

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 2696/2019 & CRL.M.A.31239/2019**

Order reserved on: 05.11.2019
Date of decision : 25.06.2021

PUNJAB NATIONAL BANK

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Nishant Joshi, Mr. Nikhil
Varshney, Advs.

Versus

NCT OF DELHI & ANR

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
State
Mr. Mahesh Jethmalani, Sr. Adv.
With Mr. Ramesh Babu M.R., Ms.
Manisha Singh, Ms. Nisha Sharma,
Advs. for RBI.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, the Punjab National Bank, vide the present petition instituted against the National Capital Territory of Delhi, through its Standing Counsel (Criminal) arrayed as the respondent No.1 and the Reserve Bank of India, arrayed as the respondent No.2 has assailed the impugned order dated **11.3.2019**, of the learned Trial Court of the Metropolitan Magistrate-05, Patiala House Courts, New Delhi in CC No.16711-18 whereby the proposed accused persons was sought to be

summoned as accused by the respondent No.2 herein, i.e., the Reserve Bank of India, through its complaint No. 16711/18 were summoned in respect of an offence punishable under Section 46 of the Banking Regulation Act, 1949, for the date of hearing **24.5.2019**.

2. The said complaint was instituted by the Reserve Bank of India, under Section 200 of the Cr.P.C., 1973, read with Section 47 of the Banking Regulation Act, 1949 on behalf of the Reserve Bank of India, the complainant corporation seeking the prosecution of all the said 11 accused persons for the commission of the offences punishable under Section 46 of the Banking Regulation Act, 1949, read with Section 120B of the Indian Penal Code, 1860.

3. The proposed accused summoned as accused are arrayed in the Memo of Parties in the Ct. No. 16711-18 which reads to the effect:-

“ **1. PUNJAB NATIONAL BANK**

*A bank constituted under Banking Companies
(Acquisition and Transfer of Undertaking) Act, 1970.*

Having its corporate office at:

Plot No.4, Sector-10 Dwarka

New Delhi-110075

Through its Managing Director and CEO Mr.Sunil Mehta

2. Smt. Usha Anantha Subramanian

Former Managing Director & CEO

Punjab National Bank

3. Shri. R.S. Sangapure

Former Executive Director

Punjab National Bank

4. Shri Sanjiv Sharan

Executive Director, Punjab National Bank

5. Shri Nehal Ahad

Former General Manager

6. Shri Rakesh Kumar

*Former General Manager
Punjab National Bank*

7. Shri Sunil Mohan

*Former Deputy General Manager
Punjab National Bank*

8. Shri I.J.Arora,

*General Manager
Punjab National Bank*

9. Shri T.R. Venkateswaran

*Assistant General Manager
Punjab National Bank
At I.T. Division, Head Office
5, Sansad Marg
New Delhi-110001*

10. Shri I.P.Singh

*Assistant General Manager
Punjab National Bank
Branch Office New Rajinder Nagar
Delhi.*

11. Shri S.K.Srivastava

*Chief Manager, Punjab National Bank
International Banking Division
Corporate Office, Plot No.4
Sector 10, Dwarka
New Delhi-110075.”*

4. Vide order dated **20.5.2019** whilst notice of the petition was issued to the respondent Nos. 1 and 2 to enter appearance, it was observed to the effect:-

*“The counsel for the second respondent (complainant) on being asked was unable to give any explanation as to why a general reference has been made in the complaint leading to similar general mention in the summoning order to Section 46 of Banking Regulation Act, 1949, without the specific penal clause being indicated.
The second respondent may file response within two weeks.
Rejoinder, if required, be filed within the same period.*

Be listed on 17th July, 2019.

Meanwhile, the proceedings before the trial court shall remain stayed.

Dasti under the signatures of Court Master.”

5. Reply to the petition was filed by the respondent No.2 to which the petitioner herein also filed the rejoinder.

6. Crl.M.A.No.35018/2019 filed on behalf of the petitioner seeking condonation of delay in filing the rejoinder was allowed and the delay condoned. Likewise Crl.M.A. No. 35019/2019 though erroneously mentioned as Crl.M.A. No. 35018/2019 in proceedings dated 5.11.2019 filed on behalf of the petitioner seeking condonation of two days' delay in filing the reply to the application, i.e., Crl.M.A. No.31239/2019, filed on behalf of the respondent No.2 seeking a vacation of stay granted vide order dated **20.5.2019** was also allowed and the delay condoned. The typographical error in proceedings dated **5.11.2019** mentioning the said application as being the Crl.M.A. No. 35018/2019 is rectified to read as Crl.M.A. No. 35019/2019 as filed on behalf of the petitioner.

7. Submissions were addressed on behalf of the petitioner and the respondents qua Crl.M.C. No. 2696/2018 & Crl.M.A. No. 10783/2019 i.e., the application that was filed by the petitioner for ad interim relief qua which vide order dated 20.5.2019, the proceedings before the learned Trial Court had been stayed which interim order continued vide order dated **17.7.2019** to **20.5.2019** and the said interim order vide order dated 5.11.2019 was extended till pronouncement of the judgment. CRL.M.A.31239/2019 has been filed by the Respondent no.2, the RBI seeking vacation of order dated 20.05.2019.

8. As per the averments made in the complaint filed by the complainant of Ct. 16711/2018 i.e., the respondent No.2, arrayed as petitioner therein, it was submitted that the complainant corporation i.e., the Reserve Bank of India had been constrained to invoke the jurisdiction of the Court under Section 200 of the Cr.P.C., 1973, seeking the prosecution against the persons named as accused and thereby their punishment *inter alia* under Section 46 of the Banking Regulation Act, 1949, read with Section 120B of the Indian Penal Code, 1860 as the said accused persons had conspired with each other wilfully, deliberately and made false and misleading statements and had furnished false information relating to the affairs of the accused No.1, bank to the complainant corporation. It was submitted further through the said complaint that the Punjab National Bank had been arrayed through its Managing Director and CEO Sh. Sunil Mehra who was responsible for the day-to-day affairs of the Punjab National Bank situated at Plot No.4, Sector-10, Dwarka, New Delhi, 110075 and had superintendence, control and direction over the affairs of the bank.

9. The respondent no.2 Smt. Usha Ananthasubramanian, as per the complaint was appointed as Managing Director & CEO of the accused no.1, the Punjab National Bank, the petitioner herein by the Government of India vide its Notification dated F.No.4/2/2015-BO-1 dated **14.8.2015** and she was the Managing Director and CEO till **4.5.2017** and had assumed charge of the Managing Director & CEO of the accused No.1, Punjab National Bank, on 14.8.2015 and continued in the post till 4.5.2017. The complainant alleged that the accused No.2, Smt. Usha Ananthasubramanian, being a Managing Director & CEO of the accused No.1, Punjab National Bank, during the relevant period was the person responsible for the day-to-day affairs of the

bank having superintendence, control and direction over the affairs of the bank. It was alleged further in the complainant that during the relevant period in which the violation occurred on behalf of the bank she exercised her powers and wilfully approved and signed false statements and the said false statements were made to the Reserve Bank of India and that her act denoted that she had knowledge of the said false statements which were approved by her.

10. It was alleged through the complaint further that the accused No.3, R.S.Sangapure was the Executive Director of the accused No.1, Punjab National Bank, and had been appointed in his present post by the Government of India vide its Notification bearing No. F. No. 4/5/2012-BO-1 dated **13.3.2014** and as an Executive Director of the accused No.1, he was the person responsible for the Information Technology Division of the accused No.1, Punjab National Bank, in addition to other divisions and had assumed the charge of Executive Director of the accused No.1, Punjab National Bank on 13.3.2014 and was in the said post till **28.2.2018** and also so posted during the period in which the violation of the said Banking Regulation Act, 1949, occurred . The complainant further alleged that the said accused No.3, R.S.Sangapure wilfully made false statements which bear his signatures stating his knowledge and approval to the false statements made by accused No.1, Punjab National Bank to the Reserve Bank of India.

11. As per the complaint, the accused No.4, Sanjiv Sharan, is the Executive Director of the accused No.1 and was appointed in his present post by the Government of India vide its notification bearing No. F.No.4/5(2)/2016-BO.1 dated **15.9.2016** and was continuing in the post of

the Executive Director of the accused No.1 and had assumed charge as Executive Director of the accused No.1, Punjab National Bank, on 15.1.2016.

12. As per the complaint, accused No.5 Nehal Ahad was the General Manager (under suspension) of the accused No.1, accused No.6 Rakesh Kumar was the General Manager (Retired) of the accused No.1, accused No. Sunil Mohan was the Deputy General Manager (Retired) of the accused No.1, accused No.8 I.J.Arora was the General Manger of the Accused No.1, accused No.9 T.R. Venkateswaran was the Assistant General Manager of the accused No.1, the accused No.10 I.P.Singh, was the Assistant General Manager of the accused No.1 and the accused No.11 S.K.Srivastava, was the Chief Manager of the accused no.1.

13. The complainant, i.e., the Reserve Bank of India, further submitted that the necessary permission under Section 197 of the Cr.P.C., 1973, had been obtained from the Government of India to prosecute the accused Nos. 2, 3 and 4.

14. Inter alia, the complainant, i.e., the Reserve Bank of India, placed reliance on the provisions of Section 46 of the Banking Regulation Act, 1949, seeking prosecution of the accused persons thereunder. The said provision i.e., Section 46 of the Banking Regulation Act, 1949, reads to the effect:

“46. Penalties.—

(1) Whoever in any return, balance-sheet or other document 1[or in any information required or furnished] by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be

punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub-section (2) of section 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which is asked by 2[an officer making an inspection or scrutiny under that section] he shall be punishable with a fine which may extend to 3[two thousand rupees] in respect of each offence, and if he persists in such refusal, to a further fine which may extend to 4[one hundred rupees] for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened or if any default is made in—

(i) complying with any requirement of this Act or of any order, rule or direction made or condition imposed thereunder, or

(ii) carrying out the terms of, or the obligations under, a scheme sanctioned under sub-section (7) of section 45, by any person, such person shall be punishable with fine which may extend to 8[fifty thousand rupees or twice the amount involved in such contravention or default where such amount is quantifiable, whichever is more, and where a contravention or default is a continuing one, with a further fine which may extend to two thousand and five hundred rupees] for every day, during which the contravention or default continues.]]

(5) Where a contravention or default has been committed by a company, every person who, at the time the contravention or default was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contra-

vention or default and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the contravention or default was committed without his knowledge or that he exercised all due diligence to prevent the contravention or default.

(6) Notwithstanding anything contained in sub-section (5), where a contravention or default has been committed by a company, and it is proved that the same was committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention or default and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals, and

(b) “director”, in relation to a firm, means a partner in the firm.]”

15. The complainant corporation further submits that it is a statutory corporation constituted in accordance with the provisions of Section 35 of the Banking Regulation Act, 1949 and that the complainant corporation is inter alia vested with power to “ cause an inspection by one or more of its officers of any banking company and its books and accounts” and that from **8.2.2016** to **12.2.2016**, the complainant corporation, in exercise of the power conferred on it under Section 35 of the Banking Regulation Act, 1949, carried out a detailed inspection of the systems and procedures of the Information Technology (IT) aspects being followed in accused No.1, Punjab National Bank, including IT operations, Information security, IS/IT Audit, function and extent of IT risk assessment. The said inspection was

conducted by the complainant corporation through its officers Shri R Lakshmi Kanta Rao, General Manager, Shri. Manmohan- Assistant General Manager and Shri Praveen Bhavsar- Manager and the said order/communication vide e mail dated **29.01.2016** was issued by the complainant corporation, Reserve Bank of India, to the accused No.1, Punjab National Bank informing them of the decision to carry out such inspection, copy of which is Annexure-P-4.

“It has been decided to carry out a focused IT Examination of Punjab National Bank from 8th February to 12th February, 2016. The RBI team would be headed by Shri RLK Rao, GM, RBI, Chennai with the following team members:

Shri Manmohan, DBS, CO, AGM and Shri Pravin Bhavsra, DBS CO, Manager

Sl.No.

Name

Designation

1.

*Shri Manmohan, DBS, Co
Assistant General Manager*

2.

*Shri Pravin Bhavsra, DBS Co
Manager*

We request your bank to provide them necessary support and co-operation in conducting the IT examination.

Regards

Minal A. Jain

GM, RBI & SSM-PNB”

16. It was further submitted through the complaint that after conducting the detailed inspection of the systems and procedures of Information Technology (IT) aspects including its IT operations, Information security, IS/IT Audit function and extent of IT risk assessment being followed in

accused No.1, Punjab National Bank, the complainant corporation prepared a comprehensive report made during the said examination which was forwarded to the accused No.1, Punjab National Bank vide an e-mail dated **06.06.2016**. It was further stated through the complaint that one of the crucial observations made in the said IT examination report was to the effect:

"3.5 Bank had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of in-house developed purchased and outsourced activities CBS was not integrated in automated fashion with various critical applications i.e. no Straight through Processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks. A Copy of the aforementioned IT Examination report together with the mail sent by Shri RLK Rao to the Accused No. 1 is annexed hereto and marked as ANNEXURE-P/5 (Colly)."

17. The report of the IT Team examination was to the effect:-

"viii) It was observed that though independence of CISO from the core IT function was ensured by making him report to GM (IRMD), he was not part of any important processes relevant to Information security i.e. a) he was not part of IT steering committee, b) external audit reports of Deloitte were not formally marked to him, c) he was not consulted in exception handling procedures, confirming exceptions or dropping observations of external auditors by the IT head / Audit Head, d) he was required to be responsible for coordinating the IS related issues / implementation within the bank as well as external agencies and e) he needed to monitor SOC alerts. CISO's position and functioning appeared to be in a regulatory compliance mode only.

ix) Information security policy did not cover important aspects like alignment of IT strategy /plans with business strategy, specific knowledge and skill sets required at various levels, periodic training and continuous professional

education for the staff manning critical desks and penal measures for non-compliance of policies.

x) Functioning of the Information Systems Security Architecture and Implementation Committee(ISSAIC) needed improvement in terms of a) instead of merely reviewing status of IS Audit observations in statistical terms, persisting observations and High Risk observations need to be discussed in detail for appropriate / quicker resolution, sustenance of compliance and non-recurrence of observations, b) Security Operation Centre(SOC) alerts and action taken thereof were not being part of agenda, c) IS issues observed in Quarterly Concurrent Audits and Management Audit were not being brought to the notice of the committee, d) exceptions granted or observations dropped in respect of external IS audits were not looked into at all and e) some of the security incidents were being reported only since July 2015 and were not mandated as part of standard agenda.

xi) Generally, the meetings of IT strategy committee, IT steering committee and ISSAIC etc. were not based on structured agenda with mandatory items for discussion but an unstructured listing of various agenda items.

*xii) Though Digital Evidence Policy and Record Maintenance Policy made reference to relevant provisions of IT Act 2000, remaining IT policies did not contain any reference to the provisions of IT Act and bank's adherence to the same. The compliance function in the bank was needed to ensure bank-wide compliance to the Act *ibid*.*

xiii) A perusal of bank's ICAAP document revealed that though operational risk was discussed, no mention of IT risk, its materiality, risk mitigation thereof was made though IT risk remains material and critical for the bank. Further, legal risks arising out of cyber laws were not assessed.

3	<i>IT Operations.</i>
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3.1 Bank had implemented ISO 27001 standards which was valid till May 2016. It had no plans to evaluate its IT function in respect of frameworks like COBIT 5.

3.2 As per the information provided, there are 80 applications in use in the bank and as many as 71 of them have been treated as critical. However, the basis of categorizing them as critical and whether Business Impact Analysis (BIA) was carried out or not was not clearly documented. Further the purpose of such categorization as to whether closer monitoring would be needed in respect of them was not clearly articulated.

3.3 In respect of 12 out of 71 critical applications of the bank, neither the source code was available with the bank nor Escrow Agreement with the vendors for safe custody of the source code was in place. In respect of 15 critical applications, no information was available with the bank regarding escrow status (e.g. Kondor + in Treasury, Credit Card issuance and SOC etc.).

3.4 Out of 71 critical applications, 18 applications were developed in house. However, there were no enabling HR policy provisions to ensure that the staff involved in development continues to be available for debugging, enhancements and changes in the application.

3.5 Bank had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of in-house developed, purchased and outsourced activities. CBS was not integrated in automated fashion with various critical applications i.e., no Straight through processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks.

3.6 Back up policy of the bank did not stipulate that data in the backup tapes needed to be in encrypted form. Data tapes containing data were being held at alternate locations but the data was not encrypted except in case of CBS data. Concurrent audit pointed out that media of software kept in the library was not periodically tested for integrity of data. Back up restoration periodic testing / readability of backed up tapes was not done for RTGS as pointed out by Deloitte.

3.7 Process audit reports of Deloitte pointed out that Network racks were kept in unlocked condition on many occasions.

3.8 It was observed that the employee verification was done only at the recruitment level. The bank needed to have a policy

to perform additional background checks of the employee while assigning him/her any critical responsibility (particularly related to Information Technology) like posting in Datacenter etc.

3.9 The bank did not carry out financial impact of non-fixing of bugs.

3.10 User manuals pertaining to CBS, GBM and IBS applications have not been updated since September 2013.

3.11 In case of incidents reported at Incident Management Portal, Root Cause Analysis (RCA) of the incidents had to be reported within 15 days of reporting of incident. It was observed that in case of many incidents RCA was not done.

3.12 During the period from 01-04-2014 to 31-01-2016 there were numerous occasions when same transactions in CBS were executed multiple times due to wrong structure of transaction file or wrong name of transaction file or due to other technical glitches.

3.13 There were incidents during the period from 01-04-2014 to 31-01-2016 wherein many transactions were declined as UTR series was exhausted at CBS. On many occasions, number of transactions was declined due to slow response from CBS which was mainly due to congestion at CBS ports assigned to ATM and POS transactions.

3.14 There is need to improve the monitoring of capacity utilization of storages, databases, memory, CPU etc. There was an instance when IMPS transactions were stopped due to database log storage got full, AML server stopped functioning as archival logs of AML server got full and SMS delivery was delayed as indexes on tables of SMS alerts database reached watermark level.

3.15 Though the bank had policy of testing any sort of modification in test environment before implementing the same in production, it was observed that post version migration of IBS, done during 13-07-2014 and 23-07-2014, the application was not functioning as intended and several performance issues were encountered. Similarly in another case, ESQ Database Server running on Windows 2008R Service Pack 1 crashed when the server was restarted after deployment of

Microsoft Security Bulletin patches for November 2015. The bank needed to test each aspect of the application / patches in DAT before implementing it in production.

