IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Date of decision : 16.03.2022

1. **CRM-M-6692-2022(O&M)**

Mr.Monishankar Hazra and another

... Petitioners

Versus

State of Haryana and others

... Respondents

2. **CRM-M-6698-2022(O&M)**

Optum Global Solutions (India) Private Limited and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.R.S.Rai, Senior Advocate and
Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate;
Mr. Sarthak Sharma, Advocate;
Mr. Inder Raj Gill, Advocate;
Ms. Kirti Ahuja, Advocate;
Mr.Avichal Prasad, Advocate;
Ms.RubinaVirmani, Advocate;
Mr. Edward Augustine George, Advocate
Ms.Mahima Dogra, Advocate;
Mr.KushagraBeniwal, Advocate,
Mr.Siddharth Gupta, Advocate,
for the petitioners in both the petitions.

Mr.Munish Sharma, AAG, Haryana.

Mr. Sameer Sachdev, Advocate;
Mr. SaranshSahbarwal, Advocate and
Mr. Bhanu Kathpalia, Advocate for respondent No.2.

Mr.Vivek Saini, Additional Advocate General
for respondents no.3 and 4.

VIKAS BAHL, J.

1. This order will dispose of the two petitions filed under Section 482 Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") to set aside/quash the order dated 15.12.2021 passed by the Chief Judicial Magistrate, Panchkula, in case bearing no. COMI/63/2021 titled as "Sharad Kothari vs. United Health Group Information Services &Ors.", registered on 31.08.2021 and the consequential proceedings arising therefrom, including FIR bearing no.508 dated 23.12.2021 registered under Sections 120-B, 406, 409, 420, 465, 467, 468 and 471 of the Indian Penal Code (hereinafter referred to as "IPC") at Police Station Sector 5, Panchkula.

The first petition, i.e. CRM-M-6692-2022 has been filed by Monishankar Hazra and Sameer Bansal and the second petition, i.e. CRM-M-6698-2022 has been filed by seven petitioners namely Optum Global Solutions (India) Private Limited through its authorised representative Mr.Prashant Sinha, Anurag Khosla, Tim Trujillo, Rajat Bansal, Gayatri Varma, John Santelli and Partha Sarathi Mishra. Since the impugned order in both the cases is the same and the issues involved and questions of law are also common, thus, both the cases are being taken up together and with the consent of all the parties, CRM-M-6692-2022 is taken up as the lead case and facts have been taken from the said petition.

This judgment has been divided into the following sections:-

Background/ facts of the case

2. Respondent no.2 had filed a complaint dated 27.08.2021 under Section 156(3) of the Cr.P.C. (Annexure P-28 page 539) against ten accused persons, including 9 petitioners in both the petitions, collectively. A prayer was made in the said complaint for issuance of directions as envisaged under Section 156(3) of the Cr.P.C. to the concerned Police Station for registration of an FIR under Sections 406, 409, 420, 465, 467, 468, 471 and 120-B IPC, on the allegations that the accused persons committed illegalities in order to procure a tender, floated by Haryana State Health Resource Centre (hereinafter referred to as "HSHRC") for implementation of Hospital Information System (HIS) in favour of M/s United Health Group Information Services Pvt. Ltd.(hereinafter referred to as "UHGIS"). It had been alleged in the complaint that the complainant / respondent no.2 was an ex-employee of accused no.1-company and was appointed as Director-Business Development vide appointment letter dated 09.12.2013 in accused no.1-company, which came to be known as M/s Optum Global Solutions India Limited after passing of the amalgamation order by the Hon'ble National Company Law Tribunal, Hyderabad on 20.03.2017. It has further been alleged that in the month of December, 2013, the Government of Haryana through HSHRC floated a tender/Request for Proposal (hereinafter referred to as ("RFP") for implementation of HIS. As per the said tender, the bidders were required to be highly specialized in the field of 'System Integration' with minimum qualifications / requirements as prescribed under para 4.3 of Volume II of tender /RFP. Specific reference had been made to serial nos. 7 and 8 of said para 4.3. It has also been alleged that the award of contract was dependent upon the fulfillment of the qualifications as prescribed and in pursuance of the said tender, five companies submitted

their cost bids to the HSHRC. The companies who had given their bid are as follows:-

S. No.	***Company name***
1	IL & FS Technologies Limited
2	Hewlett-Packard India Sale Private Limited
3	Accenture Services Pvt Ltd.
4	United Health Group Information Systems Pvt. Ltd. (Accused no.1)
5	EY/NDSL

It had further been alleged that accused no.1-UHGIS was the 4th lowest bidder and by fabricating documents, managed to procure the tender. The same was procured by all the accused persons in connivance with each other and in collusion with some officials from HSHRC and accused no.1 had submitted its bid very cleverly, without the extracts of the audited balance sheet and profit and loss statement, as was required by HSHRC and without furnishing any certificate from its statutory auditor certifying that the company had a turnover of INR 100 crore from system integration services etc. and for reasons best known to the HSHRC, it still accepted the said tender. It has further been alleged that accused no.1 was incompetent to participate in the tender inasmuch as, the services which were required to be carried out, were never done by accused no.1 and even the same did not form a part of the Memorandum of Association of accused no.1-company and the said Memorandum of Association was amended vide resolution dated 29.04.2014, incorporating clauses 1B and 1C in the Objects Clause to include activities / services which were required to be carried out by the bidders. It had further been submitted that the tender bid was submitted on 13.03.2014 and the amendment in the Memorandum of Association was

carried out subsequent to the same, i.e., on 29.04.2014. It had also been alleged that in order to fulfill the condition listed at serial no.8 of para 4.3 Volume II (*supra*) of the tender, which required the bidder to have experience demonstrated in networks of hospitals and not one / single hospital, the accused persons in collusion with each other, manipulated this requirement by preparing false documents, including two experience certificates, which were stated to be clearly fake and forged document as they were issued by M/s Optum Inc. USA (hereinafter referred to as "Optum US") and the said experience certificate showed that UHGIS (accused no.1-company) had rendered service to M/s Optum Inc, USA in the year 2008 and 2009 whereas, Optum US itself came into existence on 17.09.2009.It has further been alleged that accused no.1 had not submitted any document to show that it had fulfilled the requirement of the HSHRC to the effect that it should have Rs.100 crore turnover for each year, i.e. 2008-09, 2009-10, 2010-11 and that respondent no.2 came to know about the entire scam/incident on 01.10.2015 when accused no.2-Sandeep Khurana in a drunken state disclosed to him the whole episode/incident in a restaurant. It has further been alleged that thereafter, respondent no.2 got an FIR no.419/2017 dated 18.08.2017 under Sections 66/66C of the IT Act lodged at Police Station Prashant Vihar, Rohini, New Delhi, regarding invasion of privacy of respondent no.2 and a complaint was also filed before the Director General of Police, Haryana which was marked to the Economic Offences Wing for enquiry/ investigation regarding which, a report was made by the ASI Prakash Chand from which, it was clear that the accused persons have repeatedly tried to thwart the investigation by not appearing on many occasions. It has also been alleged that the cause of action arose to the complainant on 13.03.2014 firstly, when the forged documents were

supplied by the accused persons to the office of HSHRC Panchkula and then, again on 01.10.2015 and then, on 08.04.2016,as well as on 29.04.2016, cause of action continued as the complainant was made to resign from the accused-company. It had been stated that it is the Court in Panchkula which has the jurisdiction to entertain this matter and no such or similar petition except mentioned in the petition was filed or pending.

3. The Chief Judicial Magistrate, Panchkula, vide impugned order dated 15.12.2021 allowed the said application and directed the SHO, Sector 5 Panchkula to lodge the FIR. In the said order, the Chief Judicial Magistrate, Panchkula, had considered the interim report dated 22.07.2020 which was submitted by the Director General Health Services Haryana, Panchkula in which Sanjay Sethi, Assistant General Manager, HARTRON and Puneet Brar, Senior Consultant, HARTRON had made observations against the accused persons. Reliance was also placed upon the interim report of the Investigating Officer dated 01.09.2020. It was further observed that since respondent no.2 was also involved in bidding process on behalf of accused no.1 company, the Court was taking cognizance on the report filed by above said Sanjay Sethi and Puneet Brar. In pursuance of the same, above said FIR no.508 dated 23.12.2021 was registered and above said Sanjay Sethi and Puneet Brar were made as complainant. It is the above said order dated 15.12.2021, FIR dated 23.12.2021 and the subsequent proceedings arising therefrom which have been challenged by 9 accused persons by filing two separate petitions.

Arguments on behalf of the petitioners

4. Mr.R.S.Rai, Senior Advocate and Mr. Vinod Ghai, Senior Advocate assisted by Ms. Kanika Ahuja, Advocate, Ms.Rubina Virmani, Advocate, Mr. Sarthak Sharma, Advocate, Mr. Inder Raj Gill, Advocate,

Ms. Kirti Ahuja, Advocate, Mr.Avichal Prasad, Advocate, Mr. Edward Augustine George, Advocate, Ms.Mahima Dogra, Advocate, Mr.Kushagra Beniwal, Advocate and Mr. Siddharth Gupta, Advocate, have submitted that in the present case, the impugned order and the subsequent proceedings arising therefrom, deserve to be quashed on the following grounds:-

i) The complaint filed under Section 156(3) Cr.P.C. by respondent no.2 is *mala fide* and has been filed with an oblique motive in order to extract money from the petitioners. Additionally, there is concealment of the previous complaints / applications under Section 156(3) Cr.P.C. before various forums and police authorities.

ii) Application under Section 156(3) Cr.P.C. has been filed without filing any complaint under Section 154(1) Cr.P.C. to the Officer In charge of the Police Station nor any such complaint/ representation has been filed before the Superintendent of Police under Section 154(3) Cr.P.C. and thus, the same is in violation of the law laid down by the Hon'ble Supreme Court of India in ***Priyanka Srivastava and another vs. State of Uttar Pradesh and others,*** reported as ***(2015) 6 Supreme Court Cases 287***.

iii) The procedure adopted by the Chief Judicial Magistrate, Panchkula is in violation of the mandatory provisions of the Cr.P.C.s and the impugned order has been passed without any application of mind.

iv) Offence of forgery and cheating are not made out, even if allegations levelled in the Complaint under Section 156(3) are taken to be true, in view of the judgment of the Hon'ble

Supreme Court in "***Md. Ibrahim & Ors vs. State of Bihar and Anr***" reported as ***2009 (8) SCC 751***, which has been followed in a subsequent judgment titled as "***Sheila Sebastien vs. R. Jawaharaj & Anr.*** " reported as ***2018 SCC (Cri) 275***. Even the offences under Section 406 and 409 IPC are not attracted to the facts of the present case.

v) Reliance has been placed in the Impugned Order on interim orders/reports without considering the final orders/reports and without even considering the recommendations made in the interim report.

vi) Delay of more than 5 years and 9 months in filing of the application under Section 156 (3) of C.r.P.C. before the Chief Judicial Magistrate, Panchkula.

vii) Respondent no.2 having no locus standi to file the present application under Section 156 (3) of C.r.P.C.

