

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

Judgment reserved on: 06.11.2019

Date of decision: 19.03.2020

+ CRL.M.C. 1609/2019, CRL.M.A. 6437/2019 & CRL.M.A. 10293/2019

PRADEEP KUMAR

..... Petitioner

Through: Mr.Vikas Pahwa, Sr. Advocate
along with Mr.Rajan Chawla,
Mr.Tanmaya Mehta, Mr.
Gautam Chauhan and Mr.
Shyam Singh, Advocates.

Versus

Y.S. KUMAR

..... Respondent

Through: Dr.Y.S. Kumar/ Respondent in
person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition under Section 482 of the Cr.P.C., 1973 seeks the setting aside of the judgment dated 22.02.2019 of the learned ASJ-05, District South East, Saket Courts in Criminal Revision No.520/2018 whereby the order of the learned MM-06, District South East, Saket in CC No.636258/2016 (Earlier CC No.117/2/16) titled as ***“Dr. Y.S. Kumar V. Amity Global Versity”*** qua the allegations made in the complaint of the complainant i.e. the respondent herein observed vide the order dated 08.06.2018 to the effect that the same could not be brushed aside at the stage when the

matter was fixed for consideration on the aspect of taking of cognizance and that an opportunity was to be given to the complainant to lead evidence in support of his contentions and the matter was re-notified for the pre-summoning complainant's evidence,- was upheld and the revision petition filed by the present petitioner against the order dated 08.06.2018 of the learned Trial Court, was dismissed.

2. It is essential to observe that vide paragraphs 2, 3 & 5 of the order dated 08.06.2018, of the learned Metropolitan Magistrate-06, South-East, Saket Courts, New Delhi facts put forth through the complaint have been set forth as being:-

“2. Facts of the case, as made out from the complaint, are that Amity University, Uttar Pradesh is a private university. Amity Global Varsity P. Ltd. (hereinafter referred to "the accused no.1") is a group company running management courses in 13 schools by the name of Amity Global Business School. In August-September 2012, Director General of Central Excise Intelligence initiated proceedings against Lucknow campus of Amity University and accused no.1 for evasion of service tax. Two show cause notices were issued and a demand of more than Rs. 23 Crore was raised on the basis that the courses run by accused no.1 were not approved by any statutory authority. During investigation, some employees of accused no. 1, including Mr. U. Ramachandran (herein after referred as "the accused no.9") stated that "Post Graduate Programmes in Management" and "Graduate Diploma in Business Administration" were certificate courses for which no recognition from any statutory authority was required. He further stated that no such recognition from any statutory authority was obtained. Similar statements were made by other employees of accused no.1.

3. The complainant further alleged that since as per the statement of accused no.9, the "Post Graduate Programme in Management" and "Graduate Diploma in Business Administration" were not approved by any statutory authority, accused No.1 was required to pay service tax on the fees received from the students. In its reply filed with Commissioner of Service Tax, Nehru Place, New Delhi, accused no.1 took a contrary stand stating that since the courses have been approved by Amity University, Noida, they were not liable to pay the service tax. Thus, the complainant alleges that accused no. 1 forged certain documents to avoid tax liability. The accused no.1 and Amity University are guilt of offence for forgery and cheating. A complaint in this regard was made at PS Kalkaji on 26.08.2016 and to DCP, SE on 29.09.2016 but no FIR was registered. Hence, the present complaint.

.....

5. The complainant argued that the proposed accused have been issued show cause notices by the Director General of Central Excise Intelligence and a demand of more than Rs.23 crores was raised on them. On the basis that the courses run by accused no.1 were not approved by any statutory authority. In the reply filed by the accused no.1 with the Commissioner of Service Tax, Nehru Place, accused no.1 took a contradictory stand their courses were approved by Amity University, Noida and thus, they were not entitled to pay any service tax. The complainant further submitted that the accused are illegally having a campus outside Delhi which is not permissible as per UGC terms and conditions. He further submitted that even the students of the accused have started challenging the credibility of the degrees / certificates awarded by the accused. He urged that in the certificates issued by the accused, it is nowhere mentioned that the said courses were from distant learning. The complainant further submitted that the accused have opened several campuses throughout India, most of which are being operated from small houses and the students are being charged a very high fees. He further

argued that the Directors of the accused are drawing a huge salary upto Rs.1.5 crores per year by cheating the innocent students.”

3. The contentions raised by the petitioner herein are put forth vide paragraphs 4, 6, 7, 8 & 9 in the order dated 08.06.2018 of the learned Trial Court to the effect:-

“4. It is relevant to note that counsel on behalf of proposed accused have entered appearance though, cognizance has not been taken yet and the proposed accused have not been summoned.

(emphasis supplied)

.....

6. The Ld. counsel for the proposed accused asserted their right to address arguments at this stage, claiming that since the cognizance of the complaint itself is barred, they intend to assist the Court on the point of law only.

7. The Ld. counsel for the proposed accused submitted that the complaint itself is making no sense. He further submitted that the matter with respect to allegations levelled by the complainant is pending with the UGC which shall take action in due course. So far as embezzlement of service tax is concerned, he submitted that the PIL filed by the complainant was dismissed by the Hon'ble High Court on the ground that the complainant had no locus standi to file the PIL. He further informed that the show cause notices issued to the accused have been stayed by the Hon'ble High court of Allahabad. He further submitted that PIL filed by the complainant on the same allegations was dismissed by the Hon'ble Supreme court on 08.07.2016. After dismissal of PIL, the complainant filed a complaint with PS Defence Colony and thereafter, with PS Kalkaji. He further submitted that no reliance on the documents filed on record by the complainant can be placed as these are not the complete documents and the complainant has only

picked up certain paragraphs. The ld. counsel for the proposed accused further submitted that cognizance of the complaint is barred in view of Section 14 of the Excise Act which is made applicable to the Finance Act 1994 by way of Section 83 of the Finance Act. He further submitted that cognizance is barred also under Section 195(1) (a) (i) of Cr.P.C. Reliance has been placed on C. Muniyappan Vs. State of Tamilnadu (2010) 9 SCC 567, SP Changalvarayuraya Naydu Vs. Jagannath (1994)(1) SCC 1. AR Antalay U. Ramdas Srinivas (1984) 2 SCC 500 T. G. Nichodemus Vs. State Crl RC No.211 of 1954, Md. Sharma Vs. State of Bihar 2002 SCC Online Pat 570, Naresh Sridhar Mirajkar Vs. State of Maharashtra AJR 1967 SCI.