3.16 During the month of Sep 2015, on four days the bank had not taken back-up of PNBFIN database due to some problem in tape library. The bank was needed to ensure that daily backup was taken without fail.

3.17 As per banks policy, software developed in-house should be audited by IAD before shifting to production. But it was observed by concurrent auditor that "online loan eligibility assessment and lead generation system" was made live on 04-11-2015 without any audit sign-off.

3.18 Physical security of IT assets and periodic physical verification was being done annually. It was observed that annual certificates have not been procured from all locations / divisions for the year ended 31 -03-2015.

3.19 ITD was maintaining helpdesk for all divisions / departments. It was observed that there were calls pending for closure for more than 15 days.

3.20 The bank was not computing the downtime of critical applications through system logs; instead the bank was capturing only planned downtime.

3.21 The bank was not doing the reconciliation / review of Access Cards issued. It was reported by the concurrent auditor that cards issued to the employees / vendors not currently with ITD were not surrendered / disabled.

3.22 The bank was not maintaining proper record of all software and their licenses in Software Inventory Maintenance Register properly. The functionality of maintenance of software procured / developed in-house was handled through CBS, but correct / complete details were not entered."

18. As per the complaint, the said mail was addressed to accused No.6, Rakesh Kumar and accused No.9 T.R. Venkateswaran and through the said mail the accused No.1 called upon submit its compliance/action taken report within **30** days on the observations/drawbacks/finding of the inspection spelled out in the email dated **06.06.2016**. In response to the email dated

06.06.2016, the accused No.9 while replying on behalf of the accused No.1, Punjab National Bank sent an e-mail to the complainant corporation on **8.7.2016** and it was alleged by the complainant that through the said mail they submitted the false compliance/action taken report in response to paragraph 3.5 (as mentioned in para 'c'), which reads to the effect:

3.3	In respect of 12 out of 71 critical applications of the bank, neither the source code was available with the bank nor Escrow Agreement with the vendors for safe custody of the source code was in place. In respect of 15 critical applications, no information was available with the bank regarding escrow status (e.g. Kondor + in Treasury, Credit Card issuance and SOC etc.).	DBD, ITD, HRDD	We have initiated process for escrow agreements with the remaining 15 application vendors. Likely date for completion of this process is 31-12-2016.	Arrangement of Escrow Agreements or other suitable alternatives for the 12 applications by 31/12/2016 (Action ITD)
3.4	Out of 71 critical applications, 18 applications were developed in house. However, there were no enabling HR policy provisions to ensure that the staff involved in development continues to be available for debugging, enhancements and changes in the application.	HRDD, ITD	Keeping in view the fact that the bank is managing the critical setups by in-house team, necessary steps have been initiated. In consultation with HR Division for a separate policy for critical IT resources/IT officers for their optimal	Review of HR provisions for availability of Officials involved in Software development (Action HRDD in coordination with ITD)

			utilization, retention, career planning so as to ensure that critical IT setup is managed by the best of resources available in the bank. Further we organize trainings to identified staff on technologies like Java programming, .net programming, Oracle database administration etc. and other specialized areas so that we create a second line in case people are transferred or they resign from service, to ensure continuity and redundancy. This aspect will be taken care while formulating separate policy.	
3.5	Bank had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of In-house developed, purchased and outsourced activities.	ITD	Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with	Review of Straight Through processing capabilities and improving the same - ongoing process (Action ITD)

	CBS was not integrated in automated fashion with various critical applications i.e., no Straight through processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks		STP except Treasury. The observation may be treated as complied.	
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19. It was submitted by the complainant that in this reply sent by accused No.1, Punjab National Bank, it was submitted that compliance/action taken report was prepared and personally approved by the accused Nos. 2, 3, 6, 7, 8 and 9 and that the same was evident from the internal documentary exchanges dated **4.10.2016** between the accused nos. 2, 3, 6, 7, 8 and 9 wherein the Compliance/Action Taken Report was first put forth before the accused Nos. 2 and 3 for their approval and further comments before it was sent to the complainant corporation.

20. The copy of the e mail dated **8.7.2016** is submitted to have been filed by the complainant as Annexure P/6 and the copies of the relevant internal documentary exchanges between the accused persons i.e., Accused Nos. 2, 3, 6, 7, 8, and 9 dated 4.7.2016 have been stated to have been annexed as Annexure P/7 (colly).

21. It was further submitted by the complainant corporation that the manner in which the accused persons propelled by their mala fide intentions and in order to achieve their illicit objective constantly provided the complainant corporation with the false and misleading information and

statements. The complainant further alleged that the accused No.1 not only made a false statement in the compliance/action taken report on **8.7.2016** but again submitted the same false statement on **27.6.2017** in response to a status report sought by Mr.C.Maheshwaran, Deputy General Manager, Department of Banking Supervision of the complainant corporation vide an e mail dated 21.6.2017. The complainant corporation further submitted that in response to the e mail dated **21.6.2017**, accused No.9, Mr.T.R. Vankateswaran, on behalf of the accused No.1, Punjab National Bank vide an email dated sent a progress report highlighting the then status of IT mechanism vis-à-vis observations made in the IT examination of Reserve Bank of India conducted in February, 2016 and reiterated its response as was earlier communicated to the complainant corporation by the accused persons vide email dated 8.7.2016. The complainant further submits that it is of immense relevance that this e mail was copied to the accused Nos. 6, 7 and 8, i.e., the same group of people who on accused No.2's approval and in connivance with her had submitted the compliance report dated 8.7.2016 containing false statements. The copy of the e mail dated **27.06.2017** sent by the accused No.9 Mr.T.R. Venkateswaran in response to the e mail issued by Mr.C. Maheshwaran on behalf of the complainant corporation seeking response from the accused no.1 Punjab National Bank is stated to be annexed as Annexure-P/9 (colly) with e mail dated **21.6.2017** issued on behalf of the complainant corporation stated to be annexed as Annexure P-8.

22. The complainant further alleged through the complaint that the accused persons wilfully made false statement despite being aware of the risks and repercussions of failing to integrate SWIFT with CBS and

introducing STP between SWIFT messaging and CBS. The complainant submits that risks were frequently flagged and highlighted by the Reserve Bank of India and that it was shocking that the accused consistently and deliberately made false statements to Reserve Bank of India and it was always the same set of persons from the accused No.1 bank, Punjab National Bank making those false statements thereby indicating a conspiracy to commit fraud. It is further submitted on behalf of the complainant corporation that it was pertinent to note that on or about 3.8.2016, the complainant corporation had issued a confidential circular bearing No. DBS.CO/CSITE/BC.4/33.01.001/2016-17 to all scheduled commercial banks including the accused No.1, Punjab National Bank and the subject matter of the circular is ‘Cyber Security Controls-SWIFT’ by which circular the banks were advised to strengthen the controls around the operating environment for fund transfers through SWIFT or similar interfaces and the banks were advised to minimize the practice of direct creation of payment messages in the SWIFT environment without routing the same through the CBS. The copy of the said circular is stated to have been annexed as Annexure-P/10 to the complaint. The complainant further submitted through its complaint that the said circular dated 3.8.2016 was discussed in a special meeting held on 19.8.2016 by various concerned divisions of accused no.1, Punjab National Bank and that the accused No. 11 was the convenor of the said meeting and that subsequent to the said meeting, accused No.5 under his signatures vide a letter bearing No.HO:IBD:SWIFT:22 dated 19.8.2016 falsely informed the complainant corporation that:

“We confirm SWIFT best practices are being adopted

in the Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place''.

The copy of the said letter dated 19.8.2016 was stated to have been annexed as Annexure-P/11 and the letter dated 22.8.2016 is stated to have been annexed as Annexure-P/12 to the complaint.

23. The complainant has further submitted through the complaint that in its endeavour to curb banking frauds it has continuously been reiterating and highlighting the importance of online integration between SWIFT and CBS and Straight Through Processing between CBS and SWIFT messaging to avoid fraudulent messages and on 25.11.2016, the complainant corporation had again issued a 'confidential circular' bearing No. RBI/2016-17/DBS/CO/CSITE/BC.4226/31.01.015/2016-17 on Cyber Security Controls-Frauds related to trade finance transactions-misuse of SWIFT and the same is stated to have sent in a 'password protected' form to the accused No.1, Punjab National Bank. Inter alia the complainant submitted that the password to open the said file which contained the circular was sent by another e-mail to all the banks including the accused No.1 on 30.11.2016 and the copy of that e mail containing the circular was stated to have been submitted as Annexure-P/13 and a copy of the e mail communication evidencing the relay of password e-mail is stated to have been annexed as Annexure-P/14.

24. The complainant further alleged through its complaint that the complainant having been the regulator and supervisor of the banking industry, whenever any bank files a flash report and submissions

relating to a fraud, the complainant issues 'caution advice' to all the banks disclosing the *modus operandi* of the fraud and advises the banks to exercise utmost caution and make detailed and in-depth enquiries before granting/renewing any facility and in terms of one of the caution advices, all banks were advised to bring an interface between CBS and SWIFT system and also consider defining large value transactions for which third level authentication may be made *mandatory*.

25. Inter alia it is submitted through complaint that pursuant to issuance of one such caution advice, a letter bearing DBS.ND.SSN.(ONB).No.865/14.47.009/2014-15 dated **27.10.2016** in the form of a questionnaire was issued to the accused No.1 by the complainant corporation and response for the questionnaire was sought from the accused No.1, Punjab National Bank and the said letter was signed by Smt. Minal A Jain, General Manager, Reserve Bank of India, New Delhi which included the question to the effect:

"i) Does the bank undertake any reconciliation to verify whether all outwards SWIFT messages transmitted by the bank have been captured in CBS?",

Copy of the said letter dated 27.10.2016 was annexed by the complainant as Annexure -P/15 to the complaint.

26. Inter alia, it was submitted by the complainant that in response to this question contained in letter dated **27.10.2016**, the accused No.1, Punjab National Bank, gave the following false and misleading answer vide its letter dated **31.10.2016** which is to the effect:

"Outward SWIFT message is sent after entering in CBS and passing/verification by two officials, without the entry in

CBS, no financial SWIFT message can be sent. However, reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by AD branches."

27. The complainant corporation alleged that this statement which was approved by accused Nos. 4, 5, 10 & 11 made to the Reserve Bank of India by on behalf of the accused No.1 Punjab National Bank was utterly and completely false and a copy of the internal approval letter dated 31.10.2016 is stated to have been annexed as Annexure-P/16(colly).

28. **The complainant corporation further submitted to the effect that they discovered the falsity of the information provided to the complainant by the accused persons and the misleading statements submitted by them in order to undermine and circumvent the endeavours of the complainant corporation to curb banking frauds while scrutinizing the Brady House Branch, Mumbai, of the accused No.1, Punjab National Bank in furtherance to the Fraud Monitoring Reports (referred to as "FMRs")/FMR Update Applications (referred to as "FUAs) filed by the accused No.1 with the complainant corporation informing that a fraud of more than Rs.13000 Crores had been detected in its Brady House Branch, Mumbai. A copy of a few FMR/FUAs filed by the accused No.1 were submitted to have been annexed as Annexure-P/17 (Colly). The said scrutiny at Brady House Branch is stated to have been conducted by Shri V.K.Maurya, General Manager (Since Retired), Department of Banking Supervision, Reserve Bank of India, New Delhi, and Sh.A.G.Giridharan, Deputy General Manager from the Reserve Bank of India, Central Officer, Mumbai deputed to the Head Office of the accused**

No.1 between **13.3.2018 to 15.3.2018** in order to assess the process put in place in submitting compliance/response to the Complainant.

29. The complainant corporation further submitted that during the said visit it was found that the information furnished by the accused No.1 in the last few years as had already been outlined in the complaint were completely false and the accused persons had wilfully and deliberately made false statement in utter disregard to their statutory obligation under Section 46 of the Banking Regulation Act, 1949. The complainant further submitted that the FMR/FUAs dated 29.1.2018, 13.02.2018, 14.3.2018 filed by the accused No.1 itself acknowledges and accepts the *modus operandi* of the fraud was because:

"9c. Issuance of Letters of Undertaking (LOU) by SWIFT without obtaining approval of the Authority, without necessary applications, documents and without making entries in the CBS system".

30. Inter alia, the complainant submitted through the IT examination conducted on the premises of the accused no.1 by the complainant, it was observed that the Core Banking System was not integrated with many critical applications and that there was no online integration of SWIFT with CBS. The complainant further submitted that this was communicated by the complainant to the accused no.1 vide its e-mail dated 6.6.2016 and thus the accused persons were fully conscious and aware that they did not follow the instructions issued by the complainant corporation during inspection and deliberately issue misleading and false information.

31. Inter alia the complainant submitted that a glaring omission to make a material statement was made by the accused No.1 when in its current status report vis-à-vis IT examination report dated 6.6.2016, submitted to the complainant corporation on **27.6.2017** stated to be submitted as Annexure-P/9 to the complaint did not find a mention of the current status report regarding observations made in para 10.7 of the said IT examination report of 6.6.2016. It was further submitted by the complainant corporation that in the e mail dated 21.06.2017 sent by Mr.C.Maheshwaran, Deputy General Manager, RBI to the accused No.1, he had specifically asked for a current status report of those paras where the accused No.1 bank in its compliance/action taken report of July 2016 had remarked by specifying a target date for compliance. The complainant further submitted that the original observation made by the complainant corporation in its IT examination of 6.6.2016 read to the effect:

"10.7 As regards systems relating to SWIFT operations were concerned, it was ascertained from the bank that the Base Software (application) patching has been done upto 7,1,14. However, patching status of other components of SWIFT infrastructure like OS/Data base server. Network devices enabling SWIFT messaging platform was not available. There was no online integration of SWIFT with CBS, Treasury, EDMS or Overseas systems. Bank also confirmed that no security incidents have been reported in the SWIFT operations for the last two years. Some of the repeated high risk observations of Deloitte (Process Audit) which are still pending pertain to physical infrastructure issues for SWIFT application server such as(i) use of inflammable wooden furniture, water seepage marks and absence of water sensors and (Hi) high level of humidity. Some of the repeated high risk observations of Deloitte in the Process Audit which were addressed by necessary action

by bank include (i) maintaining asset inventory/registers and verification thereof, (ii) use of common user ID, guest user IDs not being disabled and (iii) documentation of access control rights etc. "

32. The complainant further submitted that the compliance/action taken report of the date **8.7.2016** under the Action items at Bank Level column, the accused no.1, Punjab National Bank, had responded to para 10.7 of the complainant corporation IT examination report that “A *comprehensive review of SWIFT operations vis-a-vis observations of various auditors and actionable items by 30/09/2016 (Action ITD and IBD) "*.

33. **It was further submitted by the complainant corporation that the accused No.1 was specifically asked to submit a current status report vis-à-vis those para wherein the accused No.1 in its compliance/action taken report of July 2016 had remarked by specifying a target date for compliance and that the said current status report submitted by the accused No.1 through accused No.9 on 27.6.2017 did not consist of the status report on para 10.7 of the IT examination which it was submitted by the complainant amounted to omission of a material statement and thereby attracting provisions under Section 46 of the Banking Regulation Act, 1949. Inter alia the complainant reiterated that this omission was mala fide and deliberate because, as mentioned in the paragraph ‘m’, the FMR/FUAs dated 29.1.2018, 13.2.2018, 14.3.2018 itself acknowledged and accepted that the modus operandi of the fraud was because:**

"9c. Issuance of Letters of Undertaking (LOU) by SWIFT without obtaining approval of the Authority, without necessary applications, documents and without making

entries in the CBS system".

34. The copy of the e mail sent by Mr.C. Maheshwaran with specific instruction was stated to have been annexed as Annexure-P/8.

35. The complainant further submitted that the respondents/accused persons had deliberately furnished the false and misleading statements/information to the complainant corporation in utter violation of their statutory obligations and had therefore committed an offence punishable under Section 46 of the Banking Regulations Act, 1949, read with Section 120 B of the Indian Penal Code, 1860 and are therefore liable to be proceeded against and punished accordingly. Inter alia the complainant submitted that the necessary permission under Section 197 of the Cr.P.C., 1973 had been obtained from the Government of India to prosecute the accused Nos. 2,3 and 4 and the copies of the said permissions were stated to have been annexed as Annexure P/3 to the complaint.

36. The complainant further submitted that the Trial Court at Delhi had jurisdiction to try and entertain the complaint/application as well as the violation of Section 46 of the Banking Regulation Act, 1949 as compliance/action taken report dated **8.7.2016** as well as the progress report on the Reserve Bank of India IT Exam 2016 dated **27.6.2017** were sent by Sh.T.R. Venkateshwaran (accused No.9) from the IT Division, Head Office, Punjab National Bank, located at 5, Sansad Marg, New Delhi 110001 and the compliance/action taken report dated 8.7.2016 were also approved and authorized by and bear signatures of accused No.2, accused No.3, accused No. 6, accused No.7, accused No.8 and accused No.9 all of whom operated from the Delhi offices of the accused No.1, Punjab National Bank.

37. Inter alia, the complainant apart from seeking exemption from appearance in terms of Section 200 of the Cr.P.C., 1973, the complainant being a public servant submitted also that the instant complaint was placed on the official record and that the guilt of the accused would be established by both oral and documentary evidence and the complainant had thus sought that the Trial Court takes the cognizance of the offence under Section 46 of the Banking Regulations Act, 1949, and issues summons to the accused persons in accordance with the provisions of law and tries them for the offences they have committed.

38. The petitioner, the Punjab National Bank vide its reply to Crl.M.A. No. 31239/2019 filed by the respondent No.2, Reserve Bank of India, seeking vacation of the stay of proceedings before the learned Trial Court granted vide order dated **20.5.2019** in Crl.M.C. No. 2696/2019, submitted that the application filed by the respondent No.2, Reserve Bank of India, the complainant of the CT No. 16711-2018, was a hopeless attempt on part of respondent No.2 to stymie the proceedings and not pave the way for adjudication of the larger issue under consideration before this Court.

39. Inter alia, the petitioner submitted that the said application filed by the respondent No.2, Reserve Bank of India, seeking a vacation of the stay, the Trial Court proceedings which had been granted by this Court after weighing all facts and considerations was an attempt to mislead this Court.

