*	**IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+	CRL.M.C.No.4368/2019

Judgment reserved on : 05.11.2019
Date of decision : 25.06.2021

I.P. SINGH ..... Petitioner

Through: Mr. Ankur Mittal, Mr. Abhay Gupta, Advocates

versus

RESERVE BANK OF INDIA ..... Respondent

Through: 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 Mr. Inder Pal Singh working as a General Manager to the PNB as per the averments made in the petition who was posted at the International Bank Division (IBD), Bhikaji Cama Place during the period October, 2016 to June, 2017 seeks to assail the impugned order dated 11.03.2019 of the learned MM-05, PHC in CC No.16711/2018 qua him wherein in the said complaint, he was arrayed as the accused No.10 and has also sought the quashing of that criminal complaint qua himself arrayed as accused no.10 to the complaint filed by the RBI as well as all actions pursuant thereto.

2. The connected petition in the matter is Crl.M.C.2696/2019 vide which the PNB, the petitioner thereof had assailed the very same order dated 11.03.2019 in CC No.16711/2018 whereby apart from the instant petitioner arrayed as the accused No.10 to that complaint bearing No.16711/2018, there were 10 other accused persons summoned inclusive of the PNB i.e. the petitioner of Crl.M.C.2696/2019 with all the accused persons inclusive of the present petitioner having been sought to be summoned for the offence punishable under Section 46 of the Banking Regulation Act, 1949.

3. The allegations in Crl.M.C.2696/2019 which relate to the contention raised on behalf of the RBI qua the accused persons arrayed in the complaint case of the commission of offence punishable under Section 46 of the Banking Regulation Act, 1949 are the same as is asserted against the present petitioner Shri I P Singh with specific observations made in para 8k of CC No.16711/2018 to the effect:

> *"That in response to the aforementioned question contained in letter dated 27.10.2016, the Accused No. 1 gave following false and misleading answer vide its letter dated 31.10.2016:*
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> > *"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."*
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> *This statement, which was approved by Accused no. 4, 5, **10**& 11, made to the Reserve Bank of India by on behalf of Accused No.l bank is utterly and completely false."*

(emphasis supplied)

4. The impugned order dated 11.03.2019 in CC No.16711/2018 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 35of 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 14thAugust, 2015 till 4thMay, 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 13thMarch, 2014 till28thFebruary, 2018 and proposed accused no. 4 is Executive Director of proposed accused no. 1 and he is working in said capacity since 15thSeptember, 2016. It is submitted that proposed accused no. 5 is General Manger (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 toa 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. Along with 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."

5. The CC No.16711/2018 that has been filed by the respondent i.e. the RBI against the accused persons sought to assert that the PNB of which the respondent no.10 was the Assistant General Manager and was at the related time period posted at the International Bank Division (IBD), Bhikaji Cama Place during the period October, 2016 to June, 2017 had wilfully made false statement in relation to the material particulars knowing it to be false and wilfully omitted to make material statement in writing in terms of the Banking Regulation Act, 1949 in the document and information furnished or required to be furnished by the RBI for the purpose of any provisions of the Banking Regulation Act, 1949 in as much as though the RBI had conducted a detailed inspection in terms of Section 35 of the Banking Regulation Act, 1949 of the PNB from 08.02.2016 to 12.02.2016 of the systems and procedures of Information Technology aspects followed in the accused No.l arrayed to the said complaint i.e. PNB, Dwarka, New Delhi including IT operations, information security, IS/IT Audit

function and extent of IT risk assessment. The complaint corporation i.e. the RBI arrayed as the sole respondent to the present petition prepared a comprehensive report made during the said examination, which was forwarded to the accused no.1, Bank vide an mail dated 06.06.2016 wherein one of the crucial observations made in IT Exam Report reads 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 envisased and the middleware used involved manual interventions giving rise to various risks."***

6. The response of the accused no.9 TR Venkateswaran, Assistant General Manager of the PNB, I.T. Division, Sansad Marg, New Delhi while replying on behalf of the accused no.1 to the complainant corporation on 08.07.2016 was submitted by the complainant to be false compliance/ action taken report filed in as much as it was responded to para 3.5. of the IT Examination as follows:

> *"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."*

This reply of the PNB to the compliance/ Action Taken Report as per averments in para 8(d) were prepared and personally approved by the accused Nos.2, 3, 6, 7, 8 and 9.