8. Controverting the arguments of the Id. counsel for the proposed accused, the complainant submitted that his writ petition was dismissed only on the ground of locus but in fact, the Hon'ble High Court had appreciated the cause. He further submitted that he had given only relevant paragraphs in the documents filed by him and that he has filed the instant complaint for forgery committed by the proposed accused for escaping their tax liability and hence, cognizance is not barred. He clarified that the accused have forged the minutes of meetings held on 25.09.2005, 25.03.2007 and 07.06.2007. He explained that had these minutes existed, Mr. U. Ramachandran would have made a mention of these meetings in the reply given by him to the DGCEI. He further submitted that the proposed accused has no locus standi to address arguments at this stage. Reliance has been placed on Anju Chaudhary Vs. State of U. P. (2013) 6SCC 384, Chandra Deo Singh Vs. Prokash Chandra Bose AIR 1963 SC 1430, Vijay Pratap Singh Vs. Dukh Haran Nath 1962 Supp (2) SCR 675 and on Tata motors ltd. Vs. State, CRL RVE.P 16/2008 decided on 12.02.2009, by the Hon'ble High Court of Delhi.

9. The Ld. Counsel for the proposed argued that going by the complainants allegations, it is a case of furnishing false information to the Commissioner of Service Tax, Delhi and in view of Section 89(1)(c) and Section 89(4) r/w Section 90 of the Finance Act, 1994, cognizance cannot be taken. He further submitted that till date, no finding has come from the Commissioner of Service Tax, Delhi that these documents are forged. He further submitted that the complainant has misdescribed the offence and thus, cognizance is barred under Section 195 Cr.P.C. Lastly, he submitted that even otherwise, the allegations levelled by the complainant do not fall within the definition of "making a false document" under Section 464 IPC."

4. Submissions of the complainant made in response were recorded vide paragraph 10 of the order dated 08.06.2018 by the learned Trial Court, which reads to the effect:-

"10. The complainant thereafter, submitted that Section 89(4) of Finance Act, 1994 is not applicable as the word "information" used therein is with respect to various figures / statistics required to be furnished. He further submitted that Mr. U. Ramachandran was specifically asked if the course are recognized by any "statutory" authority which fact he denied whereas, admittedly, Amity University is a statutory authority."

5. The learned Trial Court thus, observed vide paragraphs 12 & 13 of its order dated 08.06.2018 to the effect:-

"12. Perusal of the complaint shows that the complainant primarily alleges that initially, as per the statement of accused no.9, the courses of accused were not approved by any statutory authority but in its reply filed with the Commissioner of Service Tax, Nehru place accused no.1 took a contrary stand that the courses have been approved by the Amity University, Noida. The

complainant is alleging forgery of minutes of meeting dated 25.09.2005, 25.03.2007 and 07.06.2007 (referred to by two proposed accused in the reply filed with Commissioner of Service Tax, Delhi) and cheating by the proposed accused by awarding fake degrees to numerous students.

13. In my view, the allegations of the complainant cannot be brushed aside at this stage and opportunity is to be given to him to lead evidence in support of his contentions.”

6. The Revisional Court observed vide paragraphs 14, 15 & 16 of its order dated 22.2.2019 to the effect:-

“14. The respondent-complainant has filed an application under Section 156 (3) of the Code before the learned trial court alleging that in August/September 2012, The Directorate General of Central Excise Intelligence (DGCEI), on the basis of information supplied by the complainant, initiated proceedings against the Lucknow Campus of Amity University, Uttar Pradesh, Noida (AU) and Amity Global Varsity P. Ltd., Defence Colony, New Delhi (AGVPL) for evasion of service tax, culminating into issuance of two separate show cause notices. The AGVPL was issued the notice of demand of more than 23 crore. The basis of show cause notice was that the courses run by AGVPL through Amity Global Business School (AGBS) were not approved any statutory authority like the UGC, AICTE etc. The present liability of AGVPL is around 125 crores. The total money collected by AGVPL as fees from students so far is 400 crores. During investigations, statements of many employees including Sh. U.Ramachandran, the co-ordinator/Assistant Vice President of AGBPL were recorded by the DGCEI and he categorically stated that Post Graduate Programme in Management (PGPM) and Graduate Programme in Business Administration (GDBA) were just certifications, and no recognition from any statutory authority was

required under the law. Therefore, they have not taken any recognition from any statutory body. He also stated that there was no agreement between AU and AGVPL. In reply filed by AGVPL with the Commissioner of Service Tax, Nehru Place, New Delhi, it is stated that its courses are approved by AU, hence, it is not liable to service tax. During investigations, neither Sh. U. Ramachandran nor any other employee of AU and AGVPL said that the courses were approved by AU. Therefore, it is clear that both AU and AGVPL which belong to the same group forged/back-dated documents to about their huge tax liability.

15. It is also mentioned in the said application under Section 156(3) of the Code that the Amity Group is a huge education scam. Various other tax and criminal proceedings are pending against them in various fora, with their present service tax liability Rs.400 crore. **The present application, however, is confined to the forgery committed by the group for escaping the liability in the tax proceedings pending before the Commissioner of Service Tax. Both AU and AGVPL are guilty of the offences of forgery and cheating, making money running into hundreds of crore, and cheating the State Exchequer as well as innocent students. Two of promoters of the Amity Group are interpol noticees, who fled Germany after committing massive financial fraud there.**

16. Revisionist is challenging the impugned order of taking cognizance and posting the matter for pre-summoning evidence. It is well settled that at the stage of taking cognizance, Magistrate has to see only prima facie case. As per Section 2(d) of the Code, the complaint may be oral also. In the present case, respondent herein has filed a written application under Section 156(3) of the Code and on said application, cognizance had been taken and matter had been posted for pre-summoning by the learned Trial Court. The respondent herein has alleged in said application about the forgery committed by AU and

AGVPL to avoid their huge tax liability. It is also alleged in the application about forgery and cheating, making money running into hundreds of crore, and cheating the State Exchequer as well as innocent students.