40. Inter alia, the petitioner, the Punjab National Bank, submitted that the application Crl.M.A. No. 31239/2019 filed by the respondent No.2 deserved to be dismissed at the threshold as the same was replete with false averments and that the respondent No.2 had stated in the application that paragraphs

2, 8(e), (f). (l), (m) and (n) of the criminal complaint filed by them before the learned Trial Court amply made it clear that the complaint was filed for wilfully furnishing false and incorrect information, which attracted Section 46(1) of the Banking Regulation Act, 1949. The petitioner submitted thus that a bare perusal of the said paragraph numbers paragraphs 2, 8(e), (f). (l), (m) and (n), in the criminal complaint unequivocally showed that a reference to Section 46(1) of the Banking Regulation Act, 1949, was not made in the said paragraphs and furthermore, the respondent No.2 was making an endeavour to revise the criminal complaint filed before the Trial Court by clarifying in its reply as to under what sub-section they proposed to punish the petitioner bank, i.e., Punjab National Bank. Inter alia the petitioner bank submitted that a clarification in reply before this Court would not rectify the patent error in the criminal complaint filed before the Trial Court.

41. The petitioner further submitted that it has been held by this Court that a criminal trial is a serious matter, having grave implications for an accused, who not only has to engage a lawyer and incur substantial expenditure for defending himself but has also to undergo the ordeal of appearing in the Court on every date of hearing, sacrificing all his engagements fixed for that day and if he is in business or a profession, he has to do it at the cost of affecting his business or profession, as the case may be and if he is in service, he has to take leave on every date of hearing. The petitioner further submitted that besides inconvenience and expenditure involved, a person facing a criminal trial undergoes constant anxiety and mental agony, as the sword of possible conviction keeps hanging on his head throughout the trial and therefore when there is a reasonable certainty that the trial is not going to result in conviction, it would be neither fair nor

reasonable to allow it to proceed against a person. Reliance was placed on behalf of the petitioner on the verdict of this Court in ***Raj Chawla v. Securities and Exchange Board of India (SEBI) and Ors.***; (2010) 154 Comp Cas 16 decided on 12.1.2010.

42. The petitioner has further submitted that in view of the verdict of the Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd, and Ors. v. Central Bureau of Investigation***, (2018) 16 SCC 299, it has been laid down by the Hon'ble Supreme Court that challenge against an order of framing of charge may not require meticulous examination of voluminous material which may be in the nature of a mini trial, as had been projected by Respondent No. 2 in their reply, as the Court has to only see as to whether the material on record reasonably connects the accused with the crime, Inter alia it was submitted that the issue of process by Court is indubitably a step before framing of charges against the accused and thus even at the preliminary stage of issue of process, the Court only needs to examine if there is a reasonable connection between the Petitioner Bank and purported crime and thus, the argument by the Respondent No. 2, the Reserve Bank of India, that meticulous examination of voluminous material would be required by this Court, is impermissible in law and is untenable.

43. The petitioner through its response to the CrI.M.A. No. 31239/2019 filed by the respondent No.2 reiterated that the submissions made by the respondent No.2 through its application that the petitioner had filed the petition seeking quashing of a complaint under Section 46(1) of the Banking Regulation Act, 1949, was wholly misconceived in as much as the criminal complaint filed by the respondent No.2, Reserve Bank of India, before the

Trial Court does not specifically state that the complaint is under Section 46(1) of the Banking Regulation Act, 1949, but only stated that the same was under Section 46 of the Banking Regulation Act, 1949, and the petitioner thus reiterated that the respondent No.2 was attempting to revise its complaint, by making the false averments in the application Crl.M.A. No. 31239/2019 which was impermissible in law. The petitioner further submitted that the petitioner bank has exercised its rights available under law, by filing a petition under Section 482 of the Cr.P.C., 1973, and thus the submissions to the effect that it was only an outcome of clever attempt and malafides of the Petitioner Bank to evade prosecution before the Learned Trial Court, by Respondent No. 2 were puerile, absurd and vehemently opposed.

44. The petitioner reiterated through its response to the averments in paragraph 4 of the application filed by the respondent No.2, Reserve Bank of India, Crl.M.A. No. 31239/2019 that the paragraphs 2, 8(e), (f), (l) (m) and (n) of the criminal complaint filed by them before the learned Trial Court amply made it clear that the complaint was filed for wilfully furnishing false and incorrect information, which attracted Section 46(1) of the Banking Regulation Act, 1949. The petitioner further reiterated that it being named as an accused had all the rights to know under which provisions of law it is proposed to be prosecuted and non-mentioning of the exact provision under which the petitioner bank was proposed to be prosecuted is certainly a fatal flaw that impinges on the entire trial. Inter alia, the petitioner bank submitted that the summoning of an accused is a serious matter and that the rights of the petitioner Bank cannot be savagely prejudiced by not even specifying under which provision of law the

petitioner bank was proposed to be prosecuted.

45. The petitioner bank submits that it was in the Crl.M.A. No. 31239/2019 filed by the respondent No.2, the complainant, that it for the first time stated that the complaint had been filed under Section 46(1) of the Banking Regulation Act, 1949 whilst the petitioner bank had legitimately expected that it was proposed to be prosecuted under section 46(4) of the Banking Regulation Act, 1949 as Respondent No. 2 had issued a show cause notice dated **23.08.2018** to the Petitioner Bank under Section 46(4) read with Section 47A(1)(c) of the Banking Regulation Act, 1949 and the said show cause notice was an indicator of the charges, in the absence of specific provisions being set out in the criminal complaint.

46. The petitioner bank has thus submitted that as Section 46(4) of the Banking Regulation Act, 1949, provides for a fine of INR 1,00,00,000/- as punishment the Petitioner Bank had submitted that upon entering appearance and that it would be subject to framing of notice under section 251 of the CrPC without having the advantage of knowing the substance of accusation against it. Inter alia the petitioner submitted that summoning in a criminal case itself being a serious matter, the argument that the stage of being informed by the Court of the exact nature of charge is at the stage of framing of charge is untenable.

47. Inter alia, the petitioner submitted that the issue raised by the Respondent No. 2 that in a warrants trial, the substance of the charge is only required to be explained at the stage of framing of the charge, is contrary to the law and irrelevant for the present proceedings with submissions made by the petitioner to the effect:-

a. Neither the impugned criminal complaint nor the impugned

summoning order dated 11.03.2019 make clear what offence the accused is summoned for. Under the various offences provided for in section 46 of the Banking Regulation Act, 1949, only one offence i.e., section 46(1) of the Banking Regulation Act, 1949 would be an offence requiring a warrants trial. In the present case, as indicated above, there is no indication as to what offence the accused are being summoned.

b. Even in a warrants trial case, the accused would be entitled to know the substance of the charge he is summoned for. A bare perusal of Form I, Schedule II of the CrPC establishes that the summary of the charge is to be conveyed even on the summons.

c. In this particular case, there is no particular reference that has been made to any particular sub-section under Section 46 of the Banking Regulation Act, 1949. Thus, it is not open to either the Petitioner Bank nor this Hon'ble Court to assume that proceedings in the instant case are under section 46(1) of the Banking Regulation Act, 1949.”

48. Inter alia the petitioner submits that in the instant case this Court very carefully and cautiously exercised its right to stay the Trial Court proceedings and submitted that in the case of ***Pepsi foods Ltd. V. Judicial Magistrate***, (1998) 5 SCC 749, the Hon'ble Supreme Court has observed that the summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course and it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set into motion and that it has also been submitted that it has also been laid down therein that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto and has to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing the charge home to the accused. Inter

alia the petitioner submitted that, the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused and has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

49. Inter alia the petitioner in response to Crl.M.A. 31239/2019 has denied that the continuance of stay qua the trial of the complaint before the Trial Court would fetter the smooth administration of justice and object of legislature for final and expeditious disposal of criminal proceedings would become infructuous and rather submitted that it was rather the petitioner bank which had been significantly prejudiced and inconvenienced in the event the trial continued against the Petitioner Bank more specifically when it is not even clear under what sub-section of section 46 of the Banking Regulation Act, 1949, the petitioner bank was being charged under.

50. It was inter alia submitted by the petitioner that there was no prejudice whatsoever that been caused to the respondent No.2 with the trial being stayed till the disposal of the quashing petition. The petitioner further submits that the application filed by the respondent No.2, Reserve Bank of India seeking a vacation of the stay granted of the learned Trial Court proceedings granted vide order dated **20.5.2019** had not been filed bona fide and had been filed with the sole objective of delay in adjudication of larger issue at hand.

51. Vide its rejoinder filed by the petitioner to the reply filed by the respondent No.2, Reserve Bank of India, to the petition Crl.M.C. No.

2696/2019 and the submission as made to CrI.M.A. No.31239/2019, to the effect that there was no reference to any of the different sub-sections under Section 46 of the Banking Regulation Act, 1949 under which the Petitioner was proposed to be punished having mentioned the impugned criminal complaint filed by the respondent No.2 nor in the impugned order dated **11.3.2019** of the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi was reiterated and thus it was submitted by the petitioner bank that on a plain reading of the impugned criminal complaint filed by Respondent No.2, the Petitioner Bank was not in a position to comprehend/ascertain under which sub-section of Section 46 of the Banking Regulation Act, 1949 it had been called upon to answer. The petitioner bank has thus submitted that each sub-section of Section 46 of the Banking Regulation Act, 1949 is different, and has different ingredients in as much as Section 46(1) punishes who ever wilfully furnishes a statement which is false in any material particular while Section 46(2) punishes who ever fails to furnish any statement under sub Section (2) of Section 35 of the Banking Regulation Act, 1949, and Section 46(4) punishes any other violation of the provisions of the Banking Regulation Act, 1949 and to that extent each sub-section contemplates some different elements but at the same time prescribes widely varying punishments i.e., from imprisonment of upto 3 years to a fine which may extend to INR 1,00,00,000/- (Rupees One Crore only) or fine extending to INR 1,00,000 (Rupees One Lakh only) for every day, during which contravention or default continues. The petitioner further submitted that keeping in mind the differing elements, the defence of Petitioner Bank would vary vastly and to that extent the fact that the exact sub-section has not been identified the same prejudices the accused (Petitioner Bank)

greatly. The Petitioner Bank reiterates that considering that the impugned criminal complaint filed by Respondent No. 2 is to be tried as a summons trial under Chapter XX of the CrPC, the Petitioner Bank upon entering appearance would be subjected to the framing of notice under Section 251 of the CrPC without having had the advantage of knowing the substance of the accusation against it.

52. The petitioner Bank reiterated further that the only indicator of which sub-section of section 46 Petitioner Bank is charged with is provided in the show cause notice issued by Respondent No. 2 dated 23.08.2018 under Section 47A of the Banking Regulation Act, 1949 which states that the same is punishable under Section 46(4) of the Banking Regulation Act, 1949. The petitioner Bank reiterates that the impugned criminal complaint filed by Respondent No. 2 and the impugned summoning order dated **11.03.2019** passed by the Learned Trial Court are barred in law in as much as section 47A(4) of the Banking Regulation Act, 1949 provides that no complaint shall be filed against a banking company such as the Petitioner Bank in respect of any contravention or default in respect of which any penalty has been imposed by Respondent No. 2 and submits that it is relevant to point out that in the show cause notice dated **23.08.2018** reference has only been made to Section 46(4) of the Banking Regulation Act, 1949 clearly indicating that Respondent No. 2 did not believe any other provisions were attracted in the instant case. The Petitioner Bank reiterates that in the instant case. Respondent No. 2 has already imposed a penalty on Petitioner Bank, of an amount of INR 2,00,00,000 (Rupees Two Crores Only) by way of order dated **25.02.2019** and, therefore, the provisions of Section 47A(4) would act as a complete legal bar to the prosecution of Petitioner Bank by the

impugned criminal complaint and impugned summoning order dated **11.03.2019**.

53. Inter alia, the petitioner has further submitted that there had been a total non-application of mind by the learned Trial Court whilst issuing the impugned summons as nowhere in the impugned criminal complaint nor in the impugned summoning order dated **11.3.2019** passed by the Trial Court was there any reference to which provision under the Banking Regulation Act, 1949, the accused was being summoned.

54. Further preliminary submissions made by the petitioner as a rejoinder to the response to the petition to the effect that respondent No.2 cannot amend the criminal complaint filed before the learned Trial Court by way of issuing a clarification in the reply filed before this Court.

55. Inter alia the petitioner submitted to the effect that the reply filed by Respondent No. 2 before this Court is an egregious abuse of process of law as Respondent No. 2 desires this Court to construe the clarification issued by them in their reply, in respect of the charging section under the Banking Regulation Act, 1949, as an amendment to the impugned criminal complaint filed by them before the Learned Trial Court, which is unheard of and not permissible in law. It was submitted by the petitioner bank that this clarification which Respondent No. 2 has tendered in the Reply is a mere afterthought. The petitioner further submitted that there is an error apparent on the face of the impugned criminal complaint and the impugned summoning order passed by the Ld. Trial Court and the same could not be rectified through the route of issuing a clarification in the reply filed by Respondent No. 2 before this Hon'ble Court. Furthermore, the petitioner submitted that the RespondentNo. 2 is treating the case instituted by them as

a warrant-triable case solely on the premise that the Petitioner Bank has acted in violation of Section 46(1) of the Banking Regulation Act, 1949 whilst the impugned criminal complaint and also, the impugned summoning order dated 11.03.2019 passed by the Learned Trial Court do not even make any reference to Section 46(1) of the Banking Regulation Act, 1949. The petitioner thus submits that such a material improvement in the charging section, which Respondent No. 2 desires to make, is indefensible and cannot be allowed.

56. Inter alia the petitioner submitted that the complaint must be read as it is while dealing with issues of cognizance and or summons, especially in a case where there is no pre-summoning evidence led. The petitioner reiterated that the Respondent no.2 cannot by way of a counter-affidavit/reply add or subtract from a complaint already filed before the Learned Trial Court and claim that the complaint must be read with their submissions and that such an attempt is contrary to settled legal principles.

57. The petitioner has further submitted that the respondent No.2 has taken it as if summoning of the petitioner bank in itself is not a serious matter and the ex-facie illegality in the impugned criminal complaint could have been rectified at a later juncture, at the time of framing of charges in terms of section 246 of the Cr.P.C., 1973 which is sought to be negated by the petitioner by placing reliance on the verdict of the Hon'ble Supreme Court in ***Punjab National Bank and Ors. v. Surendra Prasad Sinha***; 1993 Supp (1) SCC 499 submitting to the effect that thereby the Hon'ble Supreme Court had held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment. The petitioner has further placed reliance on the verdict of

Hon'ble Supreme Court in *Birla Corporation Limited and Ors. v. Adventz Investments and Holdings Limited and Ors.*; 2019 SCC Online 682, submitting to the effect that it had been laid down by the Hon'ble Supreme Court to be summoned/to appear before the criminal court as an accused is a serious matter affecting one's dignity and reputation in the society. The petitioner has thus submitted that in taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused.

58. The petitioner has further submitted that the requirement of examination of the complainant as envisaged under Section 200 of the Cr.P.C., 1973 could not have been dispensed with in the instant case which had been so dispensed with by the learned Trial Court on the wrong premise that the complaint had been filed by a 'public servant' in discharge of his official duties. Inter alia the petitioner submitted that Mr.Tarun Kumar Singh, an officer working with the respondent no.2, Reserve Bank of India, is not a public servant and hence the Trial Court could not have dispensed with his examination before issuing the process under section 204 of the Cr.P.C., 1973 and that none of the provisions of the Reserve Bank of India Act, 1934 nor section 21 of the Indian Penal Code, 1860 which defines 'public servant' is indicative of the fact that an employee of Respondent No. 2 is a public servant. The petitioner has thus submitted that the impugned summoning order dated 11.3.2018 whereby the examination of Tarun Kumar Singh, an authorized representative of the respondent No.2, Reserve Bank of India, was dispensed with is perverse, grossly erroneous and ought

to be set aside.

59. The petitioner has further submitted that in the case ***E. Manoj Kumar v. Tamil Nadu Public Service Commissions*** 2019 LabIC 2058 the Hon'ble Madras High Court did not subscribe to the view taken by a party that service in Reserve Bank of India (Respondent No. 2 herein) is a Central Government service. The petitioner further submitted that the Hon'ble Madras High Court further held that Sections 7 and 11 of the Reserve Bank of India Act, 1934 do not show that the employees of Reserve Bank of India (Respondent No. 2 herein) are government servants and that the fact that the Central Government has persuasive control over Reserve Bank of India would not make its employees central government employees.

60. Inter alia the petitioner has submitted while placing reliance on the observations of the Hon'ble High Court of ***Gauhati, in Sri Padumi Das & Ors. v. Bibhashree Das***, (2012) 5 GLR 597, wherein it has been held to the effect:

"In the present case, since the complainant was not a public servant and the complaint had not been made, while acting or purporting to act in discharge of the complainant's official duties and when no Court had made the complaint, in question, the learned Magistrate ought to have examined the complainant, under Section 200 Cr.PC, before deciding to issue process in exercise of his powers under Section 204 Cr.PC. Examination of the complainant unless, otherwise, dispensed with by the proviso to Section 200 Cr.PC., is mandatory, for, examination of the complainant is not a mere formality, but is aimed at ascertaining as to how far the complainant, when examined on oath, supports the allegations made in the complaint."

61. The petitioner has thus reiterated that it was incumbent upon

the Trial Court to examine Tarun Kumar Singh on oath as he is not a public servant and thus, the impugned criminal complaint and the impugned summoning order passed by the Learned Trial Court ought to be set aside by this Court.

62. The petitioner has further submitted that the information furnished by petitioner bank was not “by or under or for the provisions of the Banking Regulation Act, 1946 and hence Section 46(1) of the Banking Regulation Act, 1949 is no application on the petitioner bank.

63. The petitioner has thus submitted further that without prejudice to submissions made in ‘a’ as reflected in para 47 hereinabove, the petitioner Bank has submitted that the Respondent No. 2 did not make any reference to any of the provisions of the Banking Regulation Act, 1949 before conducting IT examination of Petitioner Bank, at the time of conducting IT examination or anytime thereafter. The petitioner submits further that a bare perusal of the IT Examination Report, the communications/letters/emails exchanged between Petitioner Bank and Respondent No. 2 makes the aforesaid fact amply clear. The petitioner reiterated that the Respondent No. 2 solely intended to conduct a study of IT system of Petitioner Bank.