viii) Respondent no.2 indulging in "***forum shopping".***

5. **Ground No. (1):**

It has been pointed out that respondent no.2 was an employee of Optum India and he was employed with the said company *vide* appointment letter dated 09.12.2013 and thereafter, on 16.02.2016, the company received anonymous complaints regarding allegations against respondent no.2 to the effect that respondent no.2 was engaging in illegal and unlawful activities in connivance with the company's vendors. On 08.04.2016, an internal investigation in pursuance of the anonymous complaint was initiated against respondent no.2 and ultimately, illegal activities of respondent no.2 were brought to the surface and in lieu of the same, he resigned on 29.04.2016 Annexure P-10 (Page 378). It has been

submitted that immediately thereafter, respondent no.2 issued a legal notice to the company demanding a sum of Rs.34.10 crores. A copy of the said legal notice dated 01.06.2016 has been annexed as Annexure P-11 (Page 379). It has further been highlighted that respondent no.2 in order to extract the said money from the petitioner-company and its employees, filed several complaints before the various police officials and other authorities. **Complaint-1** dated 05.09.2016 Annexure P-12 (Page 400) was filed before the Cyber Crime Cell, Mandir Marg, New Delhi wherein, allegations were leveled with respect to hacking of the personal e-mail account of respondent no. 2 and qua the criminal conspiracy of the petitioner company and its officers. It had further been alleged in Complaint-1 that on 08.04.2016, Tim Trujillo-petitioner no.3 in CRM-M-6698-2022, had blackmailed and threatened respondent no.2 to not blow the whistle or else the respondent would face dire consequences. The second complaint (**Complaint-2)** was filed on 21.02.2017 Annexure P-14 (Page 410) before the Additional Deputy Commissioner of Police, Rohini, New Delhi, wherein, as is apparent from para 5 (Page 412), allegations to the effect that in the year 2014 the company had participated in a bid to secure the tender floated by the Haryana Government for implementation of hospital information system and even though the company did not fulfill the essential qualifications as mentioned at serial no.7 of clause 4.3 of Volume II of RFP, yet, the company/their officers participated in the tender process by creating false and fabricated documents such as experience certificates etc. Other allegations were also made in the said complaint. It has further been submitted that the said complaint (**Complaint-2**) was enquired into and the petitioners had joined the investigation and even got the statements recorded and the Inquiry Officer filed a detailed report dated 23.05.2017 Annexure P-15(Page-418) in

which it was stated that the matter was of civil nature and hence, the complaint was recommended to be filed by Inspector Vikram Chauhan, Prashant Vihar. It has further been submitted that even the complaint dated 05.09.2016 (**Complaint-1**) was inquired into and the complainant was summoned several times to explain the complaint, however, it was respondent no. 2 that failed to appear and did not cooperate with the investigation and therefore, the matter was closed vide report dated 27.06.2017 Annexure P-16 (Page 420). It has been pointed out that respondent no.2 did not stop there and filed an application under Sections 156(3) and 200 Cr.P.C. before the Court of the Magistrate at Rohini Courts, Delhi. The said complaint**(Complaint-3)**was dated 07.06.2017. It has been highlighted that the same was filed against nine persons out of which, one proposed accused person was stated to be unknown and all the nine petitioners before this Court were not arrayed as accused persons in Complaint-3. In the said application, a prayer was made to issue directions to the SHO/IO concerned to register an FIR and to investigate the matter. Para 1 of the said application has been highlighted to show that the accompanying complaint under Section 200 Cr.P.C. was also prayed to be read as a part of the said application. In the complaint under Section 200, which accompanied the application under Section 156(3) Cr.P.C., it has been highlighted that the prayer made in the same was for registration of the FIR under Sections which included the sections as in the present application under Section 156(3) Cr.P.C. Specific reference has been made to para 2 sub para (v) (Page 436), para (iv) (Page 435) to show that the allegations in the said complaint under Section 156(3) Cr.P.C. (Complaint-3) were similar to the allegations which have been made in the present complaint under Section 156(3) Cr.P.C. In para 2(v) it had been alleged that in the year 2014, the

petitioner company had submitted a bid to secure the tender floated by the Haryana Government for implementation of hospital information system, although the company did not fulfill the minimum essential qualifications as mentioned in clause 4.3 of Volume II of RFP yet, the company by fabricating and forging documents such as experience certificates etc. in connivance with other accused were able to successfully procure the tender. In para 4 of Complaint-3, it had been stated by respondent no.2 that since the whole incident had taken place in the jurisdiction of that Court, i.e., Rohini courts, Delhi, thus, the said Court had the territorial jurisdiction to try, entertain and decide the complaint (**Complaint-3**). It has also been submitted that in the said proceedings, order was passed by the Chief Metropolitan Magistrate, Rohini Court for registration of an FIR only under Sections 66 and 66-C of the Information Technology Act, 2000and in pursuance of the same, FIR no.419 dated 18.08.2017, only under the above said sections, was registered at Police Station Prashant Vihar, District Rohini. The said FIR has been annexed as Annexure P-18 (Page 450). It has been submitted that in spite of the fact of that the allegations in the said complaint had also been made with respect to the alleged forgery of various documents at the time of submission of tender but the Learned CMM, Rohini Courts, after considering the entire matter, did not choose to order the registeration of FIR under Sections 420, 467, 468, 471 and the other Sections as mentioned in Complaint-3. It has been pointed out that respondent no.2 never challenged the orders passed in the said case in any higher court and in fact, even investigation has been carried out in the said case and a cancellation report had also been submitted in August 2019 and in spite of lapse of 2 ½ years, no objection has been filed in the said proceedings by respondent no.2 and last opportunity has been given to

respondent no.2 to file objections and the acceptance / non-acceptance of said cancellation report is still pending. It has been argued that having been unsuccessful in getting an FIR registered for the commission of offences of cheating and forgery and having found that a cancellation report has been submitted in that FIR, respondent no.2 shifted his base to Haryana from Delhi and filed **complaint no.4**(first complaint in Haryana) on 12.03.2019 (Annexure P-20 Page 471) before the Governor of Haryana with a copy to the Health Minister of Haryana, Lokayukta Chandigarh, Additional Chief Secretary Haryana and the Hon'ble Prime Minister of India. It has been stated that even in the said complaint, allegations with respect to the alleged illegalities committed during the bid process for the tender floated by the Haryana State Health Resource Centre (HSHRC) for implementation of hospital information system were made and additionally, in the said complaint allegations of corruption were also levelled. It has been stated in the said complaint that although, FIR no.419/2017 had been registered in pursuance of the order of Chief Metropolitan Magistrate, Rohini Courts but it was not mentioned in Complaint-4 that allegations with respect to cheating and forgery had already been made in the earlier complaint (Complaint-3) and on the said aspect, the FIR on the said sections had not been registered. It has been submitted that respondent no.2 had even filed a CRM-M-54124-2019 before the High Court for seeking directions for registration of FIR on similar allegations but as is apparent from the order dated 18.12.2019, the same was dismissed as withdrawn as the counsel for the petitioner therein (respondent no.2 herein), after arguing for some time, had stated that he wanted to withdraw the said petition with liberty to file an appropriate petition before the concerned Lokayukta. It has been argued that a coordinate Bench of this Court had not found the case to be a fit case for

direction of registration of FIR nor had found the case fit for reference to the Lokayukta and therefore, the counsel for respondent no.2 (petitioner therein) had withdrawn the petition to seek the alternative remedy and the said order does not in any way further the case of respondent no.2 and rather shows that coordinate Bench of this Court was not inclined to register an FIR against the present petitioners. Respondent no.2 then filed a complaint (**Complaint-5)** before Lokayukta Haryana and in the said complaint(Complaint-5) in addition to the seven petitioners, 17 government officials who had approved the tender were also arrayed as parties. In the said complaint, all the allegations which are sought to be leveled in the present complaint under Section 156(3) Cr.P.C., were made in addition to allegations of corruption as well as the alleged loss caused to the Haryana Government. A prayer had been made in Complaint-5 for inquiry into the matter and for registration of an FIR. It has been stated that the said complaint is still pending and thus, initiation of the present proceedings and registration of the present FIR simultaneously, is violative of Article 21 of the constitution of India and is in contravention of the principles of double jeopardy. The Health Department had forwarded the said complaint (Complaint-5), *vide* letter dated 08.03.2020, to the Haryana State Electronics Development Corporation Limited (in short "HARTRON") for examining the whole matter. *Vide* report dated 22.07.2020, the said HARTRON considered the entire matter and had finally made recommendations, which have been detailed at Page 501 of the paper book. It has been submitted that in the impugned order, a portion of the said report has been taken note of by the learned Chief Judicial Magistrate, Panchkula but the ultimate conclusion / recommendations, which are at page 501 of the paper book, have not been noted. It has been argued that even as per the said report, it was

recommended that the company secretary / chartered accountant may be consulted and ultimately recommended that a new committee be constituted which should include members from HSHRC, NISG, Health Department, Hartron, DITECH, ISMO and NIC for an in-depth study of all the documents, including the complaint and to give their expert views. It has been stated that in pursuance of the said recommendations, the Committee was actually constituted and the committee had submitted its report dated 12.01.2021 Annexure P-23 (Page 503) and after considering all the aspects and on the basis of the report of all the members and the points discussed, it was stated that Haryana Government should not be made a party to the dispute between employer and ex-employee and the complaint was recommended to be filed. It has also been pointed out that Prabhjot Singh was the Chairperson of the said committee and there were as many as 11 persons in the committee, which also included respondents no.3 and 4 and the said report had been submitted after due consideration of all the said officers/ persons. It is stated that in the impugned order, interim report dated 22.07.2020 had been considered whereas, the final report had not been taken into consideration in spite of the fact that, as is apparent from the zimni orders which have been placed on record, the entire record was called for. It has been further pointed out that a perusal of the impugned order would show that the Chief Judicial Magistrate, Panchkula had stated that he had taken “cognizance” of the said report and was proceeding further and had also observed that respondents no.3 and 4 have been made complainants in the present case in place of respondent no.2, who had initially filed the application under Section 156(3) Cr.P.C. Learned senior counsel for the petitioners have pointed out that there was another complaint (**Complaint-6**) dated 11.02.2020 Annexure P-24 (Page 508) which was filed by respondent

no.2 to the Director General of Police, Haryana under Sections 406, 409, 419, 420, 465, 467, 468, 471 and 120B IPC and also under Section 13 of the Prevention of Corruption Act, 1988 and it had been prayed in Complaint-6 that an inquiry be conducted against the petitioners as well as the delinquent and erring officials of the Haryana State Health Resource Centre, Government of Haryana and criminal case/FIR be registered against them. It has been argued by the Learned Senior Counsel that even the said matter was enquired into and after the initial report dated 01.09.2020, the final report dated 19.10.2020 was submitted by the Police Commissioner, Panchkula, who had stated that according to the advice of the Deputy District Attorney, Panchkula, it was recommended that the said complaint be sent to the record room. It has been pointed out that in the impugned order the interim report dated 01.09.2020 has been relied upon whereas, the said report had merged with the report dated 19.10.2020. It has further been pointed out that respondent no.2 again approached this Court by filing CRM-M-4551-2021, with a prayer for directing the registration of an FIR against the petitioners and the same was dismissed as withdrawn on the submission of the counsel appearing for petitioner therein (respondent no.2) since he did not press the petition and sought liberty to file a criminal complaint and the same was granted by a Coordinate Bench of this Court. It has been argued that it was stated before the Coordinate Bench of this Court that there is a police report dated 01.09.2020 without informing the Court that said report had merged with the report dated 19.10.2020. Even the report/letter dated 12.01.2021 (Annexure P-23) was also not brought to the notice of the Court. It has been contended that the petition was not entertained and it was withdrawn and no direction was given to register an FIR or initiate any proceedings in the matter. It has also been pointed out

that in the said order liberty was sought to file a criminal complaint but respondent no.2 has chosen to file an application under Section 156(3) Cr.P.C. before the Magistrate, Panchkula on the basis of which the impugned order has been passed and the impugned FIR has been registered. Detailed reference has been made to the averments made in the application under Section 156(3) Cr.P.C. It has been pointed out that the 17 government officials against who were arrayed as proposed accused persons and against whom allegations of corruption had been levelled in Complaint-5 (Lokayukta Application/Complaint), have not been arrayed as parties in the present complaint under Section 156(3) Cr.P.C. since respondent no.2 was well aware that prior sanction to prosecute them under the Prevention of Corruption Act, 1988 would be required. It has also been pointed out that Monishankar Hazra and Sameer Bansal i.e., the petitioners in CRM-M-6692-2022, who were never made accused in any of the complaints or even in the proceedings under Section 156(3) Cr.P.C. in Rohini Courts, Delhi, have been impleaded as accused no.9 and 10 in the present complaint. It has been submitted that there is active concealment in the application under Section 156(3) Cr.P.C. inasmuch as, there is no reference to respondent no.2 having filed an earlier application under Section 156(3) Cr.P.C. before the Rohini Courts nor it has been stated that similar allegations with respect to forgery, cheating and corruption had already been made in the said application and it has surreptitiously been mentioned in para 28 of the present Complaint **(Complaint-7)** (Page 547) that FIR no.419/2017 has been registered under Sections 66/66-C of the IT Act, however, the fact that cancellation report had been submitted in the said case, has not been mentioned. No reference had been to complaint dated 05.09.2016 **(Complaint-1**)Annexure P-12, dated 24.02.2017 Annexure P-14. A

reference has been made to para 42 of the present petition to show that it has been stated in the complaint that no such or similar petition except the present application as has been mentioned in the petition, has been filed or pending or decided by this Hon'ble Court or the Hon'ble Punjab and Haryana High Court or Hon'ble Supreme Court of India or in any court of law. It has been submitted that the proceedings with respect to cancellation report of the FIR no.419/2017 are pending for 01.04.2022 and thus, the above statement is incorrect and the said facts constitute active concealment on the part of Respondent no.2 and that the present petitions deserve to be allowed on the said ground alone. It has also been pointed out that although, all the government officials have been left out and not been arrayed as accused persons but the present application under Section 156(3) Cr.P.C. still mentions offence under Section 409 IPC. It has been highlighted in para 5 of the Complaint that respondent no.2 is not a signatory of any material and the said assertion is even contrary to the observations made in the impugned order to the effect that respondent no.2 had participated in the entire bidding process and was thus, deleted as the complainant in the present case. It has been submitted that although allegations have been levelled to the effect that there is a loss of Rs.60 crores to the state exchequer but it has been highlighted that there were other bidders who had also participated in the tender process and filed their respective bids but none of the said persons have challenged the tender process. It has been highlighted that in para 26 it has been stated that on 01.10.2015, respondent no.2 came to know about the whole scam from accused no.2-Sandeep Khurana, who in a drunken state had informed respondent no.2 about the entire incident and yet the present complaint has been filed after a delay of more than 5 years and 9 months and for the same, reference has been made

to para 39. Further, it has been argued that in para 41 it has been stated that the jurisdiction is of the Panchkula Courts whereas, in the earlier complaint under Section 156(3) Cr.P.C. (Complaint-3),it had been stated that since the entire occurrence had taken place in Delhi, it was the Delhi Court that had jurisdiction and on the basis of the same, learned senior counsel for the petitioners have submitted that the averments in the two applications under Section 156(3) Cr.P.C.(i.e., Complaint-3 and Complaint-7) are contrary to each other.