(emphasis supplied)”

7. It was also *inter alia* observed by the Revisional Court vide paragraphs 17, 18, 19, 20, 21 & 22 to the effect:-

*“17. In **Mehmood Ul Rehman** (supra) relied upon by the learned counsel for revisionist, it has been observed by the Hon'ble Supreme Court that under Section 190(1)(b) of the Code, the Magistrate has the advantage of a police report and under Section 190(1)(c) of the Code, he has the information or knowledge of commission of an offence, but under Section 190(1)(a) of the Code, he has only a complaint before him. It is also observed that the Code hence specifies that "a complaint of facts which constitute such offence", and therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) of the Code and the complaint is simply to be rejected. Hence, as per this judgment, if complaint on the face of it does not disclose commission of offence, Magistrate shall not take cognizance under Section 190(1)(a) of the Code. It means that if complaint on the face of it does disclose commission of offence. Magistrate shall take cognizance under Section 191(1)(a) of the Code.*

18. Insofar as submission of learned counsel for revisionist that for evading the payment of service tax etc., offence under Section 89 of the Finance Act, 1994 attracts and as per 89(4) of the said Act, there is a bar for prosecution except the previous sanction of Chief Commissioner of the Service Tax, is concerned, it is sufficient to say that respondent has alleged about offence of forgery and cheating punishable under the provisions of IPC. Further insofar as a submission of learned counsel for revisionist

pertaining to bar of the cognizance under Section 195(1)(a)(i) for the offence under Section 176 and 177 IPC is concerned, it is also sufficient to say that respondent has alleged about offence of forgery and cheating punishable under the provisions of IPC. Insofar as, submission of learned counsel for the revisionist that complainant himself has confined his complaint for the offence of forgery is concerned, it is mentioned in para no. 8 of complaint/application under Section 156(3) of the Code, both AU and AGVPL are guilty of offences of forgery and cheating, making money running into hundreds of crore and cheating the state exchequer as well as innocent students.

19. In para no. 12 of the impugned order, it is mentioned that:-

"perusal of the complaint shows that the complainant primarily alleges that initially, as per the statement of accused no. 9, the courses of accused were not approved by any statutory authority but in its reply filed with the Commissioner of Service Tax, Nehru Place accused no.1 took a contrary stand that the courses have been approved by the Amity University, Noida. The complainant is alleging forgery of minutes of meeting dated 25.09.2005, 25.03.2007 and 07.06.2007 (referred to by two proposed accused in the reply filed with Commissioner of Service Tax, Delhi) and cheating by the proposed accused by awarding fake degrees to numerous students".

20. On perusal of the application/complaint under Section 156(3) of the Code, I am of the view that learned Metropolitan Magistrate has rightly taken the cognizance and posted the matter for pre-summoning evidence

stating that allegations of the complainant cannot be brushed aside at this stage and opportunity is to be given to him to lead evidence in support of his contentions.

21. In complaint case, if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint under Section 203 of the Code. Therefore, after taking cognizance. Magistrate is empowered to dismiss the complaint under Section 203 of the Code if he is of the opinion that there is no sufficient ground for proceeding.

22. Needless to say that the learned Metropolitan Magistrate will take into consideration all the facts and circumstances of the case and the law applicable thereto at the stage of Section 203/204 of the Code as the case may be.”

8. The contention sought to be raised by the petitioner through the present petition is to the effect that the respondent being a disgruntled former employee of the Amity Business School [ABS] Noida, a unit of Amity University Uttar Pradesh whose services were discontinued in September, 2007 due to repeated complaints filed by one lady staff i.e. a Programme Leader with ABS, had filed false and frivolous RTI applications, complaints to various authorities against the University and threatened to defame the University, if his demands of payment of huge amount of money and removal of certain officials from the University were not met.

9. The petitioner submits that in August/September 2012, the respondent, out of his grudge and mala fides against the University, made a false and frivolous complaint against the University's

Lucknow campus and the Amity Global Varsity Pvt. Ltd. [AGV] an educational institution, with the Director General of Central Excise Intelligence [DGCEI], alleging evasion of service tax and thus on 22.04.2013, the DGCEI through its Addl. Director, issued a false, baseless and legally misconceived show cause notice to the University for levy of service tax by alleging its Lucknow Campus which is operational from the date of establishment of the University as its constituent unit, as not authorized under the law. The petitioner further submits that vide order dated 30.05.2013, the Hon'ble Lucknow Bench of the High Court of Judicature of Allahabad, stayed the operation of the show cause notice issued by DGCEI against the University, in the Writ Petition [MB] 4484/2013 filed by the University, questioning the jurisdiction of DGCEI, to issue the said show cause notice and that in July 2013, the DGCEI through its Addl. Director issued a show cause notice to the AGV proposing to levy service tax.