64. Inter alia whilst placing reliance on the provisions of Section 46(1) of the Banking Regulation Act, 1949 which reads to the effect:

"Whoever in any return, balance-sheet or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or willfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years or with fine, which may extend to one crore rupees or with both."

the Petitioner Bank submitted that an accused person is punishable for contravention of Section 46(1) of the Banking Regulation Act, 1949 only when the return/balance-sheet/other document/information has been provided by or under or for the purposes of any of the provisions of the Banking Regulation Act, 1949. The petitioner thus submitted that the information provided by Petitioner Bank was not under or for the purposes of the provisions of the Banking Regulation Act, 1949 and was an information provided solely to assist Respondent No. 2 in the study which Respondent No. 2 proposed to conduct and that thus the Petitioner Bank cannot be charged for contravention of Section 46(1) of the Banking Regulation Act, 1949.

65. Inter alia the petitioner submitted that the respondent no.2 in its impugned criminal complaint has not suggested/stated that the petitioner bank made any false statement wilfully or knew that the statement made is false or wilfully omitted to make a material statement and therefore the petitioner bank cannot be charged under Section 46(1) of the Banking Regulation Act, 1949.

66. Furthermore, the petitioner submitted that Section 46(1) of the Banking Regulation Act, 1949 penalizes making of a false statement "wilfully" or if the statement made is "known" to be false or there is a "wilful" omission to make a material statement and that it is thus clear that there has to be a *mens rea* on part of an accused person before the accused person could be charged/penalized under Section 46(1) of the Banking Regulation Act, 1949.

67. Inter alia the petitioner submits that the respondent No.2 in its impugned criminal complaint filed before the Learned Trial Court has not

stated or made any suggestion towards the fact that the Petitioner Bank has wilfully made any false statement or knew that the statement made by it was false or had omitted to make a material statement wilfully. The petitioner submits that there was no *malafide* on part of Petitioner Bank and that Respondent No. 2 implicitly admits the same as Respondent No. 2 has not stated in its impugned criminal complaint filed before the Learned Trial Court that the Petitioner Bank had acted malafidely or that Petitioner Bank wilfully made any false statement and that thus Petitioner Bank cannot be charged under Section 46(1) of the Banking Regulation Act, 1949.

68. **Furthermore, the petitioner submits that the summons issued to the petitioner bank by the trial Court is a summon under Section 138 of the Negotiable Instruments Act, 1881 whereas the impugned criminal complaint filed by the respondent No.2 against the petitioner bank and other accused persons is under Section 46 of the Banking Regulation Act, 1949, and the Learned Trial Court has summoned the Petitioner Bank under Section 46 of the Banking Regulation Act, 1949 and that the impugned criminal complaint has no remote connection to section 138 of the Negotiable Instruments Act, 1881.**

69. **The petitioner further submitted that the plain reading of the summons at page 65 of the paper book and the impugned summoning order dated 11.3.2019 passed by the trial Court reveals that there could not be a more blatant case than the present one for a total non-application of mind for the reasons:**

“a. A bare perusal of the summons reveals that it is a summons to an accused person in a summons trial case and not as is contended by Respondent No. 2, before this Hon'ble Court for a warrants trial case.

b. The summons itself appears to be a summons for a case under the Negotiable Instruments Act, 1881 and to that extent therefore, is totally defective.”

Copy of the summons issued to the petitioner as placed at page 65 is as under:-

“Summon to an accused person in a summon case (U/s. 138 NI Act) (Section 68 of the Code of Criminal Procedure Schedule II. Form I) In the court ofMagistrate..... District..... Class.....

***To,
Punjab National Bank,
Plot NO. 4, Sector - 10, Dwarka
New Delhi- 110 075
Through its Managing Director & CEO,
Mr. Sunil Mehta***

Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged).

You are hereby required to appear in person or by pleader (as the case may be) before the (Magistrate) ofon the 24th day of May 2019. Further take notice that unless you are prepared to admit the offence charged, you should bring your witnesses with you on the date mentioned above.

Note: In terms of judgment dated 03.05.2010 of Hon'ble Supreme Court of India in Crl. Appeal No. 963 of 2010 titled as "Damodar S. Prabhu Vs. Sayed Babalala H", you are hereby informed that you can make an application for compounding of the offence at the first or second hearing of the case and in that case compounding may be allowed by the court without imposing any cost.

Dated this 30th day of March 2019”

70. The petitioner has thus submitted that the summons issued by the learned Trial Court are perverse and ought to be set aside by this Court.

71. The petitioner has reiterated that the law laid down in the case of *Sunil Bharti Mittal V. CBI (2015) 4 SCC 609* and in the case of *Pepsi Foods Limited v. Judicial Magistrate, (1998) 5 SCC 749*, is squarely applicable to the facts of the present case and that it is a settled position of law that the order summoning an accused could not be passed mechanically and in a cavalier manner. The petitioner has thus submitted that the respondent No.2 had approached the Trial Court with unclean hands as the respondent No.2 did not plead/inform about the show cause notice dated **23.8.2018**, that was issued to the petitioner bank under Section 47A(1)(c) read with Section 46(4) of the Banking Regulation Act, 1949.

72. Reliance was placed by the petitioner on the verdict of the Hon'ble Supreme Court in the case of *Mehmood Ul Rehman and Ors. v. Khazir Mohammad Tunda and Ors., (2015) 12 SCC 420*, submitting to the effect that it has been laid down by the Hon'ble Supreme Court that application of mind is best demonstrated by disclosure of mind on the satisfaction and that if there is no such indication in a case where the Magistrate proceeds under sections 190/204 of the Cr.P.C, the High Court under Section 482 of the Cr.P.C is bound to invoke its inherent power in order to prevent abuse of the power of the Criminal Court.

73. The petitioner has further submitted that the complaint filed by the respondent No.2 made no reference to any of such Sections of Section 46 of the of the Banking Regulation Act, 1949, nor have they been included in the summoning order, which made it amply clear that no reference was made to any of the sub-sections of section 46 of the Banking Regulation Act, 1949 and the petitioner bank was left to make its own guesses as to under what sub-section of Section 46, Respondent No. 2 would be intending to

prosecute the petitioner Bank. The petitioner has thus submitted through its petition that the ingredients of none of the sub-sections of Section 46 were satisfied and the impugned criminal complaint is a mere instrument of harassment. The petitioner has denied that the provision under which the complaint is filed is not relevant and submits that such an interpretation would open a pandora's box of criminal complaints being filed without specifying any sections of relevant laws under which an accused is charged under and if an accused is not even informed of the provision of law it is being prosecuted under it would be nothing but a serious attack on the rights of an accused and a grave travesty of justice. The petitioner submits that the summoning in itself is a serious matter and the Court could not be left to specify the exact charge at a later stage, when it is not even clear if the case is a summons-triable case or a warrants triable case and the only indicator hints it to be a summons-triable case. It is strenuously submitted that the Petition is not an attempt to wriggle out of summons issued against Petitioner Bank but that the reply filed by Respondent No. 2 is a charade and a stratagem to frustrate the Petition.

74. Inter alia the petitioner submitted that the interpretations which respondent No.2 seeks to attempt to give to Section 47A(4) of the Banking Regulation Act, 1949, are perverse and not in conformity with the law. The petitioner has submitted that the allegations in the impugned criminal complaint and those contained in the show cause notice dated **23.8.2018** qua which the respondent No.2 has wilfully chosen to stay quiet by not informing the Trial Court of the said show cause notice dated 23.8.2018 and the order dated **25.2.2019**, were similar, if not identical and the respondent No.2 could thus not attempt to create a distinction between the two set of

proceedings against the petitioner bank initiated by the respondent No.2.

75. Inter alia, the petitioner has submitted that it was only in the circular dated **20.02.2018** issued by the respondent No.2 that the respondent No.2 for the first time, directed all scheduled commercial banks including the petitioner bank to ensure Straight Through Processing (STP) between CBS/accounting system and SWIFT messaging system put in place expeditiously and not later than **30.04.2018**.

76. The petitioner has further submitted that the emails dated **02.06.2016**, response to questionnaire dated **31.10.2016** issued by Petitioner Bank unequivocally show that the Petitioner Bank had always maintained that the Petitioner Bank does not have interface for undertaking Straight Through Processing (STP). The petitioner has further submitted that a bare perusal of e mail dated **29.01.2016** makes it clear that what Respondent No. 2 was keen in conducting was a 'study' and no reference whatsoever to an inspection under Section 35 of the Banking Regulation Act, 1949 was made.

77. Inter alia, the petitioner submitted that in general practice, the Respondent No. 2 usually makes a reference to Section 35 of the Banking Regulation Act, 1949 in its communications, whenever it proposes to conduct an inspection on a bank. It was strenuously submitted by the petitioner that terming the study as an inspection was a mere afterthought on part of Respondent No. 2 and possibly, with a malafide intent of framing the Petitioner Bank. Reliance was placed by the petitioner on the excerpt (Point no. 16) of the Minutes of Formal Interaction held between Petitioner Bank and Respondent No. 2 on 05.05.2016, which were later forwarded to Petitioner Bank by one Mr. Diyanshu Pathak, AGM of Respondent No. 2

vide email dated 25.05.2016 reproduced as below:

"16. CGM, DBS advised the bank that as per the findings of study of IT systems of the Bank done by team of officials from DBS, RBI, Mumbai, it was assessed that the bank had yet to comply with 17 recommendations of Gopalakrishna Committee on IT Security, Electronic Banking, Technology Risk Management and Cyber Frauds. The bank was advised that the concerns raised therein may be addressed and communicated to RBI."

78. The petitioner has thus submitted that the said minutes of the meeting between the petitioner bank and the respondent No.2 dated **5.5.2016** made it unequivocally clear that the Respondent No. 2 had itself referred the exercise conducted at the Petitioner Bank as "Study of IT Systems" and reliance was made by the petitioner on the e mail dated **25.05.2016** written by the officer of respondent No.2 to petitioner bank is stated to have been annexed as Annexure-P/24 with the rejoinder to the reply with a copy of the Minutes of Formal Interaction held between the petitioner bank and the respondent No.2 on 05.05.2016 stated to have been annexed as Annexure-P/25.

79. Inter alia the petitioner bank submitted that it was not challenging the powers of inspection of the respondent No.2 but putting a spotlight on the manner in which a request for IT examination was later treated as an inspection in terms of section 35 of the Banking Regulation Act, 1949, possibly propelled by a malafide intent of framing the Petitioner Bank.

80. Inter alia the petitioner bank has submitted that at no instance it wilfully omitted to make a material statement or wrong information and has denied that any wrong information was ever relayed by the petitioner bank to the respondent No.2 .

81. The petitioner bank has further submitted that a bare perusal of the letter dated 19.8.2016 issued by Petitioner Bank to Respondent No. 2 makes it abundantly clear that Respondent No. 2 did not make any statement to the effect that the Petitioner Bank has integrated SWIFT with CBS and/or Straight Through Processing (STP) was introduced between SWIFT messaging and CBS. The petitioner submits that there does not arise any question of misleading Respondent No. 2 as the Petitioner Bank had informed the true and correct facts to Respondent No. 2.

82. The petitioner has further submitted that in an email dated **02.09.2016**, the Petitioner Bank specifically informed Respondent No. 2 that branches are generating SWIFT messages through Alliance Web based application and they are not using STP. The petitioner further submitted that Respondent No. 2 cannot selectively rely on documents to frame the Petitioner Bank and all the documents/communications issued during that period have to be read as a whole. The petitioner submits that the Respondent No. 2 cannot adopt the policy of 'pick and choose'.

83. The petitioner has further submitted that no false or misleading answer was given by the petitioner bank in its response to questionnaire dated 31.10.2016.

84. The petitioner has further submitted that in the circular dated 3.8.2016 the respondent No.2 had left it to the discretion of the banks to minimize the practice of direct creation of payment messages in SWIFT environment. The petitioner submits that Respondent No. 2 had used the word 'may' in the circular and no obligation was cast upon banks to mandatorily comply with the same. It is submitted by the petitioner that Respondent No. 2 has itself stated that in a secret letter dated 10.08.2016

issued to all banks. Respondent No. 2 merely cautioned banks and that even in the communication dated **25.11.2016**, Respondent No. 2 only asked banks to 'explore' Straight Through Processing (STP) between CBS and SWIFT messaging system. **The petitioner submits that there is no communication before 20.02.2018 wherein the Petitioner Bank had mandated all banks to ensure that no SWIFT message is sent without first ensuring that the underlying transaction has been duly reflected in CBS/accounting system with immediate effect.**

85. The petitioner has further submitted that there is no relationship whatsoever between the impugned criminal complaint and the fraud perpetrated upon Brady House branch of the petitioner bank and has submitted to the effect:

“Respondent No. 2 is attempting to link the fraud committed upon Brady House branch of Petitioner Bank with the IT examination conducted in 2016. Insofar as fraud perpetrated upon Petitioner Bank is concerned, it is respectfully submitted that Petitioner Bank is a nationalized public sector bank which has suffered losses to the tune of INR 130,00,00,00,000 (Rupees Thirteen Thousand Crores only) (approx.). Petitioner Bank was the first party to file complaint in the matter which led to registration of FIR/RC bearing number RCBSM2018E0001, which was registered against Nirav Modi and others under section 120-B read with section 420 of the Indian Penal Code, 1860 and section 13(2) r/w section 13(l)(d) of the Prevention of Corruption Act, 1988 by the CBI:BS&FC, Mumbai on 31.01.2018 followed by another FIR/RC bearing number RCBSM2018E0003 registered against Nirav Modi and others under section 120-B r/w section 420 of the Indian Penal Code, 1860 and section 13(2) r/w section 13(l)(d) of the Prevention of Corruption Act, 1988 by the CBI:BS&FC, Mumbai on

04.03.2018. Similarly, pursuant to criminal complaint dated filed by Petitioner Bank, an FIR bearing number RC 02(E)/2018/CBI/BS&FC/Mumbai was registered by CBI against Mehul Choksi and others. Petitioner Bank had always acted bona fide and as soon as Petitioner Bank became aware of fraud, it was Petitioner Bank which had filed complaints with Directorate of Enforcement pursuant to which ECIR/MBZO-I/04/2018/3486 was registered by Directorate of Enforcement on 16.02.2018 against Mehul Choksi and accomplices, and ECIR/MBZO- 1/03/2018 dated 14.02.2018 was registered against Nirav Modi and accomplices. In fact, post surfacing of fraud committed upon Petitioner Bank by Nirav Modi and Mehul Choksi, Petitioner Bank itself had filed Fraud Monitoring Reports (FMR)/FMR Update Applications with Respondent No. 2, which clearly shows that Petitioner Bank always acted bona fide.”

86. Inter alia the petitioner has reiterated that the allegations contained in the show cause notice **23.08.2018** and the impugned criminal complaint are largely the same. The petitioner further submits that the respondent No.2 had taken a lenient view in the order dated **25.2.2019** in respect of allegations relating to STP and creation of payment messages in SWIFT after passing the entries in CBS/accounting system. It was further submitted by the petitioner that the respondent No. 2 thus has consciously waived its right to prosecute the Petitioner Bank for the same allegations for which a lenient view has already been taken in another set of proceedings initiated by Respondent No. 2.

87. The petitioner reiterated that nothing prevented the respondent No.2 from informing the learned Trial Court about the proceedings initiated by it under Section 47A(1)(c) read with Section 46(4) of the Banking Regulation Act, 1949.

88. The petitioner has further submitted that it has not even made a remote violation of any of the provisions of the Banking Regulation Act, 1949 by Petitioner Bank and that the impugned criminal complaint and the impugned summoning order suffer from gross illegalities and infirmities.

89. Written and oral submissions were made on behalf of the petitioner, on behalf of the respondent no.2 i.e. RBI and on behalf of the State. The State adopted the submissions that were made on behalf of the RBI.

90. Through written submissions submitted on behalf of the petitioner and through the reply to Crl.M.A.31239/2019 filed by the respondent no.2/ RBI seeking a vacation of the order of stay of the learned trial Court in the present proceedings vide order dated **20.05.2019** in the present petition were reiterated.

91. It was submitted as under by the petitioner vide written submissions filed on **13.11.2019**, which read to the effect:-

A. THE IMPUGNED CRIMINAL COMPLAINT FILED BY RESPONDENT NO. 2 NOR THE IMPUGNED ORDER DATED 11.03.2019 PASSED BY THE LD. TRIAL COURT GIVE ANY INDICATION AS TO WHICH OF THE DIFFERENT SUB-SECTIONS UNDER SECTION 46 OF THE BANKING REGULATION ACT, 1949 THE PETITIONER IS PROPOSED TO BE PUNISHED.

1. Neither the impugned criminal complaint filed by the Reserve Bank of India ("Respondent No.2") nor the impugned order dated 11.03.2019 passed by the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi (the "Learned Trial Court") make any reference to any of the different sub-sections under section 46 of the Banking Regulation Act, 1949 (the "1949 Act") for which the Petitioner is proposed to be punished.

2. On a plain reading of the impugned criminal complaint filed by the Respondent No. 2, the Petitioner is not in a position to comprehend ascertain under which sub-section of section 46 of the

1949 Act it is called upon to answer. It is pertinent to note that each sub-section of section 46 of the 1949 Act is distinct and has different ingredients in as much as section 46(1) punishes who ever wilfully furnishes a statement which is false in any material particular while section 46(2) punishes who ever fails to furnish any statement under sub section (2) of section 35 of the 1949 Act and section 46(4) punishes any other violation of the provisions of the 1949 Act. To that extent each subsection contemplates some different yet overlapping elements but at the same time prescribes widely varying punishments i.e., from imprisonment of up to 3 years to a fine which may extend to INR 1,00,00,000/- (Rupees One Crore only) or fine extending to INR 1,00,000 (Rupees One Lakh only) for every day, during which contravention or default continues.

3. Moreover, keeping in mind the differing elements, the defence of Petitioner would vary vastly and to that extent the fact that the exact sub-section has not been identified prejudices the accused (Petitioner) greatly. Petitioner submits that upon entering appearance before the Learned Trial Court, Petitioner would be subjected to the framing of notice under section 251 of the Code of Criminal Procedure, 1973 (the "CrPC") without having had the advantage of knowing the substance of the accusation against it.