7. The complainant corporation had further submitted through its complaint as under:

> *"e. What is glaring here is the manner that Accused persons propelled by their malafide intentions and in order to achieve their illicit objective constantly provided Complainant Corporation with false and misleading informations and statements. It is pertinent to note here that Accused No.l, not only made the false statement in the Compliance/ Action Taken Report on 8th July, 2016 but yet again submitted the same false statement on 27th June, 2017 in response to a status report sought by Mr. C Maheshwaran, Deputy General Manager, Department of Banking Supervision of the Complainant Corporation vide email dated 21.06.2017. That in response to the aforementioned email dated 21.06.2017, Mr. T R Venkateswaran (Accused no. 9) on behalf of the Accused No.1, vide an email dated 27.6.2017 sent a progress report highlighting the then status of IT mechanism vis-a-vis observations made in the IT Examination of RBI conducted in February 2016 and reiterated its response as was earlier communicated to the Complainant Corporation by the Accused Persons vide Email dated 08.07.2016. It is of immense relevance to note here that this email was copied to Accused No(s). 6, 7 and 8 - the same group of people who on Accused no.2's approval and in connivance with her had submitted the Compliance Report dated 8th July 2016 containing false statements.*
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> *f. The 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. The risks were frequently flagged and highlighted by the Reserve Bank of India. What is shocking is 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.l bank making those false statements thereby indicating a conspiracy to commit fraud.*

g. It is pertinent to note here that, on or about August 03, 2016, the Complainant Corporation has 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. The subject matter of the circular is 'Cyber Security Controls - SWIFT'. By this 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.

h. The abovementioned circular was discussed in a special meeting held on 19th August 2016 by various concerned divisions of Accused No.1. Accused No. 11 was the convener of the said meeting. That subsequent to the said meeting, Accused No. 5 under his signature vide the letter bearing No.HO:IBD:SW1FT:22 dated August 19, 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"

i. The Complainant Corporation in its endeavour to curb banking frauds 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. On November 25,2016, this Complainant Corporation yet again has issued a 'confidential circular' bearing 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 was sent in an 'password protected' form to the Accused No. 1. 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 November 30, 2016.

j. The Complainant is the regulator and supervisor of the banking industry. Whenever any bank files a flash report and submissions relating to a fraud, this complainant issues 'caution advice' to all the banks disclosing the modus operandi of the fraud and advice the banks to exercise utmost caution and make detailed and in-depth enquiries before granting/renewing any facility. In terms of one of the caution advices, all banks were advised to bring an interface between CBS and SWIFT system i and also consider defining large value transactions for which third level authentication may be made mandatory. ***Pursuant to issuance of one such caution advice, a letter bearing DBS.ND.SSM.(PNB).No.865/14.47.009/2014-15 dated October 27, 2016 in the form of a questionnaire was issued to the Accused No.1 by the Complainant Corporation and response to the questionnaire was sought from the Accused No.l. The said letter was signed by Smt Minal A. Jain, General Manager, RBI, New Delhi. The said letter, inter alia included following question:***

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

k. That in response to the aforementioned question contained in letter dated 27.10.2016, the Accused No. 1 gave following false and misleading answer vide its letter dated 31.10.2016:

'"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."

This statement, which was approved by Accused no. 4, 5, 10 & 11, made to the Reserve Bank of India by on behalf of Accused No.l bank is utterly and completely false"

8. The complainant corporation had further submitted through para 8(L) of its complaint that the falsity of the information provided to it by the accused persons (an apparent reference inclusive to accused No.10, the present petitioner herein) and that 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.l in furtherance to the Fraud Monitoring Reports i.e. FMR/ FMR Update Applications (FUAs) filed by the accused no.l with the complainant corporation informing that a fraud of more than Rs.13000 crores had been detected in its Brady House Branch, Mumbai and that the scrutiny at Brady House Branch had been conducted between 13.03.2018 to 15.03.2018 in order to assess the process put in place in submitting compliance/ response to the complainant and during the said visit it was found that the information furnished by the accused No.1 in the last few years, as had been detailed in the complaint was completely false and that the accused persons had willfully and deliberately made false statements in utter disregard to their statutory obligation under Section 46 of the Banking Regulation Act, 1949.