6. In order to substantiate the said ground, learned senior counsel for the petitioners have further relied upon the judgment of the Hon'ble Supreme Court of India in ***Krishna Lal Chawla and other vs. State of Uttar Pradesh and another***, reported as ***(2021) 5 Supreme Court Cases 435, T.T. Antony vs. State of Kerela*** *reported as* ***2001(6) SCC 181*** and ***Amitbhai Anil Chandra Shah vs. Central Bureau of Investigation and Anr.*** reported as ***2013(6) SCC 348*** and also the judgment of this Court dated 07.01.2022 passed in **CRM-M-45411-2021** titled as **"*Gurmail Singh Vs. State of Punjab and another".***

7. <u>Ground no.(2):</u>

It has been vehemently argued that a perusal of the entire complaint under Section 156(3) Cr.P.C. would show that neither any complaint has been made to the Station House Officer nor to the Senior Superintendent of Police, as is mandatory under Section 154(1) and 154(3) Cr.P.C. and thus, the present complaint under Section 156(3) Cr.P.C. deserves to be outrightly rejected being in contravention to the law laid down by the Hon'ble Supreme Court of India in ***Priyanka Srivastava***'s case (*supra*). Specific reference has been made to para 31 of the judgment wherein it has been mandated by the Hon'ble Supreme Court of India that a

prior application under Section 154(1) and 154(3) Cr.P.C. before filing application under Section 156(3) Cr.P.C. had to be filed and the facts detailing the same had to be clearly spelt out in the application under Section 156 (3) Cr.P.C. and necessary documents to the said effect are also required to be filed. It has been highlighted by learned senior counsel for the petitioners that the law laid down in ***Priyanka Srivastava's*** case (*supra*) has been followed in Criminal Appeal no.252 of 2022 titled as ***Babu Venkatesh and others vs. State of Karnataka and another, decided on 18.02.2022.*** In the present case it is submitted that neither any averment with respect to respondent no.2 having filed the said applications under Sections 154(1) or 154(3) has been made nor any such document has been filed alongwith the same. The impugned order is also sought to be challenged being in contravention to the law laid down in ***Priyanka Srivastava's*** case (*supra*). It has been pointed out that as per para 35 of the said judgment, the judgment was ordered to be circulated to all the judicial officers and the said judgment is dated 19.03.2015, which is prior to the passing of impugned order.

8. **Ground no.(3):**

It has been contended that in the present case, the Chief Judicial Magistrate, Panchkula has embarked upon a procedure which is unknown to law. In order to substantiate the said argument, reference has been made to the reply filed by respondent no.2,particularly, paragraphs 3, 4 and 5 to highlight that in the reply it had been stated that over a span of 3 months, the Chief Judicial Magistrate, Panchkula, had conducted his own inquiry and also called for the record in a sealed cover and even the counsel for respondent no. 2 had no access to the said sealed cover as the permission to inspect the record by counsel for the complainant/respondent no.2, was declined by the Court of Chief Judicial Magistrate, Panchkula, and the Court

after satisfying itself, had passed the impugned order. Reference has been made to the zimni orders which have been annexed along with the short reply submitted by Respondent no.2. It has been contended that initially a status report was called from the SHO and thereafter, as is apparent from the zimni orders dated 17.09.2021 and 05.10.2021, the documents with respect to the inquiry from the M.D., Haryana Medical Services Corporation, Haryana, have been called for in exercise of powers under Section 91 Cr.P.C. and it was directed that the complete record be summoned in a sealed cover from the Chief Vigilance Officer of Health Department, after having found that the case stood transferred to the Chief Vigilance Officer of Health Department. A similar direction was given to the Director General Health Services Haryana while exercising power under Section 91 Cr.P.C., as is apparent from the zimni order dated 20.10.2021 when the sealed report was received in the case. It has been submitted that after considering the entire record, the Chief Judicial Magistrate had recorded in para 8 of the impugned Order that the Court took cognizance on the report filed by the Assistant General Manager, HARTRON (respondents no.3 and 4 herein) dated 22.07.2020 and thereafter, replaced respondent no.2 with respondents no.3 and 4 as complainants in the present case, as is apparent from the impugned FIR. It has been submitted that above-said facts would show that instead of exercising powers under Section 156(3) Cr.P.C., which empowers the Magistrate to direct the registration of an FIR in an appropriate case, the Chief Judicial Magistrate had embarked upon an enquiry himself, by issuing summons under Section 91 Cr.P.C. and has thus, moved from Chapter XII Cr.P.C. to Chapter XV Cr.P.C. and having done so, power under Chapter XII for registration of an FIR could not have legally been exercised while considering the application under Section 156(3) Cr.P.C. Reference has been

made to various provisions under Chapter XII and Chapter XIV with respect to the abovesaid argument, reliance has been placed upon the judgments of Hon'ble Supreme Court of India in ***S.K.Sinha, Chief Enforcement Officer vs. Videocon International Limited and others,*** reported as ***2008(2) SCC 492; Mohd.Yousuf vs. Afaq Jahan (SMT) and another,*** reported as ***2006(1) SCC 627, Ramdev Foods Product Pvt. Ltd. Vs. State of Gujarat,*** reported as ***2015(6) SCC 439, Madhav and another vs. State of Maharashtra and another,*** reported as ***2013 (5) SCC 615, Supreme Bhinondi Wada Monor Infrastructure Pvt. Ltd. Vs. State of Maharashtra and another,*** reported as ***2021 (8) SCC 753.***

9. It has further been pointed out that even alongwith the short reply, respondent no.2 has annexed Annexure R2/7, which is a revision petition that has been filed by respondent no.2 challenging the impugned order and it is stated to be pending before the Sessions Judge, Panchkula. A perusal of the grounds of the said revision would show that although, respondent no.2 has projected himself to be the whistleblower but the very fact that even after the registration of the FIR, the impugned order is sought to be challenged by respondent no.2 would show that the entire proceedings have been initiated with a malafide motive to extract money from the petitioners. To buttress the said argument, reliance has been placed upon the judgment dated 07.06.2021 of Single Bench of High Court of Chhattisgarh, Bilaspur passed in Writ Petition (Cr.) No.678 of 2020 titled as ***"Rajeshwar Sharma vs. State of Chhattisgarh and others".***

10. <u>Ground no. 4:</u>

Learned senior counsel for the petitioners have stated that in the present case even if the allegations in the FIR are taken on its face value then also, no offence of forgery and cheating or even offences under Section 406

and 409 IPC are made out. It has been argued that the allegations of forgery have been primarily been made by referring to the experience certificates which are stated to be annexed along with the application under Section 156(3) as Annexures C-9 and C-10 and that it is not the case of respondent no.2 or of the prosecution that the signatures of any person have been forged on the same or any of the ingredients of Section 464 as detailed in the judgment of Hon'ble Supreme Court of India in ***Md. Ibrahim's*** case (*supra*) are made out and thus, the said documents cannot be stated to be a false documents within the meaning of Section 464 IPC which is a necessary ingredient to constitute the offence of forgery. It is further argued that the judgment of the Hon'ble Supreme Court in ***Md. Ibrahim***'s case (*supra*) has been followed in ***Sheila Sebastian's*** case (*supra*). It has further been submitted that even the allegations with respect to the balance sheets, are absolutely false and perverse inasmuch as, a perusal of the balance sheets would clearly show that the conditions which are required to be met as per the tender document/RFP are duly met. It has further been argued that at any rate, there is no allegation to the effect that the said balance sheets are forged or fabricated. It is further argued that in the present case, even as per the allegations in the FIR, there is no criminal breach of trust as has been defined under Section 405 IPC nor the case would fall within the meaning of cheating as defined under Section 415 IPC and thus, the offences under Sections 406, 409 and 420 IPC are not attracted to the facts of the present case. It is submitted that even as per the case of respondent no.2, it was he who was earlier employed with the accused no.1-company and thus, the question of the petitioners, who, even as per the case of respondent no.2, are the employers, committing the offence under Section 409 IPC would not

arise inasmuch as, the same would apply only in case of criminal breach of trust by a public servant, banker, merchant or agent.

11. Ground no.5:

Learned senior counsel for the petitioners have submitted that the impugned order, is perverse and illegal and has been passed without application of mind as the same has been passed on the basis of interim reports without considering the final report and without even considering the recommendations which had been made in the interim report dated 22.07.2020. It has been submitted that as per the recommendations, a committee was to be formed and thereafter, a committee was formed and the said committee had come to the conclusion that there was no corrupt act nor there was any loss caused to the exchequer in the process of the tender and it was recommended that the complaint be filed. It has further been argued that it was the interim reports which had been considered and not the final reports which recommended taking no further action.

12. Ground no.6:

Learned counsel for the petitioners have submitted that in the present case there is a substantial delay in filing the present application under Section 156(3) Cr.P.C. inasmuch as, even as per the case of respondent no.2, the knowledge of the entire alleged incident with respect to the alleged offences had been gained by respondent no.2 on 01.10.2015 and yet, the present application has been filed on 27.08.2021, i.e. after a delay of 5 years and 9 months. It has been submitted that the impugned order deserves to be set aside on the said ground of delay alone.

13. Ground no.7:

Learned senior counsel for the petitioners have submitted that the complainant has no locus to file the present complaint under Section

156(3) Cr.P.C. Reference has been made to Section 39 Cr.P.C. to contend that a perusal of the said section would show that respondent no.2 had no locus to file the present complaint under Section 156(3) Cr.P.C. inasmuch as, none of the offences as alleged in the FIR are the offences which have been detailed in Section 39 Cr.P.C. regarding which every person has a right to give information to the nearest Magistrate or the Police officer for the commission of such offence. The only offence which has been alleged to have been committed which is included in the above section 39 Cr.P.C. is 409 IPC which as per learned senior counsel for the petitioners, is not even remotely made out in the present case.

14. **Ground no.8:**

Learned senior counsel for the petitioners have submitted that the present case is a classic case of forum shopping inasmuch as, respondent no.2 has first filed successive complaints before various authorities in the jurisdiction of Delhi and after having been unsuccessful in extracting money from the petitioners and not getting the desired result then, respondent no.2 shifted his base to the State of Haryana where also, successive complaints have again been filed by respondent no.2, which have been consigned to the record room and yet, without disclosing the factum of several complaints including the application under Section 156(3) Cr.P.C. having been filed in the Delhi Courts would show that the respondent no.2 has indulged in the practice of forum shopping which has been deprecated by all the Courts and which ought to be dealt with a heavy hand.