10. *Inter alia* the petitioner submits that on 06.05.2014, the respondent filed a false and baseless complaint with the Addl. Commissioner of Police [Crime & EO] against the University/AGV, by alleging cheating on the basis of false and unsubstantiated observations made in the show cause notice issued by DGCEI and that the respondent from May 2014 to December 2014, repeatedly contacted the officials of the parent body of the University in Defence Colony and also met its officials under the guise of his alleged grievances against the University. The petitioner submits that a Writ Petition bearing W.P (C) No.3383/2015 filed as a PIL by the

respondent herein against the UOI, UGC, AICTE, the University and the AGV, making false, frivolous and vexatious allegations, on the basis of false, frivolous and unsubstantiated observations made in the show cause notice was dismissed on 07.09.2015 by the Hon'ble Division Bench of this Court by a detailed order on the ground of locus and in view of pending proceedings before the Hon'ble Allahabad High Court. The petitioner submits further that vide order dated 30.10.2015, the review petition filed by the respondent against the said judgment dated 07.09.2015 was also dismissed. The petitioner has further submitted that on 08.07.2016, the S.L.P. filed by the respondent against the judgment dated 07.09.2015 and order dated 30.10.2015 passed by the Hon'ble Division Bench of the High Court of Delhi in W.P. No.3385/2015 was dismissed by the Hon'ble Supreme Court and that thereafter on 26.08.2016, the respondent filed a complaint with PS Kalkaji against the Petitioner, officials / dignitaries of University / its sponsoring body and certain unconnected person, falsely and baselessly alleging commission of offence of forgery against University/AGV, relying on a reply filed by the AGV before the Commissioner of Service Tax, Nehru Place, in a pending service tax proceedings.

11. The petitioner submits that on 21.12.2015, the FIR bearing No.493/2015, PS Defence Colony under Sections 387/506 of the Indian Penal Code, 1860 was lodged against the respondent on the complaints of the petitioner, pursuant to order dated 14.12.2015 passed by Ld. M.M.-09, South East, Saket Courts, on an application u/s 156(3) of the Cr.P.C., 1973 filed by the petitioner on behalf of the

University. The petitioner further submits that after dismissal of the writ petition of the respondent, on 05.02.2016, a complaint bearing No.282/2016 was filed by the respondent against the petitioner officials / dignitaries of University / its sponsoring body and certain unconnected person, falsely alleging cheating, etc, making false, frivolous and vexatious allegations, on the basis of false, frivolous and unsubstantiated observations made in the show cause notice issued by DGCEI.

12. The petitioner has further submitted that on 16.09.2016, Amity University Uttar Pradesh (Amendment) Act 2016, was notified in the Gazette of Uttar Pradesh, declaring the Lucknow Campus of the University as its constituent unit/campus of the University from the date of its establishment. The petitioner has also submitted that on 18.10.2016, the Respondent filed an application u/s 156 (3)Cr.P.C. marked as CC.No.117/2/2016 with the Ld. MM-06, Distt. South East, Saket Courts, Delhi for registration of an FIR in relation to the specific allegations made by the respondent in complaint dated 06.05.2014 at PS Defence Colony in CC No.282/2016 before the learned MM-09 vide paragraph 7 of the complaint, which reads to the effect:-

“the present application, however, is confined to the forgery committed by the group for escaping the liability in the tax proceedings pending before Commissioner of service tax, Nehru Place, New Delhi.”,

with it having been submitted by the petitioner that the said application under Section 156(3) of the Cr.P.C., 1973 was false, frivolous, legally misconceived, actuated with mala fides and

vengeance and that the respondent has placed reliance on some documents and filed selected pages which were part of the ongoing adjudication of the AGV before the Commissioner Service Tax, Delhi, which were ex-facie obtained through unlawful means with it having been submitted on behalf of the petitioner to the effect:-

“In nutshell it is the case of Respondent in his complaint and the documents filed that pursuant to his information, AGV is facing a Service Tax adjudication before the Commissioner, Service Tax, Nehru Place, and proceedings have been initiated by Director General of Central Excise Intelligence [DGCEI], in 2012, followed by a show cause notice. During investigation before sending show cause notice, an employee of AGV has allegedly stated that AGV has not taken any recognition from any statutory body. Respondent has relied upon response of AGV to SCN, filed before Commissioner, Service Tax saying that AGV's courses are approved by the Amity University. It is in this background that the Respondent conjecturally and baselessly alleged that forgery has taken place in the service tax proceedings before the Commissioner of Service Tax.”

13. The petitioner has further submitted that on 17.12.2016, PS Kalkaji filed a status report in CC. No. 117/2/2016 that the matter related to DGCEI and in view of previous cases filed by the respondent, the complaint is not maintainable and vide order dated 22.03.2017, the learned MM-06 in CC. No. 117/2/16 observed that the affidavit accompanying the application u/s 156 (3) Cr.P.C of the respondent, was not satisfactory and directed him to file a fresh affidavit whereby on 08.05.2017, the Ld. M.M.-09, Distt. South East,

Saket Court, Delhi, in FIR No.493/15, took cognizance of the charge sheet filed against the respondent.

14. The petitioner further submits that on 30.05.2017, the respondent filed an affidavit pursuant to order dated 22.03.2017 passed by the Ld. MM-06 in CC. No. 117/2/16 and submissions were made on behalf of the petitioner qua the legal bar of registration of FIR and for taking cognizance on the application under Section 156(3) of the Cr.P.C., 1973 of the respondent submitting to the effect that the FIR could not be registered and no cognizance could be taken on allegations made by the respondent, in as much as, it was sought to be contended on behalf of the petitioner to the effect:-

“(i) The Service Tax proceedings are governed by the Chapter V of the Finance Act 1994, which inter alia provides and deals with the entire scheme of substantive and procedural aspects of recovery of service tax.

(ii) As per section 83 of the chapter V of the Finance Act 1994, various provisions of Excise Act 1944 are made applicable to the service tax proceedings, which includes section 14 of the Excise Act, whereby the Central Excise Officer conducts the investigation before issuing show cause notice. As per section 14(2) read with sub-Section (3) such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 IPC.

(iii) Section 89 of the Finance Act provides for various offences and penalty, and as per which the evasion of service tax is an offence u/s 89 (1)(a) and the supply of false information is an offence u/s 89(1)(c).

(iv) As per section 89 (4) of the Finance Act a person shall not be prosecuted without the sanction of the Principal Chief Commissioner of Central Excise and Chief Commissioner of Central Excise.