9. *Inter alia* the complainant of CC No.16711/2018, the RBI had submitted that the FMR/FUAs dated 29.01.2018, 13.02.2018, 14.03.2018 filed by the accused No.l itself acknowledges and accepts the Modus Operandi of the fraud being due to:

> *"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".*

10. The RBI thus stated through its complaint through para 8 (m) to the effect:

> *"m. That during IT examination conducted by this complainant on the premises of Accused No. 1, it was observed that the Core Banking System was not integrated with many critical applications. Further, there was no online integration of SWIFT with CBS. This was communicated by the complainant to the Accused No. 1 vide its e-mail dated 6th June, 2016, 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 issued misleading and false information."*

11. **The allegations that have been made by the complainant in CC No.16711/2018 against 11 accused arrayed therein inclusive of the present petitioner arrayed as the accused No.10 relate to alleged false statement approved by the accused Nos.4, 5, 10 (i.e. the present petitioner) and 11 to the RBI on behalf of the accused No.1 in relation to the aspect of non-conformity of the PNB to SWIFT best practices and non-integration between SWIFT and CBS and Straight Through Processing between CBS and SWIFT messaging and non-strengthening of controls around the operating environment for fund transfers through SWIFT or similar interfaces and banks to ensure the minimization of the practice of direct creation of payment messages in the SWIFT environment with routing the same through CBS, in relation to which, the response submitted by the PNB vide letter dated 31.10.2016 to the RBI, which reads 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."*

with the response of the petitioner herein to the question contained in letter dated 27.10.2016 sent by the RBI to the PNB being 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?"*

to which, the reply given by the PNB was 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."*

qua which, the submission was made by the RBI categorically that this was a false and misleading answer, which had been approved by the accused Nos.4, 5, 10 (i.e. the present petitioner of Crl.M.C.4368/2019) and 11 and that the statement given to the RBI on behalf of the PNB was utterly completely false.

12. The consequence of issuing a letter of undertaking by SWIFT without obtaining approval of the authority, without necessary applications, documents and without making entries in the CBS system is alleged to have resulted into a fraud of more than Rs.13,000/- crores detected at the Brady House Branch of the PNB,

Mumbai, in relation to which scrutiny between 13.03.2018 and 15.03.2018in order to assess the process put in place in submitting compliance/ response to the complainant brought forth that information furnished by the PNB was found to be false in utter disregard to their statutory obligation under Section 46 of the Banking Regulation Act, 1949.

13. The avowed contention of the petitioner sis to the effect that he has had no role to play and has no involvement in the adaptation of CBS/ STP or any other application or system adopted by PNB or suggested by RBI at any point in time and that the petitioner is an AGM level officer and admittedly has no role in policy framing or decisions of the PNB and that the grave allegations against him that he has made a false statement do not suffice to summon him as an accused especially when no summoning evidence was led on the subject.

14. *Inter alia* the petitioner contends that the Question 1, which is to the effect:

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

to which it was answered 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 message transmitted by the bank are captured in CBS is being done by AD branches."*

that the answer to the question 1 was not at all false and was in consonance with the practice that was being followed and ought to be followed while making any international transfer through SWIFT messaging.

15. *Inter alia* the petitioner submits that the said question did not ask about the possibility of sending SWIFT message without entering in CBS as per the available interface/application/system adopted by PNB and that the question was asked about the practice followed by the bank to reconcile the onward SWIFT messages with the entries made in CBS. The petitioner thus submits that the answer given based on information available and practice followed over a period of officers, was about the practice followed in so far as reconciliation was concerned, which answer was apparently correct as per the practice followed.