B. AT THE HIGHEST, THE IMPUGNED CRIMINAL COMPLAINT INDICATES THAT IT IS A CRIMINAL COMPLAINT UNDER SECTION 46(4) OF THE BANKING REGULATION ACT, 1949 OR IN THE ALTERNATIVE SECTION 46(2) OF THE BANKING REGULATION ACT. 1949:

1. Each opportunity is important for an accused in a criminal matter. Respondent No.2 has wrongly projected that the summoning order dated 11.03.2019 and also, the impugned criminal complaint filed by Respondent No. 2 could only be under sub-section (1) of section 46 of the 1949 Act as it could also be a complaint under sub-section (2) or under sub-section (4) of section 46 of the 1949 Act.

2. The Petitioner has strong apprehensions that the complaint filed by Respondent No. 2 is a complaint under section 46(2) of the 1949 Act as Section 46(2) contemplates an inspection. Respondent No.2 conducted an inspection of Petitioner in February, 2016,

and has in fact made reference to the aforementioned Inspection Report in the Impugned Criminal Complaint, hence, probabilities of it being a complaint under section 46(2) of the 1949 Act are much higher as opposed to it being a complaint under section 46(1) of the 1949 Act.

3. Similarly, there are strong reasons that the impugned criminal complaint filed by Respondent No.2 is a complaint under section 46(4) of the 1949 Act as it is a general provision providing punishment in case of violation of any other provisions of the 1949 Act. During hearing dated 05.11.2019, Senior Counsel appearing for Respondent No. 2 submitted before this Hon'ble Court that Petitioner has contravened section 27(2) of the 1949 Act. Punishment for violation of section 27(2) of the 1949 Act could fall only under section 46(4) of the 1949 Act. More so, the show cause notice issued by Respondent No.2 dated 23.08.2018 states that Petitioner had not complied with various directions/guidelines issued by Respondent, which is punishable under section 46(4) of the 1949 Act.

4. Thus, it is submitted that chances of it being a complaint under section 46(2) or 46(4) of the 1949 Act are much higher as opposed to section 46(1) of the 1949 Act. If it is a complaint under section 46(2) or section 46(4) of the 1949 Act, bar under section 47 A(4) of the 1949 Act would come into play and the complaint filed by Respondent No.2 would be hit by section 47 A(4) which bars filing of a complaint in a court of law when penalty has already been imposed by Respondent No.2.

5. In the present case, there have been penalty proceedings instituted against the Petitioner under Section 47 A of the Banking Regulation Act, 1949 and a penalty of INR 2,00,00,000 (Rs. Two Crore Only) has been imposed by order dated 25.03.2019 and the said penalty has been paid. In these circumstances, the immunity provided under Section 47 A(4) of the Banking Regulation Act, 1949 would inure to the benefit of the Petitioner and the Impugned Criminal Complaint must be quashed on that point alone. This aspect of the matter has been elaborated as follows in Point C of these Synopsis.

6. In cases where two views are possible, the Court ought to take a view which is more favourable to the accused person. In a case as

in the present, where the Complaint is vague and bereft of material particulars, this Hon'ble COUII ought to construe the same in a manner so as to benefit the Petitioner, resulting here in it being barred by operation of statute.

C. ASSUMING THE IMPUGNED CRIMINAL COMPLAINT TO BE UNDER SECTION 46(4) OF THE BANKING REGULATION ACT, 1949 THE PROSECUTION IS BARRED BY OPERATION OF SECTION 47A(4) OF THE BANKING REGULATION ACT, 1949:

I. The only indicator of which sub-section of section 46 Petitioner is charged with is provided in the show cause notice issued by Respondent No.2 dated 23.08.2018 under Section 47 A of the 1949 Act which states that same is punishable under Section 46(4) of the 1949 Act. The impugned criminal complaint filed by Respondent No.2 and the impugned summoning order dated 11.03.2019 passed by the Learned Trial Court are barred in law in as much as section 47 A(4) of the 1949 Act provides that no complaint shall be filed against a banking company (such as Petitioner) in respect of any contravention or default in respect of which any penalty has been imposed by Respondent No.2.

2. It is relevant to point out that in the show cause notice dated 23.08.2018, reference has only been made to section 46(4) of the 1949 Act clearly indicating that Respondent No.2 did not believe any other provisions were attracted in the instant case. Respondent No. 2 has already imposed a penalty on Petitioner of an amount of I R 2,00,00,000 (Rupees Two Crores Only) by way of order dated 25.02.20 19 (Annexure-P123 of Petition) and, therefore, the provisions of Section 47 A(4) would act as a complete legal bar to the prosecution of Petitioner by the impugned criminal complaint and impugned summoning order dated 11.03.2019. Petitioner has also paid the penalty imposed by Respondent o. 2 on 06.04.20 19.

D. THE IMPUGNED SUMMONING ORDER SUFFERS FROM A TOTAL NON - APPLICATION OF MIND AND DESERVES TO BE SET ASIDE ON THIS SHORT GROUND:

I. The summoning order passed by the Learned Trial Court is a mere recapitulation of the allegations made by Respondent No.2 in its complaint and does not show any application of mind by the

Learned Trial Court. It is a settled position of law that a summoning order must reflect the due application of mind and the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused. The absolute absence of application of mind in the impugned summoning order is also demonstrated by the fact that akin to criminal complaint filed by Respondent No. 2, even in the impugned summoning order, there is no indication as to under which sub-section of section 46 of the 1949 Act, Petitioner has been summoned under.

2. Summons issued by a criminal court are equally important and the summons issued by the Learned Trial Court (Annexure-P12 @ pg. 65 of Petition) to Petitioner, in the present case, refer to section 138 of the Negotiable Instruments Act, 1881, which shows the lack of application of mind by the Learned Metropolitan Magistrate.

E. THE IMPUGNED CRIMINAL COMPLAINT CANNOT BE SUPPLEMENTED OR CLARIFIED BY THE RESPONDENT NO.2 BY WAY OF ITS REPLY BEFORE THIS HON'BLE COURT. IN ANY EVENT. THE CLARIFICATIONS SOUGHT TO BE MADE ARE WITHOUT MERIT:

I. Reply filed by Respondent No. :2 before this Hon'ble Court is an egregious abuse of process of law as Respondent No.2 desires this Hon'ble Court to construe the clarification issued by them in their Reply, in respect of charging section under the 1949 Act as an amendment to the impugned criminal complaint filed by them before the Learned Trial Court, which is unheard of and not permissible in law. The clarification which Respondent No.2 has tendered in the Reply is a mere afterthought. There is an error apparent on the face of impugned criminal complaint and impugned summoning order passed by the Learned Trial Court and same could not be rectified through the route of issuing a clarification in the Reply filed by Respondent No.2 before this Hon'ble Court. It is a settled position in law that a complaint must be read as it is, while dealing with issues of cognizance and/or summons, especially in a case where there is no pre-summoning evidence led. Respondent No.2 cannot by way of a counter-affidavit/Reply add or subtract from a complaint already filed before the Learned Trial Court and claim that the complaint must

be read with their submissions. Such an attempt is contrary to settled legal principles.

2. Respondent No.2 is treating the case instituted by them as a warrant-triable case solely on the premise that Petitioner has acted in violation of section 46(I) of the 1949 Act whilst the impugned criminal complaint and also, the impugned summoning order dated 11.03.2019 do not even make any reference to section 46(I) of the 1949 Act. Such a material improvement in charging section, which Respondent No. 2 desires to make, is indefensible and cannot be allowed. The issue raised by the Respondent No.2 that in a warrants trial. the substance of the charge is only required to be explained at the stage of framing charge, is not only contrary to law and is irrelevant for the present proceedings as well for the following reasons:

a. Neither the impugned criminal complaint nor the impugned summoning order make clear what offence the accused is summoned for. Under the various offences provided for in section 46 of the 1949 Act, only one offence i.e., section 46(1) would be an offence requiring a warrants trial. In the present case, as indicated above, there is no indication as to what offence Petitioner is being summoned.

b. Even in a warrants trial case, the accused would be entitled to know the substance of the charge he is summoned for. A bare perusal of Form I, Schedule II of the CrPC establishes that the summary of the charge is to be conveyed even on the summons.

c. In this particular case, there is no particular reference that has been made to any particular sub- section under section 46 of the 1949 Act. Thus, it is not open to either the Petitioner nor this Hon'ble Court to assume that proceedings in the present case are under section 46(I) of the 1949 Act.

F. ARGUENDO, SECTION 46(1) OF THE BANKING REGULATION ACT, 1949 IS NOT ATTRACTED IN THE INSTANT CASE AS THERE WAS NO MENS REA ON PART OF THE ACCUSED PERSONS AND IN ANY EVENT THE PETITIONER HAS ALREADY BEEN EXONERATED OF THE SAID CHARGE IN THE PENALTY PROCEEDINGS UNDER SECTION 47A OF THE BANKING REGULATION ACT, 1949:

1. Even if it is assumed, though not admitted, that the impugned

criminal complaint has been filed by Respondent No.2 under section 46(I) of the 1949Act, it is submitted that section 46(1) of the 1949 Act penalizes making of a false statement "wilfully" or if the statement made is "known" to be false or there is a "wilful" omission to make a material statement. It is thus clear that there has to be a mens rea on part of accused person before the accused person could be charged/penalized under section 46(I) of the 1949 Act. Respondent No.2, in its impugned criminal complaint fil ed before the Learned Trial Court has not stated or made any suggestion towards the fact that Petitioner has wilfully made any false statement or knew that the statement made by it was false or had omitted to make a material statement wilfully.

2. There was no mala fide on pal1 of Petitioner and Respondent No. 2 implicitly admits the same as Respondent No.2 has not stated in its impugned criminal complaint fil ed before the Learned Trial COU11 that Petitioner had acted mala fidely or Petitioner wilfully made any false statement. Thus, Petitioner could not have been charged under section 46(I) of the 1949 Act. Respondent No. 2 itself in an advisory dated 25. 11 .20 16 in relation to 'cyber security control s-frauds related to trade finance transactions misuse of SWIFT issued to all scheduled commercial banks, including Petitioner had only asked banks to explore Straight Through Processing (STP) between CBS and SWIFT messaging system. It was only in the circular dated 20.02.2018 (subsequent to commission of fraud) issued by Respondent No. 2 that Respondent No.2 for the first time directed all scheduled commercial banks, including Petitioner Bank to ensure Straight Through Processing (STP) between CBS/accounting system and SWIFT messaging system is put in place, expeditiously and not later than 30.04.2018.

3. Additionally, in series of communications written by Petitioner Bank to Respondent No.2, including the email dated 02.09.2016 issued by Petitioner o Respondent No.2 response to questionnaire dated 31.10.2016, Petitioner had always maintained that Petitioner does not have interface for undertaking STP. Even vide letter dated 05.07.2018, Petitioner issued a response to confidential circular dated 20.02.2018 that was issued by Respondent No. 2. In the response dated 05 .07.20 18, Petitioner had informed Respondent No.2, without mincing words, that the

process of integration of SWIFT with ITMS through STP is in process and sought time till 30.09.2018 for developing STP between Treasury Accounting Software and SWIFT. Later, Petitioner did develop STP between SWIFT and CBS by 10.09.2018. Additionally, Petitioner for the first time, had stated that, depending on its business requirement, it has identified 43 outward SWIFT messages to be integrated with CBS and these 43 outward messages have been integrated. Further, by said letter, Petitioner also informed to Respondent No. 2 that manual creation of all SWIFT messages were blocked at SWIFT level by 30.04.2018. thus, no false information was ever given by Petitioner to Respondent No.2.

4. The main allegations that Respondent No. 2 has levelled against Petitioner are:

(a) Petitioner did not create messages in SWIFT system only after passing necessary entries in CBS, and

(b) Petitioner failed to introduce STP between SWIFT messaging and CBS.

5. However, in the order dated 25.02.2019 passed by the Respondent No. 2 under section 47 A of the 1949 Act, Respondent No.2 has accepted the explanations given by Petitioner on both the counts and has further decided not to enforce the charge. Same is evident from clause 3. 1.5 and clause 3.2.5 of the order dated 25.02.2019 which deal with the charge of direct creation of payment messages in SWIFT environment (without passing entries in CBS) and non-implementation of STP between CBS and SWIFT respectively. Thus, Respondent No. 2 could not be allowed to take two inconsistent views at the same time and hence, the impugned criminal complaint filed by Respondent No.2 against Petitioner ought to be quashed. The purported issues that have been raised by Respondent No. 2 in the impugned criminal complaint filed with the Learned Trial Court were also dealt by Respondent No.2 separately by issuing a show cause notice dated 23.08.2018. Respondent No. 2 could not have taken two starkly divergent views as in the order dated 25.02.2019, Respondent No.2 has decided to not enforce the charges against Petitioner for direct creation of financial messages in SWIFT environment and for not introducing STP between SWIFT messaging and CBS

whilst the impugned criminal complaint filed by Respondent No. 2 is solely premised on the aforesaid two issues.

G. RESPONDENT NO. 2 HAS SUPPRESSED RELEVANT FACTS AND DOCUMENTS IN THE IMPUGNED CRIMINAL COMPLAINT:

Respondent No.2 approached the Learned Trial Court with unclean hands and filed the impugned Complaint under section 200 of the CrPC read with section 47 of the 1949 Act seeking prosecution against Petitioner and its then and current officials. Respondent No.2 did not bring to notice of the Learned Trial Court that Respondent No.2 had already issued a show cause notice dated 23.08.2018 in terms of section 35, 35A, 46 and 47 A of the 1949 Act whereby Petitioner was called upon to show cause in writing as to why penalty under section 47A(I)(c) read with section 46(4) of the 1949 Act be not imposed upon the Petitioner. There was a clear bar contained in section 47A(4) of the 1949 Act in launching such proceedings against banking companies, such as Petitioner in cases where penalty has already been imposed by Respondent No. 2.

In view of the aforesaid submissions, the Petitioner humbly prays that this Hon'ble Court be pleased to allow the petition (CrI.M.C. No. 2696/2019) filed by the Petitioner thereby setting aside the impugned criminal complaint filed by Respondent No.2 with the Learned Trial Court, the impugned summoning order dated 11.03.2019 passed by the Learned Trial Court and all proceedings emanating therefrom."

92. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 SCC 609*** with specific reference placed on observations in paras 52 & 53 thereof, which read to the effect:

"52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to

issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

to submit to the effect that the order vide which the learned trial Court comes to the conclusion that there is sufficient ground for proceedings in terms of Section 204 of the Cr.PC, 1973 which are of immense importance and has to be necessarily made after due application of mind that there is sufficient basis for proceedings against the said accused and formation of such an opinion is to be stated in the order itself and that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons and that the order would be bad in law if the reason given turns out to be ex facie incorrect.

93. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others (1998) 5 SCC 749*** with specific reference in observations in para 28 thereof, which read to the effect:

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law

set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

to reiterate the contention that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto and that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused and that the Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

94. Reliance was placed on behalf of the petitioner on the verdict of the High Court of Bombay at Nagpur in ***Volvo India Private Limited, Yalachachally Village, Tavarakere Post, Ta. Hosakote, Bangalore-562122 Vs. State of Maharashtra 2017 SCC OnLine Bom 8540*** wherein the observations of the Hon'ble Supreme Court in ***Pepsi Foods Ltd. and Another (supra)*** were reiterated in Para-15 submitting to the effect that the impugned order passed by the Magistrate completely fails to show what

weighed in the mind of the learned Magistrate to issue the process against the applicant, the same was liable to be set aside.

95. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Punjab National Bank and Others Vs. Surendra Prasad Sinha 1993 SCC (Cri) 149*** to contend to the effect that the judicial process should not be an instrument of oppression and harassment and that there lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for and only on satisfying that the law casts liability or creates offence against the juristic person or the person impleaded then only process would be issued. The specific reliance was placed on behalf of the petitioner on observations in para 6 of the said verdict, which read to the effect:

“It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Migistracy to find whether the concerned accused should be legally responsible for the offence for. Only on satisfying that the law casts liability or creates offence against the juristic person or the person impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case of harass them for vendetta.”

96. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Birla Corporation Limited Vs. Adventz Investment and Holdings Limited and Others 2019 SCC OnLine SC 682*** with specific reliance on the observations in para 60 of the said verdict, which read to the effect:-

“The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity. In the present case, the satisfaction of the Magistrate in ordering issuance of process to the respondents is not well founded and the order summoning the accused cannot be sustained. The impugned order of the High Court holding that there was compliance of the procedure under Section 202 Cr.P.C. cannot be sustained and is liable to be set aside.”

to reiterate to the effect that the issuance of process should not be mechanical nor should be made as an instrument of the harassment of the accused and that the issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity.

97. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others (2015) 12 SCC 420*** with reliance placed on observations in para 22 thereof, which read to the effect:

“22. The steps taken by the Magistrate Under Section 190(1) (a) of Code of Criminal Procedure followed by Section 204 of Code of Criminal Procedure should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered alongwith the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed Under Section 203 of Code of Criminal Procedure when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered alongwith the statements recorded and the result of inquiry or report of investigation Under Section 202 of Code of Criminal Procedure, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused Under Section 204 of Code of Criminal Procedure, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds Under Sections 190/204 of Code of Criminal Procedure, the High Court Under Section 482 of Code of Criminal Procedure is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an

accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

thus to contend that the Code of Criminal Procedure requires a speaking order to be passed under Section 203 of the Cr.PC, 1973 when the complaint is dismissed and that too the reasons need to be stated only briefly and that even the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before it and issue process as a matter of course and that the process could only be issued when the Magistrate is satisfied that the allegations in the application constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation Under Section 202 of Code of Criminal Procedure, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused Under Section 204 of Code of Criminal Procedure, by issuing process for appearance.

As per the compendium of cases relied upon on behalf of the petitioner, the said six verdicts relied upon on behalf of the petitioner are qua the proposition that the summoning order must reflect due application of mind.