(v) Section 195 (1) (a) (i) Cr.P.C bars the cognizance of the offences for contempt of lawful authority of public servants i.e. offences punishable u/s 172 to 188 IPG, and section 195 (1) (b) bars the cognizance of offences u/s 193 to 228 IRC. The act of furnishing false information is punishable u/s 177 and omitting to give information to public servant is punishable u/s 176.”

15. The petitioner further submits that on 31.01.2018 the Commissioner, Service Tax, vide its order erroneously confirmed the demand of service tax against the AGV, qua which the petitioner submits that no adverse findings of forgery, fabrication, etc, was rendered therein against the AGV as alleged by the Respondent in his CC No.117/2/16, now CC No.636258/16 and that though vide order dated 23.02.2018, the learned MM-06 dismissed the application under Section 156(3) of the Cr.P.C., 1973 in CC No. 117/2/16, however, posted the case for further proceedings by impliedly treating the same as a private complaint. The petitioner further submits that W.P.(MB) 4484/2013 filed by the University was disposed of giving an opportunity to the petitioner to apprise the authorities concerned of the DGCEI through Commissioner of Central Excise, Lucknow about the AUUP (Amendment) Act 2016, so that a fresh decision could be taken and submitted that on 11.05.2018, the AGV filed its statutory appeal before CESTAT against the order dated 31.01.2018 by the Commissioner Service Tax, which appeal is still pending.

16. The petitioner has further submitted that on 27.09.2018, the Commissioner, CGST and Central Excise, Lucknow, dropped the proceedings initiated vide Show Cause Notice dated 22.04.2013, issued by DGCEI to Amity University Lucknow, Campus.

17. Through its reply, the respondent has *inter alia* submitted that the petitioner has no locus to frustrate/stall the proceedings initiated by the respondent. Reliance was placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***“Chandra Deo Singh vs Prokash Chandra Bose @ Chabi Bose & Anr.” 1964 (1) SCR 639*** wherein it was observed to the effect:-

“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. ”

to submit thus, that the petitioner not being a party to the proceedings in the Trial Court, cannot invoke inherent jurisdiction of this Court.

18. Reliance was also placed on behalf of the respondent on the observations of the Hon'ble Supreme Court in ***“State of Haryana & Ors. vs Bhajan Lal & Ors.” 1992 Supp. (1) SCC 335*** as made in paragraph 103 thereof, which reads to the effect:-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent

powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

19. Written synopses were submitted on behalf of either side which have been perused and considered.

20. On behalf of the petitioner, it has been submitted that the criminal proceedings in CC No.636258/2019 out of which the impugned order arises, are liable to be quashed as no offence of forgery is made out with it having been submitted on behalf of the petitioner that even the alleged forged document has not been placed on the record of the learned Trial Court and what had been placed on the Trial Court record were only the copies of service tax proceedings in selected pages which were unattested and uncertified and without disclosing the source thereof. It has been submitted on behalf of the petitioner that the criminal proceedings initiated by the respondent before the learned Trial Court are void *ab-initio* being without jurisdiction.

21. A catena of verdicts has been relied upon on behalf of the petitioner placing reliance on the verdict of the Hon'ble Supreme Court in ***“C.Muniappan & Ors. Vs. State of Tamil Nadu” (2010) 9 SCC 567*** in relation to the aspect of proceedings in which the cognizance is taken despite submitting that the legal bar u/s 195 Cr.P.C. is without jurisdiction and void *ab-initio*; test of whether there is evasion or non-compliance with S.195 Cr.P.C. or not, is whether the facts disclosing primarily or essentially an offence for which the complaint is required from the public servant and that Section 195 Cr.P.C. cannot be evaded by mis-describing the offence and that the

cognizance of such an offence cannot be taken by misdescribing the offence or by putting a wrong label on it and that the legislative intent behind the provision of Section 195 Cr.P.C. is that the individual should not face criminal prosecution instituted by persons actuated with malice, ill-will etc. with specific reference to observations in paragraphs 27 to 33 of the said verdict, which read to the effect:-

“27. Section 195 CrPC reads as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No court shall take cognizance—

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Penal Code, 1860, or

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of

certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections. (Vide **Govind Mehta v. State of Bihar** [(1971) 3 SCC 329 : 1971 SCC (Cri) 608 : AIR 1971 SC 1708] , **Patel Laljibhai Somabhai v. State of Gujarat** [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] , **Surjit Singh v. Balbir Singh** [(1996) 3 SCC 533 : 1996 SCC (Cri) 521] , **State of Punjab v. Raj Singh** [(1998) 2 SCC 391 : 1998 SCC (Cri) 642] , **K. Vengadachalam v. K.C. Palanisamy** [(2005) 7 SCC 352 : 2005 SCC (Cri) 1673] and **Iqbal Singh Marwah v. Meenakshi Marwah** [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] .)

29. The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In **Basir-ul-Haq v. State of W.B.** [AIR 1953 SC 293 : 1953 Cri LJ 1232] and **Durgacharan Naik v. State of Orissa** [AIR 1966 SC 1775 : 1966 Cri LJ 1491] , this Court held that the provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a wrong label on it.

30. In **M.S. Ahlawat v. State of Haryana** [(2000) 1 SCC 278 : 2000 SCC (Cri) 193 : AIR 2000 SC 168] this Court considered the matter at length and held as under: (SCC p. 282, para 5)

“5. ... Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section.”

(emphasis added)

31. In *Sachida Nand Singh v. State of Bihar* [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] this Court while dealing with this issue observed as under: (SCC pp. 497-98, para 7)

“7. ... Section 190 of the Code empowers ‘any Magistrate of the First Class’ to take cognizance of ‘any offence’ upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise....”

(emphasis supplied)

32. In *Daulat Ram v. State of Punjab* [AIR 1962 SC 1206 : (1962) 2 Cri LJ 286] this Court considered the nature of the provisions of Section 195 CrPC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the public servant concerned, the Tahsildar, had not filed any complaint. This Court held as under: (AIR pp. 1207-08, paras 4-5)

“4. ... The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction *ab initio* and the conviction cannot be maintained.

5. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside.”

(emphasis added)

33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant

whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”.

Reliance was also placed on behalf of the petitioner on the verdict of this Court in **“Mohan Kukreja Vs. State” 2019 SCC Online Del 6398** in relation to the aspect of proceedings in which the cognizance was taken despite legal bar u/s 195 Cr.P.C. being without jurisdiction and void *ab-initio* with specific reference to observations in paragraphs 16 & 17 which read to the effect:-

“16. As noticed above, subject complaint does not satisfy the requirements of Section 195 Cr.P.C. and, accordingly, the Trial Court could not have taken cognizance of the offence under Section 188 IPC either on the final report or on the supplementary chargesheet filed by the prosecution.

*17. Since the subject proceedings suffer from infraction of Section 195 Cr.P.C., the impugned orders dated 09.12.2016 and 14.11.2017 cannot be sustained and, accordingly, the action taken by the prosecution against the petitioner for the offence under Section 188 IPC is rendered void ab initio being against the dictum of the Supreme Court in **Daulat Ram v. State of Punjab (1962) Supp. 2 SCR 812.**”.*

Reliance was also placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in **“M.L. Sethi Vs. R.P. Kapur” AIR 1967 SC 528** in relation to the aspect of the bar u/s 195 Cr.P.C. is to be seen at the time of taking cognizance, which must be examined at the said

stage by the Magistrate with specific reference to observations in paragraph 9 of the said verdict, which reads to the effect:-

“9. In dealing with this question of law, the important aspect that has to be kept in view is that the point of time at which the legality of the cognizance taken has to be judged is the time when cognizance is actually taken under Section 190 CrPC Under the Code of Criminal Procedure which applies to trials of such cases, the only provision for taking cognizance is contained in Section 190. Section 195, which follows that section, is in fact, a limitation on the unfettered power of a Magistrate to take cognizance under Section 190. Under the latter section, cognizance of any offence can be taken by any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer; and (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed. In the present case, the Judicial Magistrate at Chandigarh had before him the complaint filed by the respondent, and if Section 190 stood by itself he was competent to take cognizance of it under clause (a) of sub-section (1) of that section. This power of taking cognizance was, however, subject to the subsequent provisions contained in the Code of Criminal Procedure including that contained in Section 195. Sub-section (1) of Section 195, which is relevant for our purposes, is reproduced below:

“195. (1). No court shall take cognizance — (a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

(b) of any offence punishable under any of the following sections of the same Code, namely,

Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate; or (c) of any offence described in Section 463 or punishable under Section 471, Section 475 or Section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such court, or of some other court to which such court is subordinate.

This sub-section thus bars any court from taking cognizance of the offences mentioned in clauses (a), (b) and (c), except when the conditions laid down in those clauses are satisfied. In the case of an offence punishable under Section 211 IPC, the mandatory direction is that no court shall take cognizance of any offence punishable under this section, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate. This provision in clause (b) of sub-section (1) of Section 195 is thus clearly a limitation on the power of the court to take cognizance under Section 190. Consequently, it is at the stage when the Magistrate is taking cognizance under Section 190 that he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by clause (b) of sub-section (1) of Section 195 CrPC. In the present case, therefore, at the time when this complaint was filed by the respondent in the Court of the Judicial Magistrate at Chandigarh, it was necessary and incumbent on that Magistrate to examine whether his power of taking cognizance of the offence was limited by the provisions of Section 195(1)(b). He had, therefore, to

determine whether cognizance of this complaint charging the appellant with commission of an offence under Section 211 IPC, could not be taken by him, because that offence was alleged to have been committed in, or in relation to, any proceeding in any court, and if he found that it was so, whether a complaint in writing by such court or some other court to which such court was subordinate was necessary before he could take cognizance. Consequently, in deciding this appeal, this Court has to examine whether on the date when cognizance was taken by the Judicial Magistrate at Chandigarh such cognizance was barred under Section 195(1)(b) CrPC, because the offence punishable under Section 211 IPC, included in the complaint was alleged to have been committed in, or in relation to, any proceeding in any court.”

Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***“State of Haryana Vs. Bhajan Lal” 1992 Supp (1) SCC 355*** in relation to the aspect that the criminal proceedings can be quashed if no offence is made out and/or proceedings are attended with mala fides & to wreak vengeance or where there is an express legal bar engrafted in the code/ any other act to the institution/ continuation of proceedings with specific reference to observations in paragraph 102 of the said verdict, which reads to the effect:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any

court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

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

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

Reliance was placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in **“Vineet Kumar & Anr. Vs. State of Uttar Pradesh” (2017) 13 SCC 369** in relation to the aspect that criminal proceedings can be quashed when there are materials to indicate that the criminal proceeding has been maliciously instituted with ulterior motives, and is attended with mala fides of complainant with specific reference to observations in paragraph 41 of the said verdict, which reads to the effect:-

*“41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in **State of Haryana v. Bhajan Lal** [**State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426**] . Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in **State of Haryana v. Bhajan Lal** [**State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426**] , which is to the following effect: (SCC p. 379, para 102)*

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

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”,

Reliance was placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in ***“Mohd. Ibrahim V. State of Bihar” (2009) 8 SCC 751*** in relation to the aspect of lack of the ingredients of forgery being made out in the instant case submitting that, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorized by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses, with specific reference to observations in paragraph 14 of the said verdict which reads to the effect:-

“14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other

person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”,

submitting that thus no forged document exists in the instant case.