Arguments on behalf of respondent no.2

15. Mr. Sameer Sachdev, Advocate assisted by Mr. Saransh Sahbarwal, Advocate and Mr. Bhanu Kathpalia, Advocate for respondent

no.2 has referred to Section 39 of the Code of Criminal Procedure, 1973 to state that present respondent no.2 has every locus standi to file the present complaint. It has been argued that the said provision specifically states that every person who is aware of commission of or of the intention of any other person to commit any offence punishable under any of the sections which have been detailed in Section 39 of the Cr.P.C., can give information to the nearest Magistrate or Police Officer regarding such commission or intention. It has been pointed out that under Section 39(1) sub clause (viii), Section 409 has been specifically mentioned and in the present complaint submitted by respondent no.2, allegations have also been made so as to constitute the offence under Section 409 IPC. It has further been argued that in the present case although respondent no.2 has not submitted a complaint directly to the SHO, Police Station Sector 5, Panchkula or to the SSP of the concerned area but had filed a complaint with the Director General of Police which was further marked by the Director General of Police to Commissioner of Police who further marked it to the Economic Offences Wing, which had then further marked it to ASI Parkash Chand, who was the officer in the said Economic Offences Wing and said officer had submitted his report dated 01.09.2020, which had been taken into consideration in the impugned order and thus, as per the counsel, there is compliance of the judgment of the Hon'ble Supreme Court in ***Priyanka Srivastava's*** case (*supra*).

16. Learned counsel for respondent no. 2 has further referred to a judgment of the Single Bench of Jammu and Kashmir High Court passed in CRMC no.761 of 2017 IA no.01 of 2017 titled as "***Gulam Mohi-ud-Din. Vs. State of J&K", decided on 16.04.2021*** in which after considering the judgment of the Hon'ble Supreme Court in ***Priyanka Srivastava's*** case (*supra*) it has been observed by the Single Judge that in case the

investigating agency had found merit in the case then, the FIR should not be quashed merely on the ground that the Magistrate has not followed the ratio laid down by the Hon'ble Supreme Court in ***Priyanka Srivastava's*** case (*supra*) particularly when the offences stand established against the accused.

17. He has further submitted that respondent no.2 belongs to a very respectable family and has never earlier filed any complaint against any person and the present complaint has been filed by him as a Whistleblower and thus, he deserves protection available under the Whistleblowers Protection Act, 2014. He has specifically referred to Section 3 (c)(d) where the definition of the "complainant" and "disclosure" has been provided.

18. He has also submitted that although, the proceedings before the Lokayukta, Haryana with respect to the entire issue are pending but as per Section 24 of the Haryana Lokayukta Act, 2002, it has specifically been provided that other remedies are not barred merely on account of the fact that there is institution of any inquiry or proceedings under the said Act. It has thus, been submitted that the present complaint should be seen independently although, proceedings before the Haryana Lokayukta are still pending.

19. Learned counsel for respondent no.2, in order to rebut the arguments of learned senior counsel for the petitioners to the effect that the present complaint has been filed with a malafide motive, has relied upon the judgment of the Hon'ble Supreme Court in ***Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS and another*** reported as ***(2006) 7 Supreme Court Cases 188*** to contend that the malafides of the informant would be of secondary importance and it is the material collected during investigation and the evidence led in the Court which decides the fate of the accused persons.

20. Further reference has been made to the judgment of the Hon'ble Supreme Court of India in ***Mosiruddin Munshi vs. Md.Siraj and another,*** Criminal Appeal no.1168 of 2014 decided on 09.05.2014 to contend that the High Court should not adopt a hypertechnical approach specially during the stage of investigation. Reliance has been placed upon the judgment of Full Bench of Bombay High Court in ***Mr.Panchabhai Popatbhai Butanivs. State of Maharashtra, Criminal Writ Petition no.270 of 2009 decided on 10.12.2009*** to argue that although normally a person should invoke the provisions of Section 154 of the Code before he takes recourse to the power of the Magistrate under Section 156(3) and although, such intimation would be a condition precedent for invocation of powers of the Magistrate under Section 156(3) of the Code but there could be cases where non-compliance of the provisions of Section 154(3) would not divest the Magistrate of his jurisdiction in terms of Section 156(3). He has further relied upon the judgment of Hon'ble Supreme Court in ***Kaptan Singh vs. The State of Uttar Pradesh and others, Criminal Appeal no.787 of 2021 decided on 13.08.2021*** to argue that in a case where there are serious triable allegations in complaint it is improper to quash the FIR in exercise of inherent powers of High Court under Section 482 Cr.P.C. On the same aspect, reliance has also been placed upon the judgment of Hon'ble Supreme Court of India in ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, Criminal Appeal no.330 of 2021***. Reliance has also been placed upon the judgment of Hon'ble Supreme Court of India in ***Sakiri Vasu vs. State of Uttar Pradesh and others,*** reported as ***(2008) 2 Supreme Court Cases 409***on the above proposition and also on the judgment of Hon'ble Supreme Court of India in ***HDFC Securities Ltd. &Ors. Vs. State of***

Maharashtra &Anr., Criminal Appeal no.1213/2016 decided on 09.12.2016.

21. In order to rebut the arguments of learned senior counsel for the petitioners on the aspect of the Magistrate having moved from Chapter XII to Chapter XV, learned counsel for respondent no.2 has referred to a judgment of High Court of Chhattisgarh at Bilaspur titled as ***Chandra Shekhar Jaiswal and another vs. State of Chhattisgarh and others*** passed in Criminal Misc. Petition no.560 of 2016 decided on 02.12.2016 to contend that where the complainant had moved an application under Section 91/93 of the Cr.P.C. for calling of the original records on the basis of which the allegations levelled against the petitioner and other accused persons could have been proved or established and acceptance of the said application by the Court and further ordering registration of an FIR after allowing the application under Sections 91/93 Cr.P.C. would be valid and was thus, upheld by the Chhattisgarh High Court. It has been submitted that merely because the Magistrate has exercised the power under Section 91 Cr.P.C. would not mean that the Magistrate has moved from Chapter XII to Chapter XV of Cr.P.C. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court of India in ***R.R. Chari vs. The State of Uttar Pradesh, Criminal Appeal no.1 of 1950*** decided on 19.03.1951, to contend that the word "cognizance" is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense and in a case when the Magistrate applies his mind not for the purpose of proceeding under the subsequent section of this Chapter, but for taking action of some other kind, e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. On a similar aspect, reliance has also been placed

upon the judgment of Hon'ble Supreme Court in ***Srinivas Gundluri vs. M/s Sepco Electric Power Construction Corpn. & Ors., Crl.A. no.1377 of 2010 decided on 30.07.2010.***

22. Learned counsel for respondent no.2 has submitted that the objection raised by learned senior counsel for the petitioners to the effect that second FIR cannot be registered had been considered by the Hon'ble Supreme Court of India in ***Nirmal Singh Kahlon vs. State of Punjab and others,*** reported as ***2009 (1) SCC 441*** and on the basis of said judgment it has been argued that where it has been found subsequently that the conspiracy had a larger canvas with broader ramifications, when equated with the earlier conspiracy which covered a smaller field of narrower dimensions, then the conspiracies which are the subject matter of the two cases cannot be said to be identical though the conspiracy which is the subject matter of the first case may, perhaps, be said to have turned out to be a part of the conspiracy which is the subject matter of the second case. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Kapil Agarwal and others vs. Sanjay Sharma and others, Criminal Appeal no.142 of 2021 decided on 01.03.2021*** to contend that the non-disclosure of the pending application under Section 156(3) Cr.P.C. does not prejudice the accused therein in any manner and thus, the same should not be a ground for quashing / setting aside the impugned order and the subsequent FIR.

23. Learned counsel for respondent no.2 has also relied upon the judgment of Hon'ble Supreme Court of India in ***State of Punjab vs. Davinder Pal Singh Bhullar,*** reported as ***2011(14) SCC 770*** to contend that while examining the matter it is always open to the Court to give directions to CBI to inquire into the matter and learned counsel for respondent no.2 has

prayed that in the present case, the said direction be given by this Court. Learned counsel for respondent no.2 has also relied upon the judgment of Hon'ble Supreme Court of India in ***Dr.Subramanian Swamy vs. Dr.Manmohan Singh and another,*** reported as ***2012 (3) SCC 64*** to contend that in a case where there is allegation of corruption against public servants then, the locus standi of the complainant should not be questioned.

24. Learned counsel for respondent no.2 has submitted that in the present case, offences under Sections 465, 467, 468, 471, 120-B IPC are made out as is apparent from a bare perusal of documents C-9, C-10 and C-12, which have been attached by the complainant along with the complaint. (The said documents are a part of Annexure R2/8 which has been taken on record vide order dated 09.03.2022). Learned counsel for respondent no.2 has further submitted that the first certificate i.e., C-9, has been issued by Optum Inc. He has further submitted that there are three entities which need to be noted in the present case. The first entity is Optum Inc., which is a U.S. based entity and the second entity is Optum Global Solutions India Private Limited (Optum India), i.e., the petitioner herein, which is an Indian company. It has further been submitted that the third entity is United Health Group Information Services Pvt. Ltd.(hereinafter referred to as "UHGIS") which is also an Indian entity and which was the successful bidder in the tender bid. By referring to the document C-9, it has been highlighted that said document has been issued by Optum Inc, which is an American entity and in the said document it has been certified that UHGIS is carrying out a project which started in 2009 and is on going and in the said certificate, the name of John Santelli (accused-petitioner no.6 in CRM-M 6698/2022) has been mentioned and it has been stated that he is the Chief Information Officer at Optum Inc. It has been argued that said John Santelli was never

the Chief Information Officer, Optum Inc and in fact, on the date of issuance of said certificate which is stated to be on 14.02.2014, said John Santelli was an employee of UHGIS. It has also been submitted that the date of commencement of the project is stated to be "since 2009". From document C-10, similar facts have been highlighted alongwith the additional factor that in the said certificate issued, the date of assigning the work order has been stated to be of the year 2008. It has been argued that a perusal of the document C-12, shows that Optum Incorporation was "***founded on 17.09.2009"*** and thus, the certificates C-9 and C-10 which have been issued by Optum Inc., certifying that UHGIS Private Limited has been working since 2008-09 are, on the face of it, forged and fabricated documents, which have been submitted in the bid process in order to procure the tender.

25. With respect to offence under Section 409 IPC, it has been submitted that respondent no.2 was an employee of UHGIS-accused no.1 and thus, he had every right to inform the authorities about the criminal breach which had been committed by accused no.1.

Argument on behalf of the petitioners in rebuttal to the arguments raised by respondent no.2

26. Learned senior counsel for the petitioners in rebuttal have submitted that the argument of learned counsel for respondent no.2 to the effect that respondent no. 2 had complied with the law laid down in ***Priyanka Srivastava's*** case (*supra*) by filing prior complaint with the Director General of Police (Page 508) and which was circulated to the Economic Offences Wing, is not correct inasmuch as the complaint to the Director General of Police (Annexure P-24) (Page 508) would show that in the said complaint allegation was also levelled under Section 13 of the Prevention of Corruption Act, 1988 and allegations of corruption had been made in the same whereas, in the present complaint under Section 156(3), there is no allegation with respect to Section

13 of the Prevention of Corruption Act and the reason for not mentioning the said offence under Section 13 of the Prevention of Corruption Act was to come out of the rigors of the of the Prevention of Corruption Act, 1988 as, in case, they had to proceed in the said case then, prior sanction from the competent authority was also required. Learned senior counsel for the petitioners have further submitted that the judgment in ***Priyanka Srivastava's*** case (supra) has been reaffirmed in ***Babu Venkatesh's*** case (supra) and the judgment of ***Md. Ibrahim's*** case (supra) has been followed in ***Sheila Sebastian's*** case (supra).

27. Learned senior counsel for the petitioners have further referred to the *email* in which Monica Ran, who is Chief Data Governance Office and Deputy General Council for Optum US, has confirmed that John Santelli was employed by Optum Inc in 2014. Learned senior counsel for the petitioners have submitted that a perusal of the application under Section 156(3) would show that reference has been made to the order passed by the National Company Tribunal dated 20.03.2017 which has been annexed as C-2 with the complaint. It has been argued that the petition before the Tribunal was filed by UHGIS which was the transferor company therein and the second party was Optum Global Solutions (India) Private Limited (Optum India), which was the transferee company therein. It has been highlighted that in para 2 it was stated that UHGIS was incorporated on 22.07.2002 and was thus, in existence prior to the project which was of the year 2008-09, regarding which experience certificate has been submitted.