98. *Inter alia* reliance was placed on behalf of the petitioner on the verdict of this Court in ***M/s Lalji & Co. And Others vs. Delhi Administration and Others 1984 SCC online Del 169*** with specific reliance on observations in para 11 of the said verdict which read to the effect:

“(11) As already noted above, so far as the raising of loan of Rs. 13,25,000 the chapter already stands closed and is not germane to the trial of the present case. It is with respect to the accused No. 6 having introduced accused No. 1 to those parties who had

purported to give loans to accused No. 1 that the complainant has sought to implicate accused No. 6 in the abetment and inducement as envisaged by Section 278 of the Income-tax Act. Except for this allegation, there is no averment against accused No. 6. Of course, in para 11 of the complaint it is further added as under : "Accused No. 6 to 17 abetted and / or induced the accused 1 to 5 to make and deliver accounts / statements and declaration relating to income of accused No. 1 which was chargeable to tax which was false and which they either knew to be false and/ or did not believe to be true. They have committed an offence punishable under Section 278 of the Act." In the reply which the Income-tax Officer has filed to the present petition before this Court, various other allegations have been made against accused No. 6 and its partners, and it is pointed out that some loans had been purported to be obtained by accused No. 6 from the same persons as well. Reference has also been made to earlier dealings between accused No. 1 and 6 and passing, off some money or adjustment of the amounts in the course of those transactions. However, I am not inclined to allow new allegations and averments relating to the commission of the offence by accused No. 6 and its partners to be raised which go beyond the scope of the complaint. It is the complaint which has been filed in the trial court which has to be looked into for ascertaining the nature and extent of allegations and the complainant cannot travel beyond the same. The accused persons too have to meet the allegations made in the complaint, and not that they are to be confronted unaware and taken by surprise with new or additional allegations. The basic document thus remains the complaint and it has to be ascertained on its plain reading whether any case at all is made out against accused No. 6 and its partners."

to contend to the effect that the new allegations and averments relating to the commission of the offence by an accused cannot go beyond the scope of the complaint and that it is the complaint which has been filed in the trial court which has to be looked into for ascertaining the nature and extent of allegations and the complainant cannot travel beyond the

same with it having been observed therein to the effect that the accused persons too have to meet the allegations made in the complaint, and not that they are to be confronted unaware and taken by surprise with new or additional allegations and that the basic document thus remains the complaint and it has to be ascertained on its plain reading whether any case at all is made out against accused to submit to the effect that the learned trial Court cannot travel beyond the complaint filed in the Court to ascertain the nature and extent of allegations against an accused in support of this submissions that have been made on behalf of the petitioner at the most the impugned criminal complaint would be one under Section 46(4) of the Banking Regulation Act, 1949 qua which the embargo on any further proceedings is applicable to the petitioner in terms of Section 47A of the Banking Regulation Act, 1949 as the petitioner has already paid the penalty of Rs.2 crores imposed on it vide an order dated 25.03.2019 under Section 47A of the Banking Regulation Act, 1949 though in case where two views are possible, the Court ought to take a view which is most favourable to the petitioner especially as in the instant case, the complaint is vague and bereft of particular materials.

99. Through its written submissions dated 16.11.2019, the RBI, the respondent no.2 has reiterated the submissions made through its reply to the petition as well as to CrI.M.A.31239/2019 seeking a vacation of the order dated 20.5.2019 of stay of the proceedings before the learned trial Court dated 20.05.2019 as passed in the present proceedings. It was submitted on behalf of the respondent no.2 qua the submissions made on behalf of the petitioner that the neither the complaint nor the order issuing the process

discloses that Sub-section of Section 46 of the Banking Regulation Act, 1949 was alleged to have been violated by the petitioner/ Bank which had thus caused great prejudice to the petitioner as he did not have sufficient notice as to the exact charge for which has been summoned and that the failure of the Magistrate to mention the precise subsection of Section 46 of the Banking Regulation Act, 1949 qua which PNB had been summoned reflects that the order issuing process had been passed mechanically without application of mind in relation to which, the respondent no.2 submitted to the effect:

"1. That section 2 (d) of CrPC defines a complaint as:

"any allegation made orally or in writing to a magistrate. with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence. but does not include a police report. "

2. It is sett led law that a complaint need only set out the facts which disclose an offence and not mention the exact sections that are attracted. Thus, In Emperor v. Ram Bricha Misra 1947 ILR 796, the Allahabad High Court held that:

" .. .It is the allegations of facts which constitute the complaint. Reference of specific sections relating to the offences made out by these facts is no essential ingredient of a complaint...The definition of the word complaint does not contemplate reference to the specific sections of the enactment making a certain conduct an offence. It follows, therefore, that omission to mention the offence made out by the facts or mentioning wrong section does not invalidate a complaint. "

3. In Gulabchand Chandani v. State of MP. 2001(3) M.P.LJ.467 the Madhya- Pradesh High Court held that,

" .. from the facts which has to be taken cognizance of and it is not material that the complainant has mentioned a wrong Act or a wrong section in the complaint. Where the facts alleged in the complaint disclose an offence, the Magistrate should take cognizance of the complaint and any error in the recital of the statutory provision is not of much significance."

4. In Shyamlal v State AIR 1958 All 76 the High Court of

Allahabad held that, "the word 'complaint' as defined in s.4(h) does not show that it should also mention the sections under which it has been made. What is required to be stated in the complaint are the facts which would enable the Magistrate to take cognizance of the offence under s.498 IPC. "

5. Further, the Hon'ble Supreme Court in *Rajesh Bajaj vs. State of NCT of Delhi* 1999 3 SCC 259 when dealing with power of the High Court to quash proceedings under section 482, stated in paragraph 9 of the judgement that:

"If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. "

6. As enumerated above, it is well settled in law that the complaint need only disclose facts constituting an offence & not the sections applicable. In the instant case the complaint is replete with facts disclosing the offence prescribed under section 46(1) of the Act, i.e., The act of wilfully making a statement which is false in any material particular, knowing it be false, or wilfully omits to make a material statement, in any return, balance-sheet or other document. These acts punishable under section 46(1) of the Act are set out in the complaint at paragraphs 2, 8(e) , (t), (I), (m) and (n) of the complaint. Further, these averments are also supported by documents annexed to the complaint. In any event the complaint alleges that the facts disclose an offence under section 46 of the Banking Regulation Act but only does not mention the sub-section prescribing & punishing the offence.

The factual conspectus disclosing the offence under section 46(1) of the Act:

7. (i) The first instance of PNB furnishing false information to the RBI was on 08.07.2016. Pursuant to an inspection carried out by it in February 2016 of all aspects of PNB's Information Technology (IT) systems, the bank prepared a comprehensive

report and forwarded a copy of the same to PNB vide email dated 06.06.2016. One of the crucial observations made in the IT examination report was in paragraph 3.5 of the report, which is reproduced below:-

"3.5 Banks had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of in-house developed, purchased and outsourced activities. CBS was not integrated in automated fashion with various critical applications i.e., no Straight Through Processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks."

Through the said mail PNB was called on to submit a Compliance Report inter alia on the above observation. PNB's response to RBI vide letter dated 08.07.2016 furnished false information regarding its compliance with the observations cited above. PNB's response to paragraph 3.5 of the IT Exam/Report is reproduced below:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied"

This assertion by PNB was subsequently discovered by RBI to be totally false in January 2018 onwards when it received a series of Fraud Monitoring Reports ("FMRs") from PNB. In column 9c of these FMRs titled "modus operandi", the report stated as under:

"9c. Issuance of Letters of Undertaking (LOU) by SWIFT without obtaining approval of the Authority, without necessary applications, documents and without making entries in the CBS system"

Thus, while PNB's compliance response on 08.07.2016 informed RBI that "all applications around CBS have been integrated with STP except Treasury" the FMRs as above reported that the Modus Operandi of the fraud was facilitated by Issuance of LOUs by SWIFT inter-alia without necessary applications.

(ii) On 21.06.2017 the Dy. General Manager of Department of Banking Supervision of RBI vide an email also

called upon PNB to submit a Current Status on those paras of its IT report communicated on 06.06.2016 where the PNB had assured compliance by a target date. In response, PNB filed not just a response to compliance by it which remained to be carried out by a target date but furnished a response to every paragraph of the said report of RBI. In response to paragraph 3.5 of the IT report, PNB again reiterated that:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied"

This was a reiteration of the earlier falsehood communicated to RBI on 08.07.2016, which as aforesaid was found to be manifestly false by column 9c of the FMRs submitted to it by PNB from January 20 18 onwards. In other words, the offence of furnishing the same false information was committed on two separate occasions - 08.07.2016 and 27.06.2017.

(iii) On 03.08.2016 RBI sent a confidential letter to all scheduled commercial banks including PNB. Paragraph 3 of the said letter stated as follows:-

"You are also advised to get the SWIFT infrastructure comprehensively audited immediately for malicious software script/activities. Appropriate steps may be taken to rectify malicious activity and to patch vulnerabilities, if any, in the SWIFT IT infrastructure. In the meantime, you may take steps to ensure strict vigil on the transactions made through your SWIFT infrastructure."

PNB replied to RBI's said letter of 03.08.2016 vide letter dated 19.08.2016. Its response to the said paragraph 3 of the RBI letter was as follows:

"We confirm SWIFT best practices are being adopted in the Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place. Swift system Configuration is in line with SWIFT protocol and all patches have been updated to mitigate the cyber security risk. "

The FMRs of 2018 disclosed that far from adopting

SWIFT best practices "by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place" by P B as informed in its reply dated 19.08.2016, Letters of Undertakings (LOUs) were issued by the Brady House branch of the bank, as per column 9c of the FMRs "without obtaining approval of the Authority, without necessary applications, documents and without making entries in the CBS System '. Thus PNB once again furnished false information to the RBI.

(iv) Under a covering letter of 27.10.2016, the RBI sent PNB a questionnaire about the practices followed by PNB regarding SWIFT framework. QA(i) read as follows:

'Does the bank undertake any reconciliation to verify whether all outward SWIFT messages transmitted by the bank have been captured in CBS?'

The response to QA(i) given by PNB was as follows:-

"Outward SWIFT message is sent after entering in CBS and passing/verification by two officials, without the entry in CBS, 110 financial SWIFT message can be sent. However. reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by A D branches"

The statement was again found to be false by FMRs of 2018 as aforesaid column 9c dealing with modus operandi of the fraud categorically disclosed that Letters of Undertaking by SWIFT were issued without making any entries in the CBS (Core Banking System).

v) The final instance consists not of a making false statement but of the alternative offence U/S 46(1) of the Act, i.e., willful omission to make a material statement. RBI vide its email dated 21.06.2017 had sought from PNB. A Current Status report on those paras of its IT Compliance Report communicated on 06.06.2016 where it had assured compliance by a target date. The original observation made by RBI in paragraph 10.7 of its IT exam report of 06.06.20 16 was as follows:

"10.7 As regards systems relating to SWIFT operations were concerned. it was ascertained from the bank that the Base Software (application) patching has been done upto 7.1.14. However, patching status of other components of SWIFT

infrastructure like OS/Data base server. Network devices enabling SWIFT messaging platform was not available. There was 110 online integration of SWIFT with CBS, Treasury, EDMS or Overseas systems. Bank also confirmed that no security incidents have been reported in the SWIFT operations for the last two years ... "

In response to paragraph 10.7 of the IT Exam Report of 06.06.2016, PNB in its IT Compliance/Action Taken Report of 08 .07.20 16 had responded with the following:

"10.7 A comprehensive review of SWIFT operations vis-a-vis observations of various auditors and actionable items by 3010912016 (Action ITO and IBD)."

It is pertinent to note here that PNB was specifically asked to submit a Current Status Report vis-a-vis those paragraphs wherein PNB in its Compliance/Action Taken Report of July 2016 had remarked by specifying a target date for compliance. The Current Status Report submitted by PNB on 27.06.2017 did not consist of the status report on the afore stated 10.7 paragraph of the IT exam report and the IT Compliance/Action taken report of 08 .07.20 16. Thus, in this instance PNB was guilty of the offence of wilful omission to make a material statement, also punishable u/s 46 of the Act.

8. The Petitioner contends that the summoning order of magistrate is also silent about which sub-section of s.46 of the Act it is summoned to answer the charge. This is a frivolous objection as extensive facts regarding the commission of the offence are set out in the Complaint, copy of which has been served upon Petitioners as per the provision of s.204(3). The Ld. Magistrate has also passed a detailed order setting out reasons for issuing of summons and these also set out the facts that constitute the offences for which the accused was summoned. The summoning order also discloses that it has been issued for offences u/s 46 of the Act. From a combined reading of averments In the complaint, the speaking order issuing the summons itself, the accused have complete notice that the offences alleged against them are those prescribed and punishable under s.46(1) of the Act.

9. In any event, it is settled law that the summoning order need

not contain the precise section for which the accused are summoned. In a warrant triable case instituted other than on a police report i.e., on a complaint as in the present case, the precise section of the IPC with which the accused is charged is at the stage when charges are to be framed, which is u/s 246 in chapter XIX-B as is evident from the law laid down in the following cases:

(i) In Dy. Chief Controller of Imports & Exports Vs. Roshanlal Agarwal & Ors " SCC 139 the Hon'ble Supreme Court considered an order passed by the Special Court taking cognizance of an offence u/s 5 of the Import and Export Control Act and other offences under the IPC. The order passed by the Ld. Magistrate read as under: In paragraphs 8 and 9 it held the following:

"8 'Cognizance taken. Register the case. Issue summons to the accused.'

The High Court had quashed the order on the ground that it did not disclose that the magistrate had even perused the complaint or even applied his mind before taking cognizance. The Supreme Court set aside the order of the High Court on the ground that:

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. "

(ii) The High Court of Bombay in Charanjit Singh v. Assistant Collector of Central Excise 1989 SCCOnline Bom 505 held that:

"10 Only because the sections under which the learned Magistrate was proceeding had not been mentioned in the order of issue of process, it would not follow that there was non-application of mind What exact charge could be framed against the accused is a matter which would arise for decision only at a later stage after evidence is recorded. this being a

warrant case."

(iii) *The High Court of Punjab and Haryana in Murari Lal Goel v Sukhcharan Singh Bajwa 1989 SCC Online P&H 309* held that:

"4. It is not necessary to mention any particular offence or offences in the summoning order. Where certain offences are mentioned as in this case it cannot be taken to mean that the accused is discharged or absolved of the remaining offences."

10. The Counsel for the Petitioner Bank stated that he does not seek quashing of entire proceedings but only seeks a remand to trial court for fresh consideration. The Hon'ble Supreme in *U.P. Pollution Control Board vs. Mohan Meakins Ltd & Ors (2000) 3 SCC 745* dealt with a situation where a Sessions Court in revision quashed process issued by Magistrate and remanded the matter to him for reconsideration. In paragraph 7 of the said judgment, the court held that:

"it is unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. instead the Sessions Judge relegated the work to the trial Magistrate for doing the exercise over again."

12. It is respectfully submitted that if this Hon' ble Court has any doubt whether the complaint discloses an offence, the proper course would be to form its own opinion whether process could have been issued by the magistrate on the basis of the averments contained in the complaint instead of relegating the work to the trial Magistrate for doing the exercise over again.

13. Moreover, the factual averments in the complaint relied upon by the Ld. Magistrate in his order issuing process disclose an offence under section 46(1) of the Act only and cannot and do not disclose the offences under sub sections (2) (3) and (4) of s.46 of the Act.

14. Section 46(2) punishes the failure by any person "to produce any book. Account or other document or to furnish any statement or information which Under subsection (2) of 35 it is his duty to produce or furnish or to answer any question relating to the business of a banking company, which is asked

by an officer making an inspection or scrutiny under that section." The various acts/omission complained of in the instant Complaint filed by the RBI do not consist of a failure to produce any book, account or other document or a failure to furnish any statement or information. The acts complained of in the Complaint are those, which constitute the wilful making of a statement which is false in a material particular knowing it to be false and in the one instance of wilfully omitting to make a material statement. Further, Section 46(2) of the Act does not punish the wilful making of a false statement in a material particular or wilfully omitting to make a material statement; it simpliciter publishes any failure to produce any book, account or other document or a failure to furnish any statement or information, which it is its duty to produce or to answer any question. Thus for the purpose of s.46(2), it is irrelevant if a statement is wilfully false in a material particular or there is a wilful omission to make a material statement. Section 46(2) punishes the failure to do any of the Acts mentioned in the subsection irrespective of mens rea and irrespective of the materiality of what is required to be furnished. That is why the offence u/s 46(2), being an offence of strict liability is punishable with fine only whereas the offence under section 46(1) requiring mens rea is punishable with imprisonment up to 3 years and or with fine.

15. Moreover, section 46(2) requires that the failure to perform the various acts prescribed in the sub section must be in the course of an inspection under sub section (2) of s.35 of the Act. In the instant case, the RBI had already completed the inspection, which it was empowered to carry out under section 35 of the Act, by February 2016. The Information sought by the RBI from the Accused including the Petitioner Bank (PNB) and to which the accused wilfully gave also answers to or wilfully omitted to make a material statement in response thereto, was not in the course of an inspection. This information was sought in June 2016, much post the inspection carried out by the RBI and the false statement/wilful omissions were made from July 2016 till June 2017. Thus, in any view of the matter the offences alleged in the Complaint could never be those prescribed under

section 46(2) of the Act.

16. Section 46(3) is ex-facie in-applicable as that section punishes the receipt by a banking company of any deposit in contravention of an order under section 35(4)(a) of the Act. The Complaint in the instant case is manifestly not concerned with the receipt by PNB of any deposit in contravention of an order under the said section 35(4)(a) of the Act.

17. Finally, the instant Complaint is also ex facie not concerned with a contravention of the provisions of section 46(4) of the Act. Firstly, sub-section (4) of section 46 commences with the words "if any other provision of this act is contravened", the words "any other provision" meaning other than the provisions of section 46 (I) (2) and (3). In other words s.46(4) does not deal with the offence of " wilfully making a statement which is false in material particular or wilfully omitting to make a material statement." Moreover, the contraventions which section 46(4) deals with are expressly set out in clauses (i) and (ii) of sub section (4) of s.46. It is manifestly clear that the instant Complaint is not concerned with the noncompliance with any requirement of the act, order, rule or direction made or condition imposed thereunder as prescribed by clause (i) of sub section (4) of section 46 of the Act nor is it concerned with carrying out the terms of, or the obligations under, a scheme sanctioned under sub-section (7) of section 45 as prescribed by clause (ii) of sub section (4) of section 46 of the Act.

18. The upshot is that the Complaint and the Summoning order charged and summoned the accused with infringing the provisions containing in section 46(1) of the Act only. The averments in the Complaint were not even remotely concerned with the provisions of sub-sections (2) (3) and (4) of section 46 of the Act. The contentions of PNB are wilfully misconceived and the Complaint and the Summoning Order have been deliberately misconstrued."

100. Significantly, the respondent no.2 submitted through its written submissions whilst placing reliance on the response filed by the PNB i.e. the petitioner to the present petition to para 3.5 of the IT Report communicated

on **06.06.2016** by the RBI to the petitioner, that the PNB again reiterated to the effect:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied."

which the RBI states is a reiteration of the earlier falsehood communicated to RBI on 08.07.2016, which as afore stated was found to be manifestly false by column 9c of the FMRs submitted to it by PNB from January 20 18 onwards. In other words, the respondent no.2 has submitted that the offence of furnishing the same false information was committed on two separate occasions i.e. **08.07.2016** and **27.06.2017**.