Reliance was placed on behalf of the petitioner on the verdict of this Court in **“Shashi Lata Khanna Vs. State of Delhi” 2005 (121) DLT 522** in relation to the aspect that prosecution of forgery without the forged document on record is futile, with specific observations in paragraph 6 of the said verdict, which reads to the effect:-

*“6. In the case of **K.V.R. Iyyanger v. State of Andhra Pradesh, 1988 (2) CRIMES VIII 882** it was held, that in order to establish an offence of forgery under section 463 IPC punishable under Section 465 IPC the presence of the original document before the court concerned is necessary. Copy or photo stat copy is not sufficient in order to establish offence of forgery. In the present case also the original was never produced in that court nor it was proved in the court in accordance with law hence the offence of forgery or using the*

said forged document has not been proved. Once the offence of forgery is not proved there is no question of using the forged document as genuine. Accordingly the accused persons cannot even be convicted under Section 465/468/471/120-B of IPC.”.

Reliance was placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in **“Mehmood Ul Rehman Vs. Khazir Mohammed Tunda & Ors.” (2015) 12 SCC 420** in relation to the aspect that if the complaint on the face of it does not disclose commission of offence, the Magistrate shall not take cognizance under S.190(1)(a) of the Cr.P.C., 1973, with specific observations in paragraph 21 of the said verdict which reads to the effect:-

“21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.”

Reliance was placed on behalf of the petitioner on the verdict of this Court in **“Tej Kishan Sadhu Vs. State” (2013) 201 DLT 359** in relation to the aspect that the petitioner, who has not yet been summoned as an accused can challenge the order passed by the learned Metropolitan Magistrate even at the pre-summoning stage invoking the inherent power of this Court under Section 482 of the Cr.P.C. or even under Articles 226 & 227 of the Constitution of India

or under Section 483 of the Cr.P.C., where the abuse of process of the Court or miscarriage of justice is writ large or in other alluring circumstances as detailed in the said judgment, with specific reference to observations in paragraph 82(a) of the said verdict, which reads to the effect:-

“82. In the light of the aforesaid discussion, relenting on the import of the provisions involved, following answers would set out the legal propositions as formulated in Para 4 above, which are as under:

a) Whether the petitioner who has yet not been summoned as an accused can challenge any order passed by the learned Metropolitan Magistrate at the pre-summoning stage, by invoking the powers under Section 482, Section 483 Cr.P.C. or Article 226 & 227 of the Constitution of India.

• This query has been discussed in detail in the paragraph nos. 37-51 of the aforesaid judgment. The petitioner, who has not yet been summoned as an accused can challenge the order passed by the learned Metropolitan Magistrate even at the pre-summoning stage invoking the inherent power of this Court under Section 482 of the Cr.P.C., or even under Article 226 & 227 of the Constitution of India or under Section 483 of the Cr.P.C., but the exercise of such a power can only be under an extraordinary situation where the abuse of process of the Court or miscarriage of justice is writ large or in other alluring circumstances as discussed above.”.

22. The respondent on the other hand placed reliance on the verdict of the Hon’ble Supreme Court in **“Chandra Deo Singh Vs. Prokash Chandra Bose @ Chabi Bose &Anr.” AIR 1963 SC 1430** with specific reference to observations in paragraph 7 of the said verdict, which reads to the effect:-

“7. Taking the first ground, it seems to us clear from the entire scheme of Chapter 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 would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. It was, however, contended by Mr Sethi for Respondent 1 that the very object of the provisions of Chapter XVI of the Code of Criminal Procedure is to prevent an accused person from being harassed by a frivolous complaint and, therefore, power is given to a Magistrate before whom complaint is made to postpone the issue of summons to the accused person pending the result of an enquiry made either by himself or by a Magistrate subordinate to him. A privilege conferred by these provisions can, according to Mr Sethi, be waived by the accused person and he can take part in the proceedings. No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. 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 Section 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. It is true that there is no direct evidence in the case before us that the two persons who were examined as court witnesses were so examined at the instance of Respondent 1 but from the fact that they were persons who were alleged to have been the associates of Respondent 1 in the first information report lodged by Panchanan Roy and who were alleged to have been arrested on the spot by some of the local people, they would not have been summoned by the Magistrate unless suggestion to that effect had been made by counsel appearing for Respondent 1. This inference is irresistible and we hold that on this ground, the enquiry made by the enquiring Magistrate is vitiated. In this connection, the observations of this court in **Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar [(1961) 1 SCR 1, at p 9]** may usefully be quoted:*

“The enquiry is for the purpose of 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 and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage, for the person complained against can be legally called upon to

***answer the accusation made against him only
when a process has issued and he is put on trial.”,***

to contend to the effect that an accused person does not come into the picture at all in the entire scheme of Ch. XVI of the Code of Criminal Procedure till the process is issued and though this does not mean that the accused is precluded from being present when an inquiry is held by a Magistrate but that permitting an accused person to intervene during the inquiry under Section 202 of the CR.P.C., 1973 which cannot in any sense be characterized as a trial, would frustrate the very object and that is why the legislature has made no specific provision permitting an accused person to take part in an inquiry.

23. Undoubtedly, as laid down by this Court in ***“Tej Kishan Sadhu Vs. State and Ors.”*** in CRL.M.C.292/2013 dated 02.05.2013, the legal propositions formulated in the said verdict have been answered and it has been laid down vide observations in paragraph 82 thereof to the effect:-

“82. In the light of the aforesaid discussion, relenting on the import of the provisions involved, following answers would set out the legal propositions as formulated in Para 4 above, which are as under:

a) Whether the petitioner who has yet not been summoned as an accused can challenge any order passed by the learned Metropolitan Magistrate at the pre-summoning stage, by invoking the powers under Section 482, Section 483 Cr.P.C. or Article 226 & 227 of the Constitution of India.

• This query has been discussed in detail in the paragraph nos. 37-51 of the aforesaid judgment. The petitioner, who has not yet been summoned as an accused can challenge the order passed by the learned Metropolitan

Magistrate even at the pre-summoning stage invoking the inherent power of this Court under Section 482 of the Cr.P.C., or even under Article 226 & 227 of the Constitution of India or under Section 483 of the Cr.P.C., but the exercise of such a power can only be under an extraordinary situation where the abuse of process of the Court or miscarriage of justice is writ large or in other alluring circumstances as discussed above.

b) Whether after the amendment in Section 202 Cr.P.C, it is incumbent on the Magistrate to hold an inquiry or investigation where the accused is residing beyond the area in which the Magistrate is exercising its jurisdiction.