16. The petitioner further submitted that the SWIFT message is to be sent only after entering in CBS and passing/verification by two officials and as per the practice followed, no financial SWIFT message should be sent without entry in CBS and there was nothing wrong in the answer at all. *Inter alia* the petitioner submits that the complainant was not enquiring about the possibility of risks involved but was asking about the practice of reconciliation and the possibility of risks involved in the existing system was well within the knowledge of RBI, as pointed out by the inspection as well in so many terms. *Inter alia* the petitioner submits that the proposal given in the third column further elaborates and exemplifies the intent, wherein it was

categorically pointed out that, till the interface is established, it is proposed that Branches generate daily log and put up the same to Branch Head/Divisional Head to ensure reconciliation to verify that all outward SWIFT messages transmitted are entered in CBS and that the respective circle officer is to seek clarification in this regard from the said branches and therefore, the answer given including the proposal given read together are completely and absolutely correct and there is absolutely nothing wrong with the same.

17. The petitioner further submits that the petitioner herein is merely a forwarding authority, having collected the information from the branch based upon information available and practice followed over a period of time and therefore, no specific personal knowledge can be said to be attributable to the petitioner by forwarding the requisite information to his superior authority (not to RBI). The petitioner further submits that the impugned summoning order passed by the learned Magistrate does not make any reference, whatsoever, to the material available on record but merely makes a vague reference and captures an omnibus statement of having perused the record and the complaint, to summon the respondents arrayed in the complaint including the petitioner herein and a perusal of the summoning order would reveal that the learned Magistrate has failed to apply his mind and to even prime facie record his satisfaction regarding the culpability and/ or the involvement of the petitioner.

18. The petitioner further submits that the learned Magistrate has further failed to point out as to under which sub-clause of section 46 of the Banking Regulation Act, 1949 the petitioner herein has been

summoned and that the petitioner has been made to face a trial without even disclosing to him the offence allegedly committed by him and his role or involvement. The petitioner further submits that a reading of the entire complaint would reveal that it discloses no offence, whatsoever under section 46 of the Banking Regulation Act, 1949 and no summoning order could have been passed by the learned Magistrate based upon the complaint and the documents filed along with it. The petitioner further submits that the impugned complaint in para k fails to demonstrate as to how the statement recommended by petitioner for onward approval is false, and further submits that even assuming without admitting, even if said statement is false as to how the respondent attributes that the said statement was made by the petitioner wilfully has not been brought forth.

19. The petitioner further submits that PNB at the relevant time did not have the interface to undertake STP, as such it was using conventional method, wherein the following steps were required for sending SWIFT message:

- Before undertaking any transactions, the entry is made in the CBS by invoking the respective menu options.
- The entry in CBS is authorized and approved by two different users having access with delegated powers based on their profiles/designation.
- The documents on the basis of which entry is made in CBS, is duly signed by both the maker/checker.

• On the basis of such documents authorized official will create/approve the message on SWIFT which would be approved by other officer.

• The swift message sent is generated and hard copy is kept with documents.

• As regards SWIFT, it is conventional approach adopted for undertaking the transactions as above,

and in view of practice followed at PNB at the relevant time, neither the statement recommended by petitioner was false, and in case the same was false, the statement was not recommended willfully knowing it to be false.

20. *Inter alia* the petitioner submits that in view of the Book of Instructions on Foreign Exchange issued by PNB in 2011 which instructions were to be strictly adhered to, by all its employees, it was a genuine belief of the petitioner that the outward message is sent only after it is entered in CBS and without the entry in CBS, no financial SWIFT message could be sent and that the genuine belief of PNB was bonafidely communicated to Respondent vide letter dated so 31.10.2016 and thus, there was no willful misstatement made by petitioner. The petitioner further places reliance on the verdict of the Hon'ble Supreme Court in ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609*** and ***Pepsi Foods Ltd. V.Judicial Magistrate, (1998) 5 SCC 749*** to submit that a summoning order must reflect the due application of

mind and that the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused.