28. Learned senior counsel for the petitioners have reiterated that the interim report dated 22.07.2020 (Annexure P-22) (page 487) which has been relied upon by the Learned CJM Panchkula, would show that six recommendation pointers were given by Sanjay Sethi and Puneet Brar (respondents no.3 and 4 herein). Recommendation no.6 has been highlighted to state that it was recommended that a new Committee should be formed which

would include the members from HSHRC, who were not a part of the previous committee and from various other departments. Further reference has been made to the final report dated 12.01.2021 (Annexure P-23) moreso, paragraphs 3,4, 6 and 7, to highlight that in pursuance of the said recommendation, a joint committee of experts from the Health Department etc. was constituted and the same was approved by the Hon'ble Health Minister and the said committee report was compiled by Prabhjot Singh IAS, Mission Director, National Health Mission, Haryana, who was the Chairman of the said committee along with 11 other members which included the present respondents no.3 and 4 and also Harkesh Anand, Asha Hooda and Renu Pathania. As per the observations in the report dated 12.01.2021, it was stated that after considering all the documents available on record and report of all the Members (12 members of Joint Committee) it was drawn that the Committee could find not any act of omission or Commission on the part of the Bid Valuation Committee and the detailed factors regarding the same were mentioned. Ultimately, in paragraph 7, it was concluded that the complainant did not have sufficient evidence as to why and how he justified his claim of the 16 committee members being corrupt or having committed criminal breach of trust or having caused loss to the state exchequer. It was also observed that his allegations with respect to the experience certificate of the petitioner company being false and fabricated or with respect to the balance sheet of profit and loss document had been examined in detail by the financial and legal experts of the Joint Committee namely Harkesh Anand CA, Asha Hooda CS, Smt. RenuPathania LO, whose reports were also considered while finalizing the report in question and ultimately, it was stated that the complaint should be filed.

Argument on behalf of the State

29. Learned State counsel has submitted that in the present case, initially the matter had been consigned to the record room in order to await the

decision of the inquiry and thereafter, respondent no.2 filed the present application under Section 156(3) Cr.P.C. for registration of the present FIR and after the said order has been passed, the State has been earnestly looking into the entire matter and investigating the same in accordance with law. It has further been submitted that in the impugned order, no specific direction has been given as to under which sections, the FIR has to be registered. It has also been argued that it has been left open to the State authorities to see and assess the entire aspect and to see as to what offences are made out in the present case and has prayed that the present petitions be dismissed.

Arguments on behalf of respondents no.3 and 4

30. Learned counsel for respondents no.3 and 4 has submitted that respondents no.3 and 4 are not the original complainants in the present case and have been made complainants by virtue of the order passed by the Chief Judicial Magistrate, Panchkula and has further submitted that they had submitted a report dated 22.07.2020 wherein, certain observations and recommendations have been made by respondents no.3 and 4.

Findings

31. This Court has heard learned counsel for the parties and has perused the record and is of the opinion that both the present petitions deserve to be allowed and the impugned order deserves to be set aside and all subsequent proceedings, including the FIR, in question deserve to be quashed in view of the following grounds:

Ground no. 1.1: Concealment of earlier application filed by respondent no.2 under Section 156(3) Cr.P.C. and 200 Cr.P.C. before the Court of Chief Metropolitan Magistrate at Rohini Courts, New Delhi on the same set of allegations and the orders / proceedings arising therefrom, resulting in the registration of two FIRs, one in

Delhi and the other in Panchkula (impugned FIR).(re: ***Krishan Lal Chawla's*** case, ***TT Antony's*** case, ***Amitbhai Anil Chandra Shah's*** case, ***Ram Dhan's*** case) (paras 32 to 42).

Ground no. 1.2: Filing of the present application under Section 156(3) Cr.P.C. by respondent no.2 is with a *malafide* intent and with an ulterior motive to settle scores.(re:***Baijnath Jha's*** case, ***Bhajan Lal's*** case ***and Kuldeep Raj Mahajan's*** case) (paras 32 to 42).

Ground no. 1.3: Filing of successive complaints before various authorities and non-disclosure of the same in the present application under Section 156(3) Cr.P.C. would show that respondent no.2 has indulged in forum shopping and has suppressed facts and thus, the maxim*"suppressio veri, expression faisi"* i.e., suppression of the truth is equivalent to expression of falsehood, gets attracted to the facts of the present case.(re: ***Moti Lal Sangara's*** case, ***Kuldeep Raj Mahajan's*** case, ***Krishan Lal Chawla's*** case, ***Ram Dhan's*** case) (paras 32 to 42).

Ground no.2: Offences under Sections 406, 409, 420, 465, 467, 468, 471 and 120-B IPC under which the impugned FIR has been registered, are not made out in the present case (re: *Md. Ibrahim*'s case and *Sheila Sebastien's* case) (Paras 43 to 49).

Ground no.3: Non-Compliance of the law laid down by the Hon'ble Supreme Court in ***Priyanka Srivastava's*** case (*supra*) and in ***Babu Venkatesh's*** case (*supra*). **(Paras 50 to 56).**

Ground no. 4: Infirmities/illegalities in the Impugned Order. **(Para 57 to 62).**

Groundno.5: Delay in filing the present application under Section 156(3) Cr.P.C. (re: ***Krishan Lal Chawla's*** case) **(Para 63).**

Ground no. 6: Non-challenge to the tender proceedings and the award in favour of the petitioner-company, by the four companies which had participated in the tender process alongwith the petitioner-company **(Para 64).**

Ground no.7: Complaint filed by Respondent no.2 on the same set of allegations before the Lokayukta Haryana, in which prayer has also been made for registration of FIR, the proceedings whereof are pending. **(Para 65).**

Ground no.8: Lack of locus standi of the complainant to file present application under Section 156(3) Cr.P.C. (Ref. Section 39 Cr.P.C.) **(Para 66).**

32. The detailed findings with respect to each ground is given hereinbelow:

Ground nos. 1.1, 1.2 and 1.3:

Ground no. 1.1: Concealment of earlier application filed by respondent no.2 under Section 156(3) Cr.P.C. and 200 Cr.P.C. before the Court of Chief Metropolitan Magistrate at Rohini Courts, New Delhi on the same set of allegations and the orders / proceedings arising therefrom, resulting in the registration of two FIRs, one in Delhi and the other in Panchkula (impugned FIR).

Ground no. 1.2: Filing of the present application under Section 156(3) Cr.P.C. by respondent no.2 is with a *malafide* intent and with an ulterior motive to settle scores.

Ground no. 1.3: Filing of successive complaints before various authorities and non-disclosure of the same in the present application under Section 156(3) Cr.P.C. would show that respondent no.2 has indulged in forum shopping and has suppressed facts and thus, the

maxim *"suppressio veri, expression faisi"* i.e., suppression of the truth is equivalent to expression of falsehood, gets attracted to the facts of the present case.

33. The following **chronological events** would clearly demonstrate that respondent no.2 has suppressed material facts and indulged in active concealment and forum shopping by filing one complaint after another, including the earlier application under Section 156(3) Cr.P.C. before the Court of Chief Metropolitan Magistrate at Rohini Courts, New Delhi with a *malafide* intention to wreak vengeance and to extract money from the petitioners on account of the fact that he was made to resign from the petitioner company, i.e. Optum Global Solutions (India) Private Limited (Optum India) earlier known as UHGIS:-

09.12.2013 P-3 (Page 104)

- Respondent no.2 was appointed as Director Business Development at Optum India (earlier known as UHGIS), petitioner no.1 company in CRM-M-6698-2022.

29.05.2016 P-10 (Page 378)

- Resignation letter submitted by respondent no.2. It is the case of the petitioners that the company had received anonymous complaints against respondent no.2 for indulging in illegal and unlawful activities in connivance with the company vendors and on 08.04.2016, an internal investigation had been conducted and illegal activities of respondent no.2 came to surface following which, he resigned.

01.06.2016 P-11 (Page 379)

- Legal notice sent by respondent no.2 seeking a total sum of Rs.34,10,00,000/- within a period of 15 days on account of professional loss, damages, mental trauma and agony.

- In para 8 of the said legal notice, it had been stated that some of the petitioners had submitted forged prequalification documents at the time of submission of the HSHRC bid. The allegations as have been made in the present application under Section 156(3) Cr.P.C. were levelled in the said legal notice also and it was stated that the said information had come in the knowledge of respondent no.2 on 01.10.2015, when Mr.Sandeep Khurana (accused no.2) had informed respondent no.2 about the alleged illegalities committed by the petitioners in the said bid.

05.09.2016 P-12(Page 400)

- **Complaint no.1** filed with the Cyber Crime Cell, Mandir Marg, New Delhi by respondent no.2, in which allegations had been made with respect to hacking of personal e-mail account of respondent no.2 and it was further alleged that on 08.04.2016, Tim Trujillo (petitioner no.3 in CRM-M-6698-2022), had blackmailed and threatened respondent no.2 not to disclose alleged illegalities in the bid process, which he had allegedly learnt from Sandeep Khurana (accused no.2), failing which the complainant would face dire consequences.

21.02.2017 P-14 (Page 410)

- **Complaint no.2** filed before the Additional Deputy Commissioner of Police, Rohini, New Delhi, in which, as is apparent from para 5 (page 412), allegations have been made to the effect that in the year 2014, the petitioner company had participated in a bid to secure the tender floated by the Haryana Government for implementation of Hospital information system and though the company did not fulfill the essential qualifications as mentioned at serial no.7 under clause 4.3 of Volume II of the RFP, yet, the company/ its officers participated in

the tender process by creating false and fabricated documents, such as experience certificates etc. Other allegations were also levelled in the said complaint.

23.05.2017 (P-15) (Page 418)

- Inquiry conducted in **complaint no.2** in which, some of the petitioners joined investigation and it was found in the same that the matter is of civil nature and the complaint was filed.
- Even the complaint dated 05.09.2016 (i.e., **complaint no.1**) was also inquired into and the matter was closed vide report dated 27.06.2017 (Annexure P-15) (Page 418).

07.06.2017 (P-17) Page 421

- Application under Section 156(3) Cr.P.C. (**complaint no.3**) filed by respondent no.2 in the Court of the Chief Metropolitan Magistrate, Rohini Courts, New Delhi. The complaint was filed against 9 persons, one of whom was stated to be unknown. Petitioner no.1 and petitioner no.2, i.e., Monishankar Hazra and Sameer Bansal in CRM-M-6692-2022 and petitioner no.6 John Santelli in CRM-M-6698-2022 were not arrayed as accused persons in the said complaint/application.
- Para no.1 of the said application shows that the accompanying application under Section 200 Cr.P.C. had also been prayed to be read as a part and parcel of the application under Section 156(3) Cr.P.C.
- Page 428 Prayer was made for registration of an FIR.
- Page 436 Para 2(v) shows that allegations have been made with respect to some of the petitioners having submitted false and fabricated documents such as experience certificate etc., in order to secure the tender floated by the Haryana Government for

implementation of Hospital Information System. Specific reference had been made to the same being in violation of the condition listed at serial no.7 of Clause 4.3 Volume II of RFP. Allegations had also been made with respect to the amendment in the Memorandum of Association. The said sub para (v) is reproduced hereinbelow:-

> *"xxxxx*
>
> *(v) That the complainant during his employment learnt that these officials in the year 2014 has participate (Company) in a BID to secure tender floated by Haryana Government for implementation of Hospital information system. Through the company did not fulfill the minimum essential qualification as mentioned at S. No.7 of clause 4.3 of Vol.II of RFP, yet the company/these officers participated in the tender process and created false and fabricated documents such as experience certificates etc. in order to cover up the deficiency in connivance with M/s optum Inc (13625, Technology Drive, Eden Prairie, MN, USA), which is nothing but holding company of M/s UHGIS as well as M/s Advance Care, prace Jose, Querors I-44, 1800-237 Lisboa, Portugal (Another sister concern). The forgery & Manipulation is apparent from the fact that M/s UHGIS never did the work for which experience certificates were issued to it nor the company could have done these works as per its memorandum of association (Copy already provided with the complaint and enclosed). Thus the tender of HIS, Haryana 2014 was secured by these officials of the company by fabricating false documents. In fact the company after securing the tender amended its MOA to include all those activities as mentioned above in its object clause being fully aware about the illegalities and improprieties which the company and its officials have committed."*

A perusal of the above would show that allegations similar to the allegations levelled in the present complaint/application under Section 156(3) Cr.P. C. had been made. In para 4 of the said application, it was stated that the whole incident had taken place within the local jurisdiction of the Delhi Court. Para 4 (page 445) is reproduced hereinbelow: -

> *"4. That the whole incident took place within the local jurisdiction of this Hon'ble Court, hence this Hon'ble Court has got original territorial jurisdiction to try, entertain and to decide the present complaint."*

The place of jurisdiction in the present application under Section 156(3) Cr.P.C. has been changed from Delhi to Panchkula, Haryana by making averments which are contrary to the above said averments.