101. The respondent no.2/ RBI further submitted thus that the PNB reply dated **19.08.2016** to RBI letter dated **03.08.2016** is to the effect:

"We confirm SWIFT best practices are being adopted in the Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place. Swift system Configuration is in line with SWIFT protocol and all patches have been updated to mitigate the cyber security risk."

which, the respondent no.2 submits that far from adopting SWIFT best practices by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place vide reply **19.08.2016**, the PNB had informed that the Letters of Undertakings (LOUs) thus disclosed were issued by the Brady House branch of the bank as per column 9c of the FMRs "without obtaining approval of the Authority, without necessary applications, documents and without making

entries in the CBS system.” and that thus the PNB had once again furnished false information to the RBI.

102. The respondent no.2/ the RBI further submitted that under a covering letter of 27.10.2016, Qa.1 was sent by the RBI to the PNB regarding SWIFT framework, which reads to the effect:

“Does the bank undertake any reconciliation to verify whether all outward SWIFT messages transmitted by the bank have been captured in CBS?”

to which QA.1, the PNB responded to the effect:

“Outward SWIFT message is sent after entering in CBS and passing/verification by two officials, without the entry in CBS, no financial SWIFT message can be sent. However, reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by A D branches.”

with it having been submitted by the respondent no.2 that this statement again found to be false FMRs of 2018 as column 9c dealing with modus operandi of the fraud categorically disclosed that Letters of Undertaking by SWIFT were issued without making any entries in the CBS (Core Banking System).

103. *Inter alia* it was submitted by the respondent no.2 that the final instance consists not of a making false statement but of the alternative offence under Section 46(1) of the Banking Regulation Act, 1949, i.e. a wilful omission of making a material statement whilst placing reliance on observations in para 10.7 made by the RBI in its IT Examination Report of 06.06.2016 wherein vide para 10.7 of the IT Exam Report, it was stated to the effect:

“10.7 As regards systems relating to SWIFT operations were concerned. it was ascertained ji-om the bank that the Base Software (application) patching has been done upto 7.1.14. However, patching status of other components of SWIFT infrastructure like OS/Data base server. Network devices enabling SWIFT messaging platform was not available. There was 110 online integration of SWIFT with CBS, Treasury, EDMS or Overseas systems. Bank also confirmed that no security incidents have been reported in the SWIFT operations for the last two years ”

with it having been submitted by the RBI that the PNB in its IT compliance/ Action Taken Report of 08.07.2016 responded to the effect:

“10.7 A comprehensive review of SWIFT operations vis-a-vis observations of various auditors and actionable items by 30/09/2016 (Action ITD and IBD).”

104. The RBI thus submitted that the current status report submitted that the PNB thought that it was asked to submit a current status report vis-a-vis those paragraphs wherein PNB in its Compliance/Action Taken Report of July, 2016 and had remarked by specifying a target date for compliance and that in fact the current status report submitted by PNB on 27.06.2017 did not consist of the status report on the aforesaid para 10.7 of the IT exam report and the IT Compliance/Action taken report of **08.07.2016** and that the respondent no.2 thus contended that the PNB was guilty of the offence of wilful omission to make a material statement and also punishable under Section 46 of the Banking Regulation Act, 1949.

105. The respondent no.2 has thus submitted that the summoning order of the Magistrate specifies the grounds that constitute the offence for which the accused was summoned. *Inter alia* the respondent no.2 submitted that

extensive facts regarding the commission of the offence have been set out by the complainant i.e. the respondent no.2. The respondent no.2 further submitted that the summoning order also discloses that it had been issued for offences under Section 46 of the Banking Regulation Act, 1949 and from a combined reading of averments made in the complaint, the speaking order issuing the summons itself, the accused have complete notice that the offences alleged against them are those prescribed and punishable under Section 46(1) of the Banking Regulation Act, 1949.

106. *Inter alia* the respondent no.2 has submitted that though the petitioner/ Bank has submitted that it is not seeking the quashing of the entire proceedings but only a remand to learned trial Court for fresh consideration, the respondent no.2 in relation thereto placed reliance on the verdict of the Hon'ble Supreme Court in ***U.P. Pollution Control Board vs. Mohan Meakins Ltd & Ors (2000) 3 SCC 745*** wherein it was observed to the effect:

“it is unfortunate that the Sessions Judge himself did not look into the complaint at that stage to form his own opinion whether process could have been issued by the Chief Judicial Magistrate on the basis of the averments contained in the complaint. instead the Sessions Judge relegated the work to the trial Magistrate for doing the exercise over again.”

107. *Inter alia* the respondent no.2 submits that if this Court has any doubt whether the complaint discloses an offence, the proper course would be to form its own opinion whether process could have been issued by the Magistrate on the basis of the averments contained in the complaint instead of relegating the work to the trial Magistrate for doing the exercise over again. *Inter alia* the respondent no.2 submitted that the factual averments in

the complaint relied upon by the learned Magistrate in the order issuing process disclose an offence under Section 46(1) of the Banking Regulation Act, 1949 only and cannot and do not disclose the offences under sub sections (2) (3) and (4) of Section 46 of the Banking Regulation Act, 1949.

108. The respondent no.2 through its written submissions as already adverted to hereinabove has categorically submitted that the complaint and the summoning order, summoned the accused with infringing the provisions contained in Section 46(1) of the Banking Regulation Act, 1949 only and that the averments in the complaint were not even remotely concerned with the provisions of sub-sections (2) (3) and (4) of Section 46 of the Banking Regulation Act, 1949. The respondent no.2 has further submitted that the contentions of the PNB are wilfully misconceived and the complaint and the summoning order have been deliberately misconstrued.

109. As regards the contention raised on behalf of the petitioner/PNB that in terms of Section 47A(4) of the Banking Regulation Act, 1949, which reads to the effect:

"No complaint shall be filed against any banking company in any court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section."

and the consequential submissions made by the PNB that the contents in the instant case filed by the respondent no.2, the RBI was bad in law in terms of Section 47A(4) of the Banking Regulation Act, 1949, it was submitted by the RBI that the same was wholly misconceived.

110. It was submitted thus by the respondent no.2 to the effect:-

"It is respectfully submitted that this contention is totally misconceived. The Petitioner Bank has annexed to its petition

before this court, both the Show Cause Notice ("SC") in respect of the penalty imposed and the Order imposing the penalty. The SCN and the Order both reflect that the proceedings were initiated and the final order of penalty imposed on account of violation by the Petitioner Bank of the provisions of section 46(4) of the Act. In particular, the SCN initiating penalty proceedings and the Order imposing the penalty after hearing the Petitioner Bank, both disclose that the proceedings were concerned for a violation by Petitioner bank of section 46(4)(i) for non-compliance with and contravention of directions contained in RBI circular Ref. DBS (CO) CSITE/4493/31.01.015/2017-18 dated 20.2.2018. The bar U/S 47A(4) manifestly cannot apply to the instant complaint filed by the RBI as that bar applies "in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section". The words - "under this section" refer to Section 47 A whose title reads "Power of Reserve bank to impose penalty. Section 47A(1) expressly empowers Reserve Bank to impose a penalty for a contravention or a default of the provisions of sub section (2), (3) or (4) of section 46 of the Act. The section does not contemplate the imposition of any penalty by the RB[for a contravention of section 46(1) of the Act. The penalty imposed on Petitioner Bank as aforestated u/s 47A is one for, a violation of the provisions of section 46(4)(i). The Complaint filed by the RBI is for the offence under section 46(1) of the Act of wilfully making a false statement in a material particular and wilfully omitting to make a material statement. These acts are not within the scope of section 46(4) for which the penalty has been undeniably imposed. On the other hand, section 46(1) is totally unconcerned with non-compliance or contravention of a RBI circular, which in the penalty proceedings pertain to the RBI circular dated 20.2.20 18. In short, the penalty has been imposed for a violation of s.46(4) of the Act and the Complaint is filed for an altogether different and distinct contravention u/s 46 (1) of the Act. Ex-facie the bar u/s 47A(4) does not apply to the Complaint, which is the subject matter of the present

proceedings and the contentions of the Petitioner Bank in this respect are liable to be dismissed as ex-facie untenable.”

ANALYSIS

111. On consideration of the entire available record and rival pleas addressed on behalf of either side, this Court is of the considered view that the impugned order dated 11.03.2019 of the Learned MM 05PHC in CC number 16711 of 2018 which reads to the effect:-

“Present complainant u/s 200 Cr.P.C has been filed on behalf of Reserve Bank of India. As per case of complainant, complainant corporation is a statutory corporation and as per Section 35 of the Banking Regulation Act, 1949, complainant is vested with the power to cause an inspection by one or more of its officers of any banking company and its books and accounts. It is submitted that proposed accused no. 1 is a bank and proposed accused no. 2 was appointed as Managing Director and CEO of proposed accused no. 1 by Government of India and she worked in said capacity from 14th August, 2015 till 4th May, 2017. It is submitted that proposed accused no. 3 is former Executive Director of proposed accused no. 1 and he worked in said capacity from 13th March, 2014 till 28th February, 2018 and proposed accused no. 4 is Executive Director of proposed accused no. 1 and he is working in said capacity since 15th September, 2016. It is submitted that proposed accused no. 5 is General Manager (under suspension), proposed accused no. 6 is General Manager, (retired) & proposed accused no. 7 is Deputy General Manager (retired), proposed accused no. 8 is General Manager, proposed accused no. 9 & 10 are Assistant General Manager and proposed accused no. 11 is Chief Manager of proposed accused no. 1.

It is submitted that during the period from 08.02.2016 to 12.02.2016 complainant corporation in exercise of power u/s 35 of Banking Regulation Act, 1949 carried out a detailed inspection of the systems and procedures of Information

Technology aspects being followed in proposed accused no. 1. After conducting the detailed inspection of systems and procedures of Information Technology aspects, complainant prepared a comprehensive report and same was forwarded to accused no. 1 bank vide email dated 06.06.2016. The said mail was addressed to proposed accused no. 6 and 9 and through said email proposed accused no. 1 was called to submit its compliance/action taken report within 30 days on the findings of the inspection spelled out in said email. It is alleged that in response to said email proposed accused no. 9 while replying on behalf of proposed accused no. 1 sent an email to complainant corporation on 08.07.2016 and submitted the false compliance/action taken report. It is alleged that said reply was prepared, authorised and personally approved by proposed accused no. 2, 3, 6, 7, 8 & 9 and same is evident from internal documentary exchanges dated 04.10.2016 between said proposed accused persons. It is alleged that proposed accused not only made the false statement in compliance/action taken report on 8.07.2016 but again submitted the same false statement on 27.06.2017 in response to a status report sought by Deputy General Manager, Dept. of Banking supervision of complainant corporation, vide email dated 21.06.2017. It is submitted that in response to said email proposed accused no. 9 on behalf of accused proposed accused no. 1, vide email dated 27.06.2017 sent a progress report and reiterated its response as was earlier communicated to complainant corporation vide email dated 08.07.2016. It is alleged that proposed accused persons willfully made false statements despite being aware of the risks and repercussions of failing to integrate SWIFT with CBS and introducing STP between SWIFT messaging and CBS. It is submitted that on or about August, 03, 2016 complainant corporation issued a confidential circular to all scheduled commercial banks including proposed accused no. 1. By said circular, the banks were advised to strengthen the controls around the operating environment for fund transfers through SWIFT or similar interfaces and banks were advised to minimize the practice of direct creation of payment messages

in the SWIFT environment with routing the same through CBS. It is submitted that above mentioned circular was discussed in a special meeting held on 19.08.2016 by various concerned divisions of proposed accused no. 1 and proposed accused no. 11 was convener of said meeting. It is alleged that subsequent to said meeting proposed accused no. 5 under his signature, vide letter dated 19.08.2016 gave the false information to complainant corporation.

It is submitted that on November 25, 2016 complainant corporation again issued a confidential circular dated 31.01.2015 and same was sent in an 'password protected' form to proposed accused no. 1. It is submitted that letter dated 27.10.2016 in the form of questionnaire was issued by complaint corporation and response to questionnaire was sought from proposed accused no. 1 and in response to said questionnaire to proposed accused no. 1 proposed accused no.1 gave false and misleading answer which was approved by proposed accused no. 4, 5,10 and 11 on behalf of proposed accused no. 1. It is submitted that complainant corporation discovered the falsity of the information provided by proposed accused persons while scrutinizing the Brady House Branch, Mumbai of proposed accused no. 1. It was found that information furnished on behalf of proposed accused no. 1 in last few years are completely false and proposed accused persons have willfully and deliberately made false statement in utter disregard to their statutory obligation under section 46 of the Banking Regulation Act, 1949. It is submitted that during IT examination conducted on behalf of complainant on the premises of proposed accused no. 1, it was observed that core banking system was not integrated with many critical applications and there was no online integration of SWIFT with CBS. It is submitted that accused persons have deliberately furnished false and misleading statements to complainant corporation and same was done with common intention and in connivance with each other and same is punishable u/s 46 of Banking Regulation Act r/w 120 B IPC.

The present complaint has been filed on behalf of complainant corporation by Sh. Tarun Kumar Singh, General Manager,

Department of Banking supervision, RBI who is a public servant and sanction u/s 197 Cr.PC has been filed qua proposed accused no. 2, 3 and 4. Alongwith complaint u/s 200 CrPC, number of documents have been filed on record by complainant. Qua proposed accused no. 5 to 11 Ld. Counsel for complainant has filed on record certain judgments of Hon'ble Supreme Court and certain regulations as per which there is no requirement of Sanction 197 Cr.PC qua proposed accused no. 5 to 11. As present complaint has been filed by public servant in discharge of his official duties, so, requirement of examination of complainant and witnesses is dispensed with.

In view of facts stated in the complaint and documents filed on record on behalf of complainant, case is made out for summoning of all the proposed accused persons in respect of offence u/s 46 of Banking Regulation Act, 1949, so, they be summoned on filing of PF/RC for NDOH i.e 24.05.2019.”

sets forth succinctly the allegations levelled by the complainant i.e. the Reserve Bank of India against the petitioner herein of not having integrated the core banking system of the PNB, the present petitioner with many critical applications and specifically there was no online integration of SWIFT with CBS despite a comprehensive report sent by the Reserve Bank of India to the petitioner herein vide email dated 6.6. 2016 in view of a detailed inspection of the systems and procedures of the information technology aspects of the petitioner bank conducted during the period from 8.2.2016 to 12.2.2016. The averments in the complaint of the complainant indicate that one of the crucial observations made in the IT examination report were vide 3.5 to the effect:

“3.5 Bank had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of in-house developed purchased and outsourced activities CBS was not integrated in automated fashion with

various critical applications i.e. no Straight through Processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks.”

to which accused number 9 on behalf of accused No.1 i.e. the present petitioner submitted allegedly falsely to the effect :

“Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observation may be treated as complied.”

112. The impugned order observes inter alia to the effect that as alleged by the complainant Corporation apart from a false statement in the compliance / action taken report sent on 8.7.2016 by the petitioner herein which reply was prepared, authorized and personally approved by accused nos.2,3,6,7,8 and 9 and was allegedly evident from in the internal documentary exchanges dated 4. 10.16 between the proposed accused persons which alleged false statement was made again on 27.6.2017 in response to a status report sought by the Deputy General Manager, Department of Banking supervision of the complainant Corporation vide an email dated 21.6.2017 the petitioner who had assured compliance by a target date, rather submitted a response indicating that the targets were yet to be achieved and the PNB again reiterated the response submitted by it vide email dated 8.7.16.

113. The impugned order takes into account the contentions raised by the complainant that the accused persons not only made a false statement in compliance/ action taken report but also wilfully made false statements despite being aware of the risks and repercussions of failing to integrate SWIFT with CBS and introducing STP between SWIFT messaging and CBS and that even in relation to the confidential circular issued on or about

03.08.2016 by the complainant to all scheduled commercial banks including the petitioner whereby, the banks were advised to strengthen the controls around the operating environment for fund transfers through SWIFT or similar interfaces and banks were advised to minimize the practice of direct creation of payment messages in the SWIFT environment with routing the same through CBS, for which discussions were held in a special meeting held on 19.08.2016 by various concerned divisions of the petitioner and accused no.11 being the convener of the meeting, pursuant thereto, the accused no. 5 under his signature, vide letter dated 19.08.2016 gave the false information to complainant corporation.

114. The impugned order of the learned trial Court takes into account the submissions that have been made by the complainant through the complaint that on 25.11.2016, the complainant corporation again issued a confidential circular dated 31.01.2015, which was sent in a password protected form to the accused no.1 i.e. the petitioner herein and a letter dated 27.10.2016 in the form of questionnaire as issued by complainant corporation and response to the same sought and received from the petitioner, qua which, the petitioner gave false and misleading answer which was approved by the accused no. 4, 5,10 and 11 on behalf of the accused no. 1 which aspects were taken into account by the learned trial Court at the order of summoning of the petitioner and other accused persons.

115. The contention raised by the complainant corporation that it discovered the falsity of the information provided by the proposed accused persons while scrutinizing the Brady House Branch, Mumbai of the accused no.1 and that it was found that information furnished on behalf of the

petitioner in last few years are completely false and that the proposed accused persons had wilfully and deliberately made false statement in utter disregard to their statutory obligation under Section 46 of the Banking Regulation Act, 1949 were taken into account by the learned trial Court at the time of the passing of the summoning order.

116. The contention raised on behalf of the complainant through the complaint that during the IT examination conducted on behalf of the complainant at the premises of the petitioner, it was observed that the core banking system was not integrated with many critical applications and there was no online integration of SWIFT with CBS and that the accused persons had deliberately furnished false and misleading statements to the complainant corporation, which was done with common intention and in connivance with each other were taken into account by the learned trial Court observing thus that a case was made out in view of the complaint and documents on record for summoning of all the proposed accused persons in respect of the offence under Section 46 of the Banking Regulation Act, 1949.

117. Taking the observations in the impugned order into account, the contention raised on behalf of the petitioner, the PNB that the petitioner has been gravely prejudiced by the impugned order, which does not detail any reason for summoning the petitioner under Section 46 of the Banking Regulation Act, 1949 and does not spell out which particular subsection of Section 46 of the Banking Regulation Act, 1949 has been invoked for which alleged offence, i.e. the petitioner and other accused persons have been summoned, - cannot be accepted.

