr.P.C. However, as observed in ***Ganesh Prasad*** (supra) and ***Tej Kishan*** (supra), the exercise of such power could only be under extraordinary situations, where the abuse of the process of the court, or miscarriage of justice is writ large, or some other similar circumstances exist. In the present case, the petitioner has not been able to make out any such exceptional and extraordinary case warranting this Court to exercise its jurisdiction under Section 482 Cr.P.C. or 483 of the Cr.P.C. or Articles 226/227 of the Constitution of India to direct the transfer of the complaint case to the Court within whose jurisdiction the FIR No. 240/2012 has been registered, or to direct the transfer of the case under police investigation to the court of the learned MM dealing with the complaint case (private complaint). Learned CMM has made a very pertinent observation in his impugned order dated 31.03.2014 while dealing with the application preferred by the petitioner–Sudhir Chaudhary under Section 410 read with 219/220 Cr.P.C. While taking note of the fact that the learned MM dealing with the complaint case had not yet issued process, and the learned MM dealing with the police case has not yet taken cognizance and summoned the accused or any of them, the learned CMM in the impugned order dated 31.03.2014 has rightly observed that, “*at this stage, there is no (sic.) clarity about the offence and the accused*”. It is not even clear, at that stage, as to which of the accused would be summoned in either of the two cases, and for what offence. This being the position, in my view, the learned CMM was right in observing that it was pre-mature to jump to the conclusion that the offence alleged are of the same transaction or of same kind.

90. So far as the submission of the respondents with regard to suppression of facts allegedly made by the petitioner is concerned, I do not find any merit in the same. The suppression has to be of a relevant and material fact, and every omission to state each and every fact would not amount to culpable suppression entailing the refusal of the Court to exercise its discretionary jurisdiction. A party who is found to be suppressing relevant and material facts. The disclosure of which would have materially affected the decision of the case, may be denied relief in exercise of its discretion by the Court. Similarly, I do not find any force in the submission of the respondent that the petitioner has resorted to any false statements. In any event, since I am inclined to dismiss the transfer petition, I do not consider it necessary to delve into the said aspects in any great detail.

91. For the aforesaid reasons, I find no merit in the transfer petition and dismiss the same as being pre-mature. However, in case the situation so warrants at a later stage i.e. if and when cognizance is taken in the police case arising out of FIR No. 240/2012, and process is issued in the complaint case, it shall be open to the accused to move an application to seek transfer of the proceedings. At that stage, the Court moved for the said purpose, shall examine the transfer application at its own merits and decide the same.

92. The Crl.M.C. and the Transfer Petition stand disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

APRIL 25, 2016