18.08.2017 P-18(Page 450)

- FIR no.419 dated 18.08.2017 registered under Sections 66, 66-C of the I.T. Act at Police Station Prashant Vihar, District Rohini, in pursuance of the orders of Rohini Court Delhi passed on the application under Section 156(3) of the Cr.P.C.
- Although, the prayer in the application under Section 156(3) was for registration of the FIR under several offences including the offences which have been alleged in the present complaint under Section 156(3) Cr.P.C., the Chief Metropolitan Magistrate, Rohini Court, New Delhi, found that *prima facie* only offence under the I.T. Act had been committed (page 452) and accordingly, FIR no.419 was registered under the said I.T. Act and no FIR was registered under the various provisions of IPC.

- The said application under Section 156(3) Cr.P.C. or the orders thereon, have not been disclosed in the present application under Section 156(3) Cr.P.C.
- No challenge has been made by respondent no.2 to the said order *vide* which the FIR under all the provisions including that of IPC, as had been prayed, was not directed to be registered.
- In August 2019, cancellation report had been submitted in the above said case and in spite of a lapse of 2 ½ years, no objection/protest petition has been filed in the said proceedings by respondent no.2 and last opportunity has been given to respondent no.2 to file objections and the matter is still pending, at the stage of acceptance / non-acceptance of the said cancellation report.

12.03.2019 P-20 (page 471)

- **Complaint no.4** (1st complaint filed in Haryana after having failed to get an FIR registered with respect to the offences of cheating and forgery in Delhi) filed before the Governor of Haryana, with a copy to the Health Minister of Haryana, Lokayukta Chandigarh, Additional Chief Secretary and the Hon'ble Prime Minister of India.
- Copy of the same was neither given to the SHO of the concerned police station nor to the SSP concerned.
- Allegations levelled in the said complaint were similar to the allegations made in the present complaint under Section 156(3) Cr.P.C., including the allegation that the petitioners were not qualified to participate in the tender process and did not have the necessary experience and had forged experience certificates in order to secure the tender.

18.12.2019 P-27 (Page 538)

- CRM-M-54124-2019 filed by respondent no.2 for directing registration of FIR on similar allegations but the same was dismissed as withdrawn as counsel for the petitioner therein (respondent no.2 herein) after arguing for some time, had stated that he wishes to withdraw the said petition and wishes to file a complaint before the concerned Lokayukta.
- A coordinate Bench of this Court thus, did not order the registration of an FIR.

23.01.2020 P-21 (Page 478)

- Respondent no.2 then filed a **complaint no.5** before the Lokayukta Haryana and in the said complaint in addition to the seven petitioners, 17 government officials, who had approved the tender, were also arrayed as parties. In the said complaint, all the allegations which are sought to be levelled in the present complaint under Section 156(3) Cr.P.C., including allegations of corruption, had also been made. A prayer had been made for inquiry into the matter for registration of an FIR. Prayer clause of the said case is reproduced hereinbelow: -

> *"It is, therefore, prayed that an inquiry be made against the public servant mentioned above and FIR may be registered under all the enabling provisions of law, for committing the serious cognizable offences of corruption, criminal breach of trust etc. and causing wrongful and huge financial loss to the exchequer, in the interest of justice.*
>
> *It is further prayed that this Hon'ble Court, if, may deem fit entrust the investigation of the present*

case to an independent investigation agency like Central Bureau of Investigation (hereinafter referred to as 'CBI') in view of the peculiar facts and circumstances of the case.

It is further prayed that this Hon'ble Court may direct the public servants involved to produce the entire record with regards to the issuance of tender and allotment of tender against the Request for Proposal dated 14.12.2013 for implementation of Hospital Information System (HIS) in the State of Haryana.

Sd/-

Signature of the complainant
(SHARAD KOTHARI)"

The said complaint is admittedly pending before the Lokayukta, Haryana.

<u>08.03.2020</u>

- The Health Department, to whom the complaint had been forwarded to by the Lokayukta, had forwarded the same to Haryana State Electronics Development Corporation Limited (HARTRON) for examining the same.

<u>22.07.2020 P-22 (Page 487)</u>

- The HARTRON had considered the entire matter and had submitted its report by making six recommendations as detailed at page 501. The same had been prepared by respondents no.3 and 4. As per clause 6 of the said recommendation, it had been provided that a new committee should be formed including members from HSHRC, NISG, Health Department, HARTRON, DITECH, ISMO and NIC.

- The Chief Judicial Magistrate, Panchkula, *vide* impugned order dated 15.12.2021 has not considered the final recommendations made by respondents no.3 and 4.

12.01.2021 P-23 (Page 503)

- Letter from DGHS-cum-CVO, Health Department, Haryana to the Registrar, Lokayukta, Haryana, in which the recommendations made by respondents no.3 and 4 were noticed in paras 3 and 4 (page 504). It was stated that the Joint Committee under the Chairmanship of Sh.Prabhjot Singh, IAS, Mission Director, National Health Mission, Haryana along with 11 other members including respondents no.3 and 4 be constituted. The said committee after going through all the documents and reports filed by all the 12 members observed that the committee could not find any act of omission or commission of offence on the part of the bid valuation committee and gave detailed reasons for the same and even with respect to the allegations of the certificate being false and fabricated or with respect to the allegations qua the balance sheet and profit and loss accounts' it was observed that the same was examined by the financial and legal experts and it was found that there was no sufficient evidence to show that any corrupt or illegal act had been committed or any loss had been caused to the exchequer and ultimately the complaint was filed.
- The said report dated 12.01.2021 has not been considered while passing the impugned order dated 15.12.2021., even though the CJM, Panchkula had called for the entire record, as is apparent from the

zimni orders which have been reproduced in the succeeding paragraphs.

11.02.2020 P-24 (Page 508)

- **Complaint no.6** filed by respondent no.2 to the Director General of Police, Haryana in which, apart from the allegations with respect to cheating and forgery and criminal breach of trust, even allegations under Section 13 of the Prevention of Corruption Act, 1988 were also levelled.

01.09.2020

- Interim report submitted by the Economic Offences Wing made by Inspector Rajiv, which was forwarded by him to the senior officers for further orders.

19.10.2020 (P-30) (Page 34 of CRM-6761-2022 in CRM-M-6692-2022)

- The Police Commissioner Panchkula observed that an opinion had been obtained from the Deputy District Attorney and on his advice, the investigation was ongoing in a similar complaint which had been filed before the Medical Services Corporation and deemed it appropriate to take further action only after seeing the results of the other complaint and it had been observed that there was no logic in keeping the same pending and recommended that the same be filed and sent to the record room. In the impugned order, reference has been made to the interim report dated 01.09.2020 but not to the final report dated 19.10.2020.

26.07.2021 P-26 (Page 536)

- CRM-M-4551-2021 filed by respondent no.2 with a prayer for directing the constitution of a special investigation team for

investigating the allegations levelled by him in complaint dated 11.02.2020 (averments made at para 37 of page 32) and the said petition was dismissed as withdrawn while granting liberty as prayed for by the counsel for respondent no.2.

- Petitioner therein (respondent no.2) had sought to withdraw the case in order to file a criminal complaint, after referring to the interim report dated 01.09.2020.
- No reference was made to the final report dated 19.10.2020.
- Even the report dated 12.01.2021 (Annexure P-23) (page 503) was also not brought to the notice of the Court.
- At any rate, no direction had been given by the coordinate Bench and the case was only permitted to be withdrawn.

27.08.2021 (P-28) (Page 539)

- The present complaint/application under Section 156(3) Cr.P.C. **(Complaint-7)** filed by respondent no.2 against 10 persons, out of which, 9 accused persons have filed the present two petitions.
- 17 people, who were government officials and against whom allegations of corruptions had been made, have not been arrayed as parties in the present application under Section 156(3) Cr.P.C.
- They were not made party although, they have been made party in the complaint dated 23.01.2020 (P-21)(Page 478) filed before the Lokayukta, Haryana.
- The same was done since respondent no.2 was well aware that prior sanction would be required to prosecute government officials.
- Monishankar Hazara and Sameer Bansal petitioners in CRM-M-6692-2022, who were never made the proposed accused in any of the complaints or even in the proceedings under Section 156(3) Cr.P.C. in

Rohini Courts, Delhi, have been arrayed as accused no.9 and 10 in the present complaint.

- **In the present complaint under Section 156(3) Cr.P.C., there is no reference to the earlier application filed under Section 156(3) Cr.P.C. before the Rohini Courts, New Delhi, nor it has been stated that similar allegations with respect to forgery, cheating and corruption had already been made in the said application and it has been deceivingly only mentioned in para 28 (page 547) of the present complaint/application under Section 156(3) Cr.P.C. that an FIR no.419/2017 had been registered under Sections 66, 66-C of the I.T. Act.**
- The fact that cancellation report has been submitted in FIR no.419/2017 has not been mentioned.
- No reference was made to the complaint dated 05.09.2016 (P-12) (page 400) (**complaint no.1)** or to the complaint dated 21.02.2017 (P-14) (Page 410) (**complaint no.2**).
- Paragraphs 41 and 42 (Page 551) of the present complaint/application under Section 156(3) Cr.P.C are reproduced hereinbelow:-

> *"41. That the forged documents so prepared have been submitted in collusion with the officers in the office of the HSHRC, Sector 6, Panchkula and the ill-gotten gains have also been released from the said office in Sector 2, Panchkula therefore this Hon'ble Court has jurisdiction to entertain this matter.*
>
> *42. That no such or similar petition against the impugned orders, except as mentioned in the petition has been filed or is pending or decided by this Hon'ble Court or the Hon'ble Punjab and Haryana High Court,*

Chandigarh or in the Hon'ble Supreme Court of India or any court of law."

- Although, the proceedings with respect to cancellation report of FIR no.419/2017 are pending and now listed for 01.04.2022, yet the said proceedings were concealed. The averments with respect to the jurisdiction of Panchkula Court were in complete contradiction to the averments made in the earlier application under Section 156(3) of the Cr.P.C. filed in Rohini Courts, Delhi **(Complaint-3**).
- Although the government officials have been left out from the present complaint but still, in the present complaint it has been prayed that FIR under Section 409 IPC amongst other sections, be registered.
- In para 5 of the present complaint, it has been mentioned by respondent no.2 that he is not the signatory to any material documents submitted to the government department but the said averments are even contrary to the observations made in the impugned order dated 15.12.2021 to the effect that respondent no.2 had participated in the entire bidding process.
- The present complaint dated 27.08.2021 (**Complaint-7**) has been filed after a delay of more than 5 years and 9 months inasmuch as, as per paragraph 39 of the said complaint, the complainant had gained knowledge qua the alleged illegal acts and incident on 01.10.2015.

15.12.2021 P-1 (Page 73)

Impugned order passed directing registration of the FIR.

23.12.2021 P-2 (Page 80)

FIR no.508 registered under Sections 406, 409, 420, 465, 467, 468, 471 and 120-B IPC at Police Station Sector 5, Panchkula in pursuance of the said order.

34. The above chronology of events clearly demonstrates that respondent no.2 has played hide and seek with the Court. Apart from concealing several complaints and the inquiry reports thereof, the filing of the application under Section 156(3) Cr.P.C. in the Court of Chief Metropolitan Magistrate, Rohini Courts, New Delhi, has also been concealed. Sub para (v) of para 2, which has been reproduced hereinabove, would clearly show that the allegations made in the earlier complaint under Section 156(3) Cr.P.C. before the Rohini Courts, New Delhi were similar to the allegations which have been levelled in the present application under Section 156(3) Cr.P.C. before the Panchkula Courts, Haryana. On account of active concealment of the said applications and the orders passed there on, two FIRs stand registered, one in Delhi and the other in Panchkula. The Chief Judicial Magistrate, Panchkula, was neither informed by respondent no.2 about filing of the application under Section 156(3) Cr.P.C. nor it was brought to the notice of the Court that allegations in the said application under Section 156(3) Cr.P.C. in the Rohini Courts, Delhi were similar to the allegations which have been made in the present complaint under Section 156(3) Cr.P.C.