118. It is essential to observe that Section 46(1) of the Banking Regulation Act, 1949, which reads to the effect:

“(1) Whoever in any return, balance-sheet or other document 1[or in any information required or furnished] by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”

specifically imposes penalties and imprisonment in relation to wilful making a statement, which is false in any material particular knowing it to be false or wilful omitting to make material statement and that thus the contention that the petitioner seeks to urge through submissions made through the present petition, written submissions filed on behalf of the petitioner and oral submissions made by the learned senior counsel for the petitioner to the effect that the complaint filed by the complainant is probably a complaint under Section 46(2) of the Banking Regulation Act, 1949 or under Section 46(4) of the Banking Regulation Act, 1949, too cannot be countenanced presently.

119. This is so in as much as Section 46(2) of the Banking Regulation Act, 1949 relates to the non-production of any book, account or other document or to furnish any statement or information in terms of the Section 35(2) of such enactment or not answering to the question relating to the business of a banking company and does not relate to wilfully making false statement in relation to any material particular knowing it to be false or wilfully omitting to make material statement, which falls within the ambit of Section 46(1) of the Banking Regulation Act, 1949.

120. As regards the contention raised on behalf of the petitioner that the allegations made in the complaint would fall within the ambit of Section 46(4) of the Banking Regulation Act, 1949, it is essential to observe that Section 46(4)(ii) is clearly inapplicable in as much as it is related to carrying out the terms of, or the obligations under, a scheme sanctioned under sub-section (7) of the said enactment.

121. As regards Section 46(4)(i) of the Banking Regulation Act, 1949 which makes contravention of any other provision of this Act or if any default is made in complying with any requirement of this Act or of any order, rule or direction made or condition imposed there under or by the very words if any other provision at the outset under Section 46(4) of the Banking Regulation Act, 1949 make it apparent that it relates to violation and non-compliance and default in cases other than those described in Section 46(1), 46(2), 46(3) of the Banking Regulation Act, 1949.

122. In these circumstances, it cannot be said that the contents of the complaint that were put forth by the complainant corporation i.e. the respondent no.2 and the impugned order dated 11.03.2019 of the learned trial Court did not spell out the alleged commission of the offence punishable under Section 46(1) of the Banking Regulation Act, 1949 against the petitioner herein. The contention thus raised through the written submissions made by the petitioner at A, B and E as adverted to hereinabove, cannot be accepted.

123. As regards the contention raised through the written submissions at Ground D raised by the petitioner, which reads to the effect:

“D. THE IMPUGNED SUMMONING ORDER SUFFERS FROM A TOTAL NON - APPLICATION OF MIND AND DESERVES TO

BE SET ASIDE ON THIS SHORT GROUN D:

- 1. The summoning order passed by the Learned Trial Court is a mere recapitulation of the allegations made by Respondent No.2 in its complaint and does not show any application of mind by the Learned Trial Court. It is a settled position of law that a summoning order must reflect the due application of mind and the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused. The absolute absence of application of mind in the impugned summoning order is also demonstrated by the fact that akin to criminal complaint filed by Respondent No. 2, even in the impugned summoning order, there is no indication as to under which sub-section of section 46 of the 1949 Act, Petitioner has been summoned under.*
- 2. Summons issued by a criminal court are equally important and the summons issued by the Learned Trial Court (Annexure-P12 @ pg. 65 of Petition) to Petitioner, in the present case, refer to section 138 of the Negotiable Instruments Act, 1881, which shows the lack of application of mind by the Learned Metropolitan Magistrate.”*

that the impugned summoning order suffers from a total non-application of mind and deserves to be set aside, taking into account the factum that the process had been issued under Section 138 of the Negotiable Instruments Act, 1881, undoubtedly the process in the instant case issued is one under Section 138 of the Negotiable Instruments Act, 1881 and issuance of the same is extremely disturbing. However, the impugned order specifies the offence for which the petitioner has been summoned and the petitioner is aware of the contents of the impugned order.

124. It is the cardinal principal of jurisprudence that procedures are the handmaidens of justice and that justice *per se* when sought or sought to be invoked cannot be thwarted by procedural irregularities when no prejudice has been caused to the accused.

125. It is, however, directed hereinabove that the learned trial Court ought to have ensured and that the Ld. Trial Courts shall henceforth ensure that the process issued to the accused persons is verified before issuance thereof so that hyperbolic errors of the kind as in the instant case of issuance of a process under Section 138 of the Negotiable Instruments Act, 1881 in place of a process for summons of the accused under Section 46 of the Banking Regulation Act, 1949 is not repeated in future.

126. Copy of this order with these directions be also sent to the learned trial Court which has passed the impugned order and issued the process in relation thereto. The learned District & Sessions Judges of all Districts in Delhi/ New Delhi shall ensure that they put in place a procedure in their Registries to ensure issuance of the summons in terms of the summoning orders. Copy of these directions be also sent to all District & Sessions Judges of New Delhi and Delhi through the learned Registrar General of this Court for compliance.

127. As regards the contention raised on behalf of the petitioner that in terms of Section 47A (4) of the Banking Regulation Act, 1949, which reads to the effect:

"No complaint shall be filed against any banking company in any court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section."

and that there is a complete embargo to any complaint being filed against the petitioner in any Court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under

Section 47A of the Banking Regulation Act, 1949 and thus the contention raised by the petitioner to the effect that the allegations made in the criminal complaint are similar to allegations that were made in the show cause notice dated 23.08.2018, qua which, vide a letter dated 25.03.2019 of the committee of the Executive Directors of the RBI, a penalty of Rs.2 crores had been imposed on the petitioner Bank and which has since been deposited also by the petitioner, the complaint filed by the complainant was barred by Section 47A(4) of the Banking Regulation Act, 1949 cannot be accepted for the reasons that Section 47A(4) of the Banking Regulation Act, 1949 referred to hereinabove puts an embargo on the institution of a complaint against any banking company in any Court of law in respect of any contravention and default in respect of any penalty as has been imposed by the RBI under “**this Section**” i.e. Section 47A of the Banking Regulation Act, 1949.

128. Section 47A(1)(a) of the Banking Regulation Act, 1949 relates to imposition of penalty by the RBI on the banking company where the contravention or default is of the nature referred to in subsection (2) of Section 46 of the Banking Regulation Act, 1949. Subsection 3 of Section 46 of the Banking Regulation Act, 1949 reads to the effect:

“(3) If any deposits are received by a banking company in contra-vention of an order under clause (a) of sub-section (4) of section 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.”

and thus relates to receipt of deposits by a banking company in

contravention of an order under Section 35 (4)(a) of the Banking Regulation Act, 1949 and does not relate to an offence prescribed and made punishable for furnishing of false information, statement or wilful omission to make true statement, which falls within the ambit of Section 46(1) of the Banking Regulation Act, 1949.

129. Likewise in terms of Section 47A(c) of the Banking Regulation Act, 1949, the penalty is imposable by the RBI where there is a contravention or default specifically of the nature referred to in Section 46(4) of the Banking Regulation Act, 1949.

130. Section 46(4) of the Banking Regulation Act, 1949 as already interpreted hereinabove specifies also that Section 46(4) of the Banking Regulation Act, 1949 relates to contravention or default made qua any other provision being flouted other than those prescribed in Section 46 (1), 46 (2), 46(3) of the Banking Regulation Act, 1949. Thus the contention raised on behalf of the petitioner that in view of the imposition of the penalty on the petitioner vide a letter dated 25.08.2019 by the committee of the Executive Directors of the RBI, the same places an embargo on the institution on the complaint bearing No.CC 16711/2018 by the RBI i.e. the respondent no.2 to the complaint of the said case CC No.16711/2018 is unacceptable and devoid of merits.

131. Thus, taking into account the submissions that have been made on behalf of either side, the entire available records with allegations levelled against the petitioner by the RBI in relation to the alleged false statements made by the PNB qua the alleged commission of the offence punishable under Section 46(1) of the Banking Regulation Act, 1949 by the petitioner

through the contents made in the complaint as set forth through the written submissions dated 16.11.2019 specifically para 7 thereof, which reads to the effect:

"7. (i) The first instance of PNB furnishing false information to the RBI was on 08.07.2016. Pursuant to an inspection carried out by it in February 2016 of all aspects of PNB's Information Technology (IT) systems, the bank prepared a comprehensive report and forwarded a copy of the same to PNB vide email dated 06.06.2016. One of the crucial observations made in the IT examination report was in paragraph 3.5 of the report, which is reproduced below:-

"3.5 Banks had not planned or envisioned implementation of Single Enterprise Application as it had 80 applications consisting of in-house developed, purchased and outsourced activities. CBS was not integrated in automated fashion with various critical applications i.e., no Straight Through Processing (STP) was envisaged and the middleware used involved manual interventions giving rise to various risks."

Through the said mail PNB was called on to submit a Compliance Report inter alia on the above observation. PNB's response to RBI vide letter dated 08.07.2016 furnished false information regarding its compliance with the observations cited above. PNB's response to paragraph 3.5 of the IT Exam/Report is reproduced below:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied"

This assertion by PNB was subsequently discovered by RBI to be totally false in January 2018 onwards when it received a series of Fraud Monitoring Reports ("FMRs") from PNB. In column 9c of these FMRs titled "modus operandi", the report stated as under:

"9c. Issuance of Letters of Undertaking (LOU) by SWIFT without obtaining approval of the Authority, without

necessary applications. documents and without making entries in the CBS system"

Thus, while PNB's compliance response on 08.07.2016 informed RBI that "all applications around CBS have been integrated with STP except Treasury" the FMRs as above reported that the Modus Operandi of the fraud was facilitated by Issuance of LOUs by SWIFT inter-alia without necessary applications.

(ii) On 21.06.2017 the Dy. General Manager of Department of Banking Supervision of RBI vide an email also called upon PNB to submit a Current Status on those paras of its IT report communicated on 06.06.2016 where the PNB had assured compliance by a target date. In response, PNB filed not just a response to compliance by it which remained to be carried out by a target date but furnished a response to every paragraph of the said report of RBI. In response to paragraph 3.5 of the IT report, PNB again reiterated that:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied"

This was a reiteration of the earlier falsehood communicated to RBI on 08.07.2016, which as aforesaid was found to be manifestly false by column 9c of the FMRs submitted to it by PNB from January 20 18 onwards. In other words, the offence of furnishing the same false information was committed on two separate occasions - 08.07.2016 and 27.06.2017.

(iii) On 03.08.2016 RBI sent a confidential letter to all scheduled commercial banks including PNB. Paragraph 3 of the said letter stated as follows:-

"You are also advised to get the SWIFT infrastructure comprehensively audited immediately for malicious software script/activities. Appropriate steps may be taken to rectify malicious activity and to patch vulnerabilities, if any, in the SWIFT IT infrastructure. In the meantime, you may take steps to ensure strict vigil on the transactions made through your SWIFT infrastructure."

PNB replied to RBI's said letter of 03.08.2016 vide letter dated 19.08.2016. Its response to the said paragraph 3 of the RBI letter was as follows:

"We confirm SWIFT best practices are being adopted in the Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place. Swift system Configuration is in line with SWIFT protocol and all patches have been updated to mitigate the cyber security risk. "

The FMRs of 2018 disclosed that far from adopting SWIFT best practices "by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place" by PNB as informed in its reply dated 19.08.2016, Letters of Undertakings (LOUs) were issued by the Brady House branch of the bank, as per column 9c of the FMRs "without obtaining approval of the Authority, without necessary applications, documents and without making entries in the CBS System'. Thus PNB once again furnished false information to the RBI.

(iv) Under a covering letter of 27.10.2016, the RBI sent PNB a questionnaire about the practices followed by PNB regarding SWIFT framework. QA(i) read as follows:

'Does the bank undertake any reconciliation to verify whether all outward SWIFT messages transmitted by the bank have been captured in CBS?'

The response to QA(i) given by PNB was as follows:-

"Outward SWIFT message is sent after entering in CBS and passing/verification by two officials, without the entry in CBS, no financial SWIFT message can be sent. However, reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by A D branches"

The statement was again found to be false by FMRs of 2018 as aforesaid column 9c dealing with modus operandi of the fraud categorically disclosed that Letters of Undertaking by SWIFT were issued without making any

entries in the CBS (Core Banking System).

v) The final instance consists not of a making false statement but of the alternative offence U/S 46(1) of the Act, i.e., willful omission to make a material statement. RBI vide its email dated 21.06.2017 had sought from PNB. A Current Status report on those paras of its IT Compliance Report communicated on 06.06.2016 where it had assured compliance by a target date. The original observation made by RBI in paragraph 10.7 of its IT exam report of 06.06.2016 was as follows:

“10.7 As regards systems relating to SWIFT operations were concerned. it was ascertained from the bank that the Base Software (application) patching has been done upto 7.1.14. However, patching status of other components of SWIFT infrastructure like OS/Data base server. Network devices enabling SWIFT messaging platform was not available. There was 110 online integration of SWIFT with CBS, Treasury, EDMS or Overseas systems. Bank also confirmed that no security incidents have been reported in the SWIFT operations for the last two years . . . ”

In response to paragraph 10.7 of the IT Exam Report of 06.06.2016, PNB in its IT Compliance/Action Taken Report of 08.07.2016 had responded with the following:

“10.7 A comprehensive review of SWIFT operations vis-a-vis observations of various auditors and actionable items by 3010912016 (Action ITO and IBD).”

It is pertinent to note here that PNB was specifically asked to submit a Current Status Report vis-a-vis those paragraphs wherein PNB in its Compliance/Action Taken Report of July 2016 had remarked by specifying a target date for compliance. The Current Status Report submitted by PNB on 27.06.2017 did not consist of the status report on the afore stated 10.7 paragraph of the IT exam report and the IT Compliance/Action taken report of 08.07.2016. Thus, in this instance PNB was guilty of the offence of wilful omission to make a material statement, also punishable u/s 46 of the Act.”

and taking into account also the reply of the petitioner dated 08.07.2016 to the RBI, which reads to the effect:

"Bank has a core banking solution which takes care of its main business requirements. All applications around CBS have been integrated with STP except Treasury. The observations may be treated as complied."

and reply dated 19.08.2016 to the letter of the RBI dated 03.08.2016, which reads to the effect:

"We confirm SWIFT best practices are being adopted in the Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place. Swift system Configuration is in line with SWIFT protocol and all patches have been updated to mitigate the cyber security risk."

coupled with the response of the petitioner to QA.1 sent by the RBI to the PNB, which reads to the effect:

"Does the bank undertake any reconciliation to verify whether all outward SWIFT messages transmitted by the bank have been captured in CBS?"

to which the petitioner Bank responded to the effect:

"Outward SWIFT message is sent after entering in CBS and passing/verification by two officials, without the entry in CBS, no financial SWIFT message can be sent. However, reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by A D branches."

coupled with the report dated 16.06.2016 of the IT Examination conducted at the premises of the petitioner with specific reference to observation in para 10.7 of the IT Examination Report, which reads to the effect:

“10.7 As regards systems relating to SWIFT operations were concerned. it was ascertained from the bank that the Base Software (application) patching has been done upto 7.1.14. However, patching status of other components of SWIFT infrastructure like OS/Data base server. Network devices enabling SWIFT messaging platform was not available. There was 110 online integration of SWIFT with CBS, Treasury, EDMS or Overseas systems. Bank also confirmed that no security incidents have been reported in the SWIFT operations for the last two years ”

in relation to which the response submitted by the petitioner was to the effect:

“10.7 A comprehensive review of SWIFT operations vis-a-vis observations of various auditors and actionable items by 30/09/2016 (Action ITD and IBD).”

coupled with the submissions that have been made on behalf of the respondent no.2 to the effect:

“FMRs of 2018 disclosed that far from adopting SWIFT best practices by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place by PNB as informed in its reply dated 19.08.2016, Letters of Undertakings (LOUs) were issued by the Brady House branch of the bank, as per column 9c of the FMRs without obtaining approval of the Authority, without necessary applications, documents and without making entries in the CBS system and thus PNB once again furnished false information to the RBI.”

with it indicating thus to the effect that Letters of Undertakings (LOUs) were issued by the Brady House branch of the bank as per column 9c of the FMRs without obtaining approval of the authority, without necessary applications, documents and without making entries in the CBS system and

thus having furnished false information to the RBI, are aspects which are germane and essential to be looked into by the learned trial Court at the time of consideration of framing of the charges of allegations against the petitioner and other accused persons.

132. In the circumstances, thus it is held that the impugned order has to be sustained qua the summoning of the petitioner for the commission of an offence punishable under Section 46 of the Banking Regulation Act, 1949, which apparently in the circumstances of the instant case and the entire available record i.e. complaint of the complainant and evidence led by the complainant relates to the alleged commission of the offence punishable under Section 46(1) of the Banking Regulation Act, 1949. This is so and as laid down by the Hon'ble Supreme Court in ***U.P. Pollution Control Board vs. Mohan Meakins Ltd & Ors (2000) 3 SCC 745***, it is not considered appropriate to accept the contention raised by the petitioner of remanding the matter to the Magistrate for doing the exercise again for re-consideration to invoke any specific provision of Section 46 of the Banking Regulation Act, 1949 in as much as, as already observed hereinabove, the offence alleged to have been committed by the petitioner as alleged by the RBI through the complaint and brought forth through the impugned summoning order relates to the alleged commission of offence punishable under Section 46(1) of the Banking Regulation Act, 1949.

133. As regards the contention raised on behalf of the petitioner that the examination of Sh.Tarun Kumar Singh, General Manager, Department of Banking Supervisor, RBI could not have been exempted under Section 200 of the Cr.P.C., 1973 as he is not a 'public servant', taking into account the

factum that the RBI is an instrumentally of the State, the role of Sh.Tarun Kumar Singh, is General Manager falls within the ambit of being a ‘public servant’ in terms of Section 200 of the Cr.P.C., 1973, and thus the contention of the petitioner that Sh.Tarun Kumar Singh having not been examined, the impugned order dated 11.03.2019 is liable to be set aside, cannot be accepted.

134. In the circumstances, the petition CRL.M.C.2696/2019 is thus dismissed, and the order dated 20.05.2019 staying the Trial Court proceedings is set aside. CRL.M.A.31239/2019 filed by the respondent no.2 is disposed of accordingly.

135. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the trial that may take place.

ANU MALHOTRA, J

JUNE 25, 2021/sv/vm