- Answer to the aforesaid query is in the affirmative subject to paragraph Nos. 61, 62, 63 of the aforesaid judgment, as per Section 202 of the Cr.P.C, the inquiry or the investigation is mandatory where the accused is residing beyond the area in which the Magistrate is exercising its jurisdiction.*

c) Whether for directing an investigation to the police under Section 202 Cr.P.C, the magistrate can direct a full-fledged investigation in the same manner as can be done by the police under Section 156(3) Cr.P.C.

- The Magistrate cannot direct a full-fledged inquiry or investigation under Section 202 of the Cr.P.C. akin to the investigation which can be directed under Section 156(3) of the Cr.P.C. at the pre-cognizance stage. The aforesaid discussion in paragraph no. 64 clearly expounds the clear legal position as envisaged under Section 202 Cr.P.C*

d) Whether under Section 202 Cr.P.C, the Magistrate can direct the police or any other person to carry out their investigation on the suggested lines.

- Unlike under Section 156(3) of the Cr.P.C., the Magistrate being the master of inquiry under Section 202 of the Code, can direct the police or any other person to collect information on the line suggested by the Magistrate restricting to the ambit of the complaint but without involving*

the accused in any manner at such a pre mature stage which would be against criminal jurisprudence.”,

to thus, hold to the effect that the accused who has not been summoned, can challenge the order passed by the learned MM concerned even at the pre-summoning stage invoking the inherent power of this Court under Section 482 of the Cr.P.C., 1973 or even under Article 226 & 227 of the Constitution of India or under Section 483 of the Cr.P.C., 1973, but the exercise of such a power can only be under an extraordinary situation where the abuse of the process of the Court or miscarriage of justice is writ large or in other alluring circumstances as detailed in the said judgment.

24. It is essential to observe that vide judgment dated 25.04.2016 of this Court in case titled as **“Zee News Ltd. Vs. State & Anr.”** reported in **2016 SCC OnLine Del 2392**, it has been observed vide paragraph 89 to the effect:-

“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 *Badrudin 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.”

25. In the present case, it is essential to observe that the contention sought to be raised on behalf of the petitioner is to the effect that in view of the bar under Section 195(1)(b)(i) of the Cr.P.C., 1973 r/w Section 83 of Chapter V of the Finance Act, 1994 r/w Section 14 of Central Excise Act, 1944 and Section 89(4) of the Finance Act and Section 195(1)(a)(i) r/w Section 176 & 177 of the Indian Penal Code, 1860 in terms of Section 134 of the Central Goods & Services Act, 2017, there is a complete embargo to the institution of prosecution for alleged forgery committed in tax proceedings before the Commissioner of Service Tax allegedly to avoid tax liability without the requisite complaint in writing having been made of the public servant concerned or the authority to which such public servant is administratively subordinate to.

26. In relation to the said aspect, it is essential to observe that vide the impugned order dated 08.06.2018 vide paragraph 12 thereof, it has been observed to the effect that the complainant has alleged forgery of minutes of meeting dated 25.09.2005, 25.03.2007 and 07.06.2007, referred to by two of the proposed accused in their reply filed with the Commissioner of Service Tax, Delhi with intent to cheat by awarding of fake degrees to several students despite the factum that the courses of the accused i.e. "Post Graduate Programmes in Management" and

"Graduate Diploma in Business Administration" were not approved by any statutory authority, were stated to have been so approved by the accused.

27. The Revisional Court also vide its impugned judgment as already adverted to hereinabove has observed vide paragraph 18 of it impugned verdict to the effect that the respondent had alleged of the offence of forgery and cheating qua offences punishable under the Indian Penal Code, 1860 and that thus, the allegations made in the complaint could not be brushed aside and that an opportunity had to be given to the respondent to lead evidence in support of his contentions and that if after considering the statements on oath of the complainant and of the witnesses and the result of any inquiry or investigation under Section 202 of the Cr.P.C., 1973, the Magistrate is of the opinion that there are no substantial grounds for proceeding, he shall dismiss the complaint under Section 203 of the Cr.P.C., 1973 and that the Magistrate is to take into consideration all the facts and circumstances of the case and the law applicable at the stage of consideration of proceedings under Sections 203 & 204 of the Cr.P.C., 1973 as the case may be.

28. It is significant that though an averment was made through the petition as was also submitted during the course of arguments addressed that the Commissioner, CGST and Central Excise, Lucknow, have in fact dropped the proceedings initiated vide Show Cause Notice dated 22.04.2013 issued by the DGCEI to the Amity University, Lucknow Campus on 27.09.2018, no such order dropping the proceedings has been placed on the record by the petitioner.

29. In the circumstances, it is held that there are no exceptional circumstances warranting interference in the impugned order of the learned Trial Court and of the Revisional Court of the learned ASJ-05, South East vide the impugned judgments dated 08.06.2018 & 22.02.2019 respectively, in as much as, the petitioner who has not yet been summoned, in the given facts and circumstances of the instant case cannot be held to have a right at the present pre-summoning stage to invoke the inherent powers of this Court, in as much as, no extraordinary circumstance as laid down by this Court in ***“Tej Kishan Sadhu Vs. State and Ors.”*** (supra) exist as observed vide paragraph 81 of the said verdict have been shown to be in existence.

30. In view thereof, the petition is dismissed. However, it is made clear that the learned Trial Court would take into account the aspect of applicability of Section 195 of the Cr.P.C., 1973 to offences, if any, alleged to have been committed by the petitioner at the stage of consideration of the proceedings in terms of Section 202, 203 & 204 of the Cr.P.C., 1973. **Crl. M.A. No. 6437/2019** and **Crl. M.A. No. 10293/2019** thus call for no further action and are accordingly disposed of.

31. Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J.

MARCH 19, 2020

‘Neha Chopra’