35. It has been repeatedly held by the Hon'ble Supreme Court of India and various High Courts that the registration of the second FIR with respect to the same cause of action is illegal and deserves to be quashed and further, filing of successive applications without disclosing the final report in the earlier applications and instituting criminal proceedings with a *malafide* motive to wreak vengeance, would be valid grounds for seeking quashing of the criminal proceedings. Some of the judgments on the above aspects are being referred to, hereinbelow:

The Hon'ble Supreme Court of India in ***Krishna Lal Chawla's case (supra)*** has held as under:-

> *"6. Indeed, a closer look at the decision in Upkar Singh takes us to the contrary conclusion. In regard to the question of material improvements made in a subsequent private complaint by the same complainant against the same accused with regard to the same incident, it may be useful to refer to the following excerpt from Upkar Singh, which further clarifies the holding in T.T. Antony:*
>
> > *"17...In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code." (emphasis supplied)*
>
> *It is the aforementioned part of the holding in Upkar Singh that bears directly and strongly upon the present case.*
>
> *7.* ***This Court in Upkar Singh has clearly stated that any further complaint by the same complainant against the same accused, after the case has already been registered, will be deemed to be an improvement from the original complaint. Though Upkar Singh was rendered in the context of a case involving cognizable offences, the same principle would also apply where a person gives information of a non-cognizable offence and subsequently lodges a private complaint with respect to the same offence against the same accused person. Even in a non-cognizable case, the police***

officer after the order of the Magistrate, is empowered to investigate the offence in the same manner as a cognizable case, except the power to arrest without a warrant. Therefore, the complainant cannot subject the accused to a double whammy of investigation by the police and inquiry before the Magistrate.

8. We are cognizant of the fact that in the present case, no investigation had begun pursuant to NCR No. 158/2012 filed by the Respondent No. 2 for a certain period. However, the overall concern expressed by this Court in Upkar Singh, about the misuse of successive complaints by the same party, where the second complaint is clearly propped up to materially improve on the earlier one, resonates with us. We regret to say that the same thing which this Court had categorically prohibited in Upkar Singh has happened in the present case.

9. The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in Amitbhai Anilchandra Shah v. CBI & anr, (2013) 6 SCC 348:

> ***"37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048], this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution." (emphasis supplied)***

10. Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except

by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in each case. As this Court has held in Amitbhai Anilchandra Shah (supra), such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.

11. The implications of such successive FIRs on an individual's rights under Article 21 of the Constitution has been elaborated further in T.T. Antony (supra):

> *"27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that subsection (8) of section 173 CrPC, 1973 empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing*

the final report under section 173(2) CrPC, 1973. (emphasis supplied)"

12. Thus, it is incumbent upon this Court to preserve this delicate balance between the power to investigate offences under the CrPC, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State. If the Respondent No. 2 was aggrieved by lack of speedy investigation in the earlier case filed by him, the appropriate remedy would have been to apply to the Magistrate under section 155(2), CrPC, 1973 for directions to the police in this regard. Filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fide on the part of Respondent No. 2.

13. It is also crucial to note that, in the fresh complaint case instituted by him, Respondent No. 2 seems to have deliberately suppressed the material fact that a charge sheet was already filed in relation to the same incident, against him and his wife, pursuant to NCR No.160/2012 (Crime No. 283/2017) filed by Appellant No.1's son. *No reference to this charge sheet is found in the private complaint, or in the statements under section 200, CrPC, 1973 filed by Respondent No. 2 and his wife. In fact, both the private complaint and the statement filed on behalf of his wife, merely state that the police officials have informed them that investigation is ongoing pursuant to their NCR No.158/2012. The wife's statement additionally even states that no action has been taken so far by the police. It is the litigant's bounden duty to make a full and true disclosure of facts.* ***It is a matter of trite law, and yet bears repetition, that suppression of material facts before a court amounts to abuse of the process of the court, and shall be dealt with a heavy hand*** *(Ram Dhan v. State of Uttar Pradesh & Anr.,*

(2012) 5 SCC 536; K.D. Sharma v. Steel Authority of India Ltd.(2008) 12 SCC 481).”

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24. As recorded by us above, the present controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. In the case before us, the Magistrate was aware of the significant delay in the filing of private complaint by Respondent No. 2, and of the material improvements from the earlier NCR No. 158/2012 which were made in the private complaint. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries, and dismiss the frivolous complaint at the outset after judicial application of mind.

25. However, this was not done - the Magistrate issued process against the Appellants by order dated 4.04.2019, and this controversy has now reached this Court for disposal.

26. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.

27. This Court's inherent powers under Article 142 of the Constitution to do 'complete justice' empowers us to give preference to equity and a justice-oriented approach over the strict rigours of procedural law (State of Punjab v. Rafiq Masih (Whitewasher), (2014) 8 SCC 883). This

Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (Monica Kumar (Dr.) & anr. v. State of Uttar Pradesh, (2008) 8 SCC 781). ***Other decisions have held that inherent powers of High Courts provided in section 482, CrPC, 1973 may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or malafide motives.*** *(Sirajul &ors. v. State of Uttar Pradesh, (2015) 9 SCC 201; State of Haryana v. Bhajan Lal, AIR 1992 Supreme Court 604). Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants.*

xxx xxx xxx

Our Conclusions:

29. The impugned judgment of the High Court dated 28.09.2020 in Miscellaneous Petition No. 2561 of 2020 is set aside.

30. The proceedings in Complaint Case No.2943/2018, including the order of summons against the Appellants dated 4.04.2019 be quashed. 31. Further, proceedings pursuant to NCR No. 158/2012 dated 5.08.2012 filed by Respondent No. 2 also be quashed, in order to foreclose further frivolous litigation.

32. Any other criminal cases between the parties initiated by them in relation to the incident dated 5.08.2012, including the criminal proceedings arising from NCR No.160/2012 (Crime No. 283/2017) instituted by the Appellants, are quashed in exercise of our powers under Article 142 of the Constitution, in the interests of giving quietus to these criminal proceedings arising out of a petty incident 9 years ago.

33. The Appeal is allowed in the aforesaid terms."

A perusal of the above reproduced judgment would show that the act of filing successive complaints/FIRs by the same party, even with material improvements, has been held to be impermissible as it violates the right to life and liberty of an individual as enshrined under Article 21 of the Constitution of India. It has been observed that permitting multiple complaints by the same party with respect to the same incident whether it involves a cognizable or non-cognizable offences, will lead the accused to be entangled in numerous criminal proceedings which would also waste the precious time of the courts and the police. It had further been observed that in case, the complainant is aggrieved by the lack of a speedy investigation in the first FIR / complaint, then necessary remedy regarding the same should be taken and the filing of a subsequent complaint after a gap of several years would smack of mala fide on the part of the complainant. In the above said case also, there was suppression of material facts by the complainant therein at the time of filing of the second complaint. It was observed that it was the bounden duty of the complainant to make a full and true disclosure of all material facts and non-disclosure of the same would amount to abuse of the process of the Court and shall be dealt with a heavy hand. It was also observed that the High Courts under Section 482 Cr.P.C. have the power to quash the criminal proceedings which have been instituted after a great delay or with vengeance or with *a mala fide* motive and that it is the constitutional duty of the High Courts to quash criminal proceedings which were instituted by misleading the Court. The criminal proceedings thereon, were accordingly quashed. The above said judgment will apply with full force to the facts of the present case as, on account of the malicious conduct and active concealment, respondent no.2 has managed to get two FIRs registered

against the petitioners on the same cause of action. The due course in law available to respondent no.2 was to challenge the orders passed in the proceedings under Section 156(3) Cr.P.C. in the Delhi Court in case, he was dissatisfied with the non-registration of the FIR under certain offences or respondent no.2 should have filed objections/protest petition in the cancellation proceeding with respect to the first FIR registered in Delhi but the same having not been done, respondent no.2 now cannot be permitted to institute a subsequent application under Section 156(3) Cr.P.C. with respect to the same incident and on a similar set of allegations.

36. The Hon'ble Supreme Court in "***T.T. Antony's case (supra)*** has observed as under: -

> *"However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Criminal Procedure Code, 1973 It would clearly be beyond the purview of sections 154 and 156 Criminal Procedure Code, 1973 nay, a case of abuse of the statutory power of investigation in a given case.* ***In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Criminal Procedure Code, 1973 or under Articles 226/227 of the Constitution."***

A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court of India that in case, with respect to one incident an FIR has already been registered, then a second FIR with respect to the same incident cannot be registered and in case, the same is registered then the High Court while exercising its powers under Section 482 Cr.P.C. would be well within its power to quash the second FIR. The same principle has been followed by the Hon'ble Supreme Court in the case of "***Amitbhai Anil Chandra Shah's case (supra).***.

37. A Coordinate Bench of this Court in "***Kuldeep Raj Mahajan*** vs. ***Hukam Chand***" in a judgment dated 05.12.2007 passed in **CRM-34272-M of 2003** had observed as under:

> ***"It would indicate that the respondent, after being aware of the cancellation of the FIR, filed the impugned complaint, but did not disclose in the complaint that FIR lodged by him had been cancelled.***
>
> *xxx xxx xxx*
>
> ***Perusal of impugned summoning order (Annexure P-2) reveals that there is no reference at all to the investigation report/cancellation report of the police in the summoning order. Without considering the investigation report/cancellation report of the police, the impugned summoning order could not have been legally passed by the learned Magistrate.*** *The respondent, despite knowledge, concealed the cancellation report of the police from the learned Magistrate. This is another indicator of mala fide on the part of the respondent.*
>
> *xxx xxx xxx*
>
> ***However, this Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the court. In fact, this Court has inherent power and corresponding***

> ***duty to prevent abuse of the process of any court or otherwise to secure the ends of justice. In the instant case, the impugned complaint is result of mala fide as the respondent was nursing grudge against the petitioner as discussed herein above.***
>
> *xxx xxx xxx*
>
> *After investigation by Gazetted Officer, the FIR lodged in the same matter was found to be false and cancellation report was submitted by the police. The respondent, despite being aware of the cancellation report, concealed the same from the learned Magistrate. The impugned summoning order has also been passed without considering or even referring to the cancellation report. Keeping in view all these circumstances, it is a fit case in which this Court has to exercise its inherent powers under section 482 of the Code by quashing the impugned complaint and summoning order so as to prevent the abuse of process of court and to secure the ends of justice."*

A perusal of the above judgment would show that it has been observed that the High Court cannot be a helpless spectator when it is made out that the criminal prosecution is mala fide and an abuse of the process of the court and that the High Court has inherent power and a corresponding duty to prevent the abuse of the process of the court or otherwise to secure the ends of justice and in the said case, the petition under Section 482 Cr.P.C. was allowed.

38. The Hon'ble Supreme Court in ***Moti Lal Songara Vs***. ***Prem Prakash @ Pappu"***, reported as **2013(9) SCC 199**, has observed as under: -

> *"2. The factual score of the case in hand frescoes a scenario and reflects the mindset of the first respondent which would justifiably invite the statement "court is not a laboratory where children come to play". **The action***

of the accused-respondent depicts the attitude where one calculatedly conceives the concept that he is entitled to play a game of chess in a court of law and the propriety, expected norms from a litigant and the abhorrence of courts to the issues of suppression of facts can comfortably be kept at bay. *Such a proclivity appears to have weighed uppermost in his mind on the base that he can play in aid of technicalities to his own advantage and the law, in its essential substance, and justice, with its divine attributes, can unceremoniously be buried in the grave.*

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18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused- respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. ***It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expression faisi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.***

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19. Consequently, the appeal is allowed, the order passed by the High Court in Criminal Revision No. 327 of 2011 and the order passed by the learned Additional District and Sessions Judge, No.1, Jodhpur, in Criminal Revision No. 7 of 2009 are set aside and it is directed that the trial which is pending before the learned Additional District and Sessions Judge, No. 3, Jodhpur, shall proceed in accordance with law".

A perusal of the above would show that the Hon'ble Supreme Court had come down heavily on the litigants/persons who are guilty of suppression of facts in a court of law. In the said case, the accused while challenging the summoning order under Section 319 Cr.P.C., had not brought to the notice of the Court that the charges had been framed against him and was successful in getting the order under Section 319 Cr.P.C. set aside, which was reversed by the Hon'ble Supreme Court. While reversing the said order, the factum with respect to suppression of material fact, was considered to be one of the primary grounds to be held against the accused therein, and it was observed that anyone who takes recourse to the method of suppressing information in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expression faisi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted.

39. The Hon'ble Supreme Court of India in ***Ram Dhan vs. State of Uttar Pradesh and another*** reported as ***(2012) 5 Supreme Court Cases 536*** has specifically held in paragraph 12 that suppression of material facts and filing of the successive complaints amounts to abuse of process of the Court. Paragraph 12 of the judgment is reproduced hereinbelow:-

> *"12. The petitioner is guilty of suppressing the material fact. Admittedly, filing of successive petitions before the court amounts to abuse of the process of the court. Thus, we are not inclined to examine the issue any further."*

The ratio of law laid down in the above said cases would apply in the present case.