21. Inter alia the petitioner submits that the learned trial Court failed to appreciate that the communication clearly showed that the petitioner has signed the statement dated 31.10.2016 only for onward approval by General Manager and Executive Director, as such, the allegation of the respondent that petitioner has approved the statement mentioned in para k is also in correct and that as such, the impugned order has been passed by the learned trial Court in a mechanical manner as the order completely fails to show what weighed in the mind of the learned Magistrate and what were the reasons to issue the process against the petitioner. The petitioner further submits that mechanical summoning of petitioner by the learned trial Court is illegal, erroneous and ought to be set aside in terms of the verdict of the Hon'ble Supreme Court in ***Pepsi Foods Ltd. and Anr. (Supra).***

22. The further contention raised on behalf of the petitioner was to the effect that the developing STP between CBS/accounting system and SWIFT messaging system and ensuring reflecting of underlying transaction in CBS/accounting system before the financial message is sent through SWIFT message, was mandated by Respondent vide communication dated 20.02.2018 and not before and there were no guidelines or timelines specified for integration of SWIFT with CBS, as on 31.10.2016 i.e., the date of Report and that the petitioner did not submit any deliberate misleading information to the Respondent and the premise of the impugned complaint is baseless. The petitioner further submits that the petitioner is a public servant and that the

complainant ought to have obtained sanction under Section 197 of the Cr.PC, 1973 before proceeding with the complaint and submits that the non obtaining of the requisite sanction under Section 197 of the Cr.PC, 1973 by the complainant before proceeding further made the entire proceeding erroneous.

23. Reliance was sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***B.Saha v. M.S. Kochar (1979)4SCC177*** with observations to the effect:

> *"The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with official duty will require sanction for prosecution under the said provision.*
> *As pointed out by Ramaswami J. in Baijnath v. State of M.P. 1966CriLJ179 "it is the quality of the act that is important, and if it falls within the scope and range of his official duties, the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted."*
> *In sum, the sine qua non for the applicability of this Section is that the offence charged, be it one of commission or omission, must be one which has been committed by the*

public servant either in his official capacity or under colour of the office held by him."

24. *Inter alia* the petitioner submits that there was no *mens rea* of the petitioner to commit any illegal act and thus, the petitioner is not liable for the commission of any offence under Section 120B of the Indian Penal Code, 1860. *Inter alia* the petitioner submits that the complainant had filed the complaint against the petitioner with unclean hands as the respondent did not inform the Court of the Learned Metropolitan Magistrate about the proceedings under section 46(4)(i) read with section 47A(l)(c) of the Banking Regulation Act, 1949 which the respondent had initiated against PNB by way of issuing a show cause notice dated 23.08.2018, which later culminated by way of an order dated 25.02.2019 passed by the respondent whereby the respondent imposed a penalty of INR 20million (Rupees Two Crores only) on PNB.

25. The petitioner *inter alia* submits that issues that have been raised by Respondent in the Impugned Complaint filed with the Court of Ld. MM were also dealt by the respondent separately by issuing a show cause notice dated 23.08.2018 to PNB and hence, the respondent could not have initiated criminal proceedings in parallel for the same issues/grievances against petitioner. The petitioner further submits that even if it is presumed that the respondent was well within its rights to file a criminal complaint, the respondent could not have taken two starkly divergent views as in the order dated 25.02.2019, the respondent has decided to not enforce the charges against PNB for direct creation of financial messages in SWIFT environment and for

not introducing STP between SWIFT messaging and CBS whilst the complaint filed by the respondent is an afterthought and solely premised on the afore-stated two issues. The petitioner further submits that the petitioner in its tenure at PNB-IBD has never made or approved any SWIFT message for foreign transfer.

26. The petitioner further submits that any communication made by PNB prior to 10.10.2016 and post 09.06.2017, the petitioner had no role whatsoever, as the petitioner was posted at PNB's International Banking Division only for a brief period of 8 months from 10.10.2016 to 09.06.2017.

27. Though no reply was submitted by the respondent to the petition, submissions as urged in Crl.M.C.2696/2019, were reiterated on behalf of the RBI. To similar effect submissions were made on behalf of the petitioner as urged through the petition and on behalf of the respondent as urged through the written submissions that were submitted during the course of the submissions made at the time of hearing of Crl.M.C.4368/2019.The petition Crl.M.C.2696/2019 filed by the PNB assailing the very same impugned order dated 11.03.2019 of the learned trial Court of the MM-05, PHC, New Delhi in CC No.16711/2018 where the PNB, the petitioner of Crl.M.C.2696/2019 and 10 other accused persons inclusive of the present petitioner i.e. Mr. IP Singh arrayed as the accused no. 10 were summoned for the commission of an offence punishable under Section 46 of the Banking Regulation Act, 1949. Crl.M.C.2696/2019 has since been dismissed vide a separate judgment of even date.

28. It was further submitted by the respondent to the effect:

"The contentions of the Petitioner in the above Petition are the same as that of the Petitioner bank save and except of course that the Petitioner does not canvas the argument based on the bar prescribed in section 47A(4) of the Act as that bar applies only to a banking company and not to an individual. The Petitioner has in addition to the arguments canvassed by the Petitioner Bank raised an argument on merits.

According to the Petitioner, he is involved only in one instance referred to in the complaint of wilfully making a false statement in a material particular. This instance pertains to petitioner's bank letter dated 31.1 0.2016 in response to the RBI 's letter dated 27.10.2016. The Petitioner was a party to the creation of the said letter which constituted PNB's response to RBI.

In its letter dated 27.10.2016, RBI inter alia posed the following question:

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

The response of PNB to this query of the RBI in its letter of 3 1.10.2016 (to the creation of which response the Petitioner was a party) was as under:

"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."

This response was wilfully false for two reasons:-

(i) The statement that "outward SWIFT message is sent ... by two officials" was false as the verification by two officials was non-existent.

(ii) The statement that, "without the entry in CBS no financial SWIFT messages can be sent" was also false as the FMRs of 2018 disclosed that SWIFT messages were being sent without making any entry in CBS.

The Petitioner however contends that the second part of PNB's response indicated that there was no false statement. This second part reads as under:

"However, reconciliation to verify that all outward messages transmitted by the bank are captured in CBS is being done by AD branches."

The Petitioner contends that he could not be held liable if no reconciliation was done. Firstly it is to be noted that this contention of the Petitioner is a defence, which cannot be appreciated in a Quashing petition but must be left for adjudication at the stage of trial. Secondly, the defence based on the second part of the response is untenable in as much as no reconciliation was done by the Brady House branch to verify that all outward messages transmitted by the bank were captured in CBS.

It is most respectfully submitted that therefore the Petitions filed by the PNB Bank and Accused person No. 10 deserve to be dismissed with exemplary cost against the Petitioners and the stay qua the proceedings of the subject Complaint before the learned Metropolitan Magistrate may be kindly vacated. It is thus, prayed accordingly."

29. On a consideration of the submissions that have been made on behalf of either side, taking into account the contention raised on behalf of the RBI that the response which was reiterated by the petitioner to the query of the RBI i.e. the query put by the RBI dated 27.10.2016 vide Qa.1 as under:

"QA(i) 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 response was reiterated by the petitioner 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."

was fully false for two reasons, which are as under:

(i) The statement that "outward SWIFT message is sent ... by two officials" was false as the verification by two officials was non-existent.
(ii) The statement that, "without the entry in CBS no financial SWIFT messages can be sent" was also false as the FMRs of 2018 disclosed that SWIFT messages were being sent without making any entry in CBS.

which the respondent has submitted were wholly false which resulted also allegedly into an alleged fraud of Rs.13,000/- crores at the Brady House Branch of the PNB in view of the letters of undertakings having been issued by the Brady House Branch of Bank as per column 9c of the FMR without obtaining approval of the authority, without necessary application of mind and documents and without making entry in the CBS system,_ are aspects which cannot be overlooked at this stage and cannot be determined without evidence and thus, the contention raised by the petitioner that he could not have been summoned for the alleged commission of the offence vide the impugned order for the offence punishable under Section 46 of the Banking Regulation Act, 1949 vide the impugned summoning order dated 11.03.2019 of the learned trial Court, cannot be accepted.

30. The petition is thus dismissed.

31. 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 25th, 2021/vm

At this stage, learned counsel for the petitioner Mr. Abhay Gupta, Advocate submits that the petitioner, Mr. I.P. Singh has since expired due to COVID-19. The submission made on behalf of the petitioner is taken on record. It would be open to the legal representatives of the deceased/ petitioner to seek redressal, if any, in accordance with law.

ANU MALHOTRA, J.

JUNE 25th, 2021/vm