The Hon'ble Supreme Court of India in ***Baijnath Jha vs. Sita Ram and another,*** reported as ***(2008) 8 Supreme Court Cases 77*** has held as under:-

> *"8. The backgrounds clearly show that the proceedings instituted were mala fide, based on vague assertions and were initiated with mala fide intents and constitute sheer abuse of process of law.* ***No reason was shown before the High Court as to why the complainant chose not to proceed and one of the four persons initially named. The cases at hand fit in with category (7) of Bhajan Lal's case (supra).***
>
> *9. The appeals are allowed and the proceedings in complaint case No. 40 of 1994 in the Court of Judicial Magistrate, First Class, Patna City stand quashed."*

In the above-said case, the complaint was filed by the complainant after being released on bail, before the Judicial Magistrate, alleging that accused persons and one Ravinder Kumar Singh had demanded illegal gratification from the complainant. The Judicial Magistrate had taken cognizance of the same and the petition filed before the High Court for quashing of the same by the accused persons had been dismissed. Thereafter, the complainant therein filed the case before the Hon'ble Supreme Court and the Hon'ble Supreme Court found that the proceedings were instituted on malafide basis and thus, found the case to be a fit case falling under category no. 7 as illustrated in ***Bhajan Lal***'s case. One of the factors that was brought forth before the Hon'ble Supreme Court was that the complainant therein had chosen not to proceed against one of the four persons who had been initially added. In the present case, 17 government officials, against whom specific allegations have been levelled in various complaints including the complaint before the Lokayukta and which was filed prior to the filing of the present application under Section 156(3),were not made as proposed accused in the present application under Section 156(3)Cr.P.C.

40. To be fair to the counsel for respondent no.2, this Court would now like to consider the judgments cited by the learned counsel for respondent no.2 in order to make out a case that even if there was a concealment of the earlier application under Section 156(3) Cr.P.C. and the other complaints were also not disclosed or that the proceedings initiated by Respondent no. 2 were mala fide, then also, the High Court should not exercise its power under Section 482 Cr.P.C to quash the FIR. The first judgment which has been relied upon by the learned counsel for respondent no.2 is the judgment of the Hon'ble Supreme Court of India in ***Kapil Aggarwal's*** case (*supra*). The said judgment of the Hon'ble Supreme Court would further the case of the petitioners and not that of respondent no.2. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"Feeling aggrieved and dissatisfied with the impugned judgment and order dated08.09.2017 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Writ Petition No. 18308 of 2017, by which the High Court has dismissed the said writ petition preferred by the appellants herein, filed under Article 226 of the Constitution of India, for quashing the first information report registered as Case Crime No. 790 of 2017, under Sections 420/406 IPC, Police Station Loni Border, District Ghaziabad, the original writ petitioners/accused have preferred the present appeal.*
>
> *xxx xxx xxx*
>
> *6.* ***However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C.,1973 In that case, the***

complaint case will proceed further in accordance with the provisions of the Cr.P.C.

6.1 As observed and held by this Court in catena of decisions, inherent jurisdiction under Section482 Cr.P.C., 1973 and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed.

6.2 As held by this Court in the case of Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 64,,Section 482 Cr.P.C., 1973 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.

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…..Therefore, when the impugned FIR is nothing but an abuse of process of law and to harass the appellants-accused, we are of the opinion that the High Court ought to have exercised the powers under Article 226 of the Constitution of India/482 Cr.P.C. and ought to have quashed the impugned FIR to secure the ends of justice.

9. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned criminal proceedings/FIR registered as Case Crime No. 790 of 2017, under Sections 420/406IPC, with the police station Loni Border, District Ghaziabad are hereby quashed and set aside on the aforesaid grounds. *We*

> *make it clear that we have not expressed anything on merits on the allegations made by respondent no.1 against the appellants as the proceedings in the form of 156(3)Cr.P.C application are pending before the learned Magistrate. The learned Magistrate shall now proceed further with the said application, in accordance with law and on its own merits. Respondent No.1 may proceed further with the said proceedings, if he so chooses and is advised.*
>
> *10. With these observations, the present appeal is allowed."*

A perusal of the above judgment would show that in the said case initially, an application under Section 156(3) Cr.P.C. was filed by the complainant before the learned Additional Chief Judicial Magistrate, Ghaziabad for registration of an FIR and the said application was treated as a complaint under Section 200, which fact had been challenged by the complainant therein, by filing a criminal revision and in the criminal revision, the order of the Magistrate was set aside and the matter was remanded back and the said complaint was stated to be pending after remand. The complainant got the FIR registered, which was sought to be challenged by the accused. The Hon'ble High Court refused to quash the said FIR. Against the said order, the accused therein filed appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to quash the FIR by observing that registration of second FIR is an abuse of the process of the Court. Thus, the said judgment does not further the case of the respondent no.2. Learned Counsel for Respondent no. 2 is wanting to take benefit of the observation made by the Hon'ble Supreme Court to the effect that an application pending under Section 156(3) would not come in the way of registration of an FIR. The said observation would not apply in the

present case inasmuch as, in the present case, the first application under Section 156(3) Cr.P.C. is not pending and the orders have already been passed in the same and the FIR in pursuance of the said order, already stands registered. Moreover, the first application under Section 156(3) Cr.P.C. was filed in Delhi and the first FIR has also been registered in Delhi whereas, the present second application under Section 156(3) Cr.P.C. has been filed before the Panchkula Courts and the FIR has been registered in Panchkula and thus, the observations highlighted by the learned counsel for respondent no.2 in the above-said judgment would not apply to the present case.

41. The second judgment relied upon by the learned counsel for respondent no.2 is the judgment of the Hon'ble Supreme Court of India in ***Central Bureau of Investigation's*** case (*supra*). It is argued that in the said judgment it has been observed that malafide of informant would be of secondary importance. In the said case, the Central Bureau of Investigation had approached the Hon'ble Supreme Court as the petition filed under Section 482 Cr.P.C. by the accused therein had been allowed and FIR registered against the accused under Sections 120-B, 167, 168, 177A IPC and Section 13(2) and 13(1) of the Prevention of Corruption Act, had been quashed solely on the ground of jurisdiction. The High Court had found the ground of jurisdiction to be valid on the basis of a document which was misconstrued to be a notification rescinding an earlier notification. The Hon'ble Supreme Court had observed that there was no notification revoking the earlier notification and the letter on which emphasis had been laid by the High Court, was not relevant and the said letter was not even a notification and thus, the High Court was not justified to hold that there was notification rescinding the earlier notification. The facts of the said case were completely different from the facts of the present case. Moreover, the

legal arguments raised in the present petition including the argument of filing of earlier application under section 156(3) and orders thereon, earlier complaints and the concealment thereof, respondent no.2 being an ex-employee of accused no.1-company seeking money through legal notice, the offences as mentioned in the FIR not being prima facie made out (as will be discussed hereinafter), forum shopping etc., were not the issues raised in the abovesaid judgment. Moreover, at any rate it has been observed that *malafide* is of secondary importance, and thus, has not been held to be irrelevant.

42. The third judgment on which reliance has been placed by the learned counsel for respondent no.2 is judgment of the Hon'ble Supreme Court of India in ***Nirmal Singh Kahlon's*** case (*supra*). On the basis of the said judgment, it has been contended that a second FIR can be registered. A perusal of the said judgment would show that in the said case, there was a big scam with respect to the recruitment of Panchayat Secretary. An FIR was lodged by the Vigilance Department against certain persons including Nirmal Singh Kahlon for commission of offence under the Prevention of Corruption Act and under certain provisions of IPC. Thereafter, the Secretary of Government of Punjab had issued a letter opining that the case be investigated by the Crime Branch and when the matter came up before the High Court, it was observed by the High Court that the State Government had an option of suo motu making further investigations by removing all the officers who had been named in the report from the respective offices so as to ensure further inquiry is not influenced by them or in the alternative to let the Central Bureau of Investigation probe into the entire scandal involving the appointment of Panchayat Secretary. Subsequent to the passing of the said order, the State Government made a

statement that a decision had been taken to hand over the investigation in respect of the scandal to the Central Bureau of Investigation. Although, the Central Bureau of Investigation was not initially inclined to take over the matter but ultimately informed the High Court that a special team had been constituted to investigate the matter and the Central Bureau of Investigation thereafter, registered an FIR. When the matter came up before the Hon'ble Supreme Court of India, it was observed in paragraph 32 of the said judgment that two FIRs could not be maintainable on the basis of the same cause of action and it was observed in paragraph 36 that ordinarily the Supreme Court would have accepted the argument to the effect that High Court should not direct Central Bureau of Investigation to investigate into a particular offence but however, since the offence was not ordinary in nature and it involved investigation into the allegations of commission of fraud in a systematic manner and it had wide ramifications as a former Minister of the State was involved. Thus, the said case had been taken to be as an exceptional case. It was further observed in paragraphs 44 and 46 that the FIR was registered by the Central Bureau of Investigation, i.e., second FIR was lodged after a detailed preliminary inquiry had been conducted and statements of a large number of persons were recorded and there were as many as 15 categories of irregularities committed by various persons involved in the said selection process in which several persons holding very high posts were also involved. It was observed that the first FIR, which was registered in the State of Punjab, contained only the misdeeds of individuals. It was further observed in paras 48, 49 and 50 of the said judgment that the Hon'ble High Court had given two options to the State Government and the State Government had taken the decision to hand over the investigation of the scandal to the Central Bureau of Investigation and offences committed

by an individual or two are different from an offence disclosed in a scandal involving a large number of officials from the lowest category to the highest. It is in the said background that the appeals were dismissed by the Hon'ble Supreme Court. In the present case, a second FIR has not been registered by Central Bureau of Investigation with respect to any scam of a large scale. There are no orders of the High Court giving an option to the State as was given in the above-said case nor there is any statement on behalf of the State to hand over the matter to the Central Bureau of Investigation. Even the allegations made in the earlier complaints including the application under Section 156(3) Cr.P.C. before Rohini Courts, Delhi, are substantially the same to the ones made in the present application under Section 156(3) Cr.P.C. before the Panchkula Courts, Haryana and thus, the above said judgment would not further the case of respondent no.2.

43. **<u>Ground no.2:</u> Offences under Sections 406, 409, 420, 465, 467, 468, 471 and 120-B IPC under which the impugned FIR has been registered, are not made out in the present case.**

Before adverting to the facts of the present case, it is relevant to take note of two judgments of the Hon'ble Supreme Court of India. The first judgment is ***Md. Ibrahim's*** case (supra)**.** The relevant portion of the said judgment is reproduced hereinbelow:-

> *"2. Second respondent herein filed a complaint against appellants 1 to 3 (accused 1 to 3) and two others before the Chief Judicial Magistrate, Madhubani, alleging that he was the owner of Katha No. 715 Khasra No. 1971 and 1973 admeasuring 1 bigha, 5 Katha and 18 Dhurs; that the first accused who had no connection with the said land and who had no title thereto, had executed two registered sale deeds dated 2.6.2003 in favour of the second accused in respect of a portion of the said land measuring - 8 Khatas and 13 Dhurs; and that the third,*

fourth and fifth accused being respectively the witness, scribe and stamp vendor in regard to the sale deeds had conspired with accused 1 and 2 to forge the said documents; and that when he confronted accused 1 and 2 about the said forgery, they abused him and hit him with fists and told him that he can do what he wanted, but they will get possession of the land on the basis of the said documents.

3. The learned Magistrate by order dated 19.7.2003 took cognizance of the offences under sections 323, 341, 420, 467, 471 and 504 of Indian Penal Code (for short, 'the Code') and referred the complaint for investigation under section 156(3) of the Code of Criminal Procedure (for short, 'Criminal Procedure Code'). On the basis thereof a First Information Report was registered on 10.10.2003 with Pandaul Police Station. After investigation, a charge sheet came to be filed on 4.9.2004.

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7. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See : G. Sagar Suri v. State of U.P., 2000(1) RCR (Criminal) 707 : [2000(2) SCC 636] and Indian Oil Corporation v. NEPC India Ltd., 2006(3) RCR (Criminal) 740 : 2006(2) Apex Criminal 637 : [2006(6)

SCC 736]. Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

8. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below :

> *"464. Making a false document. - A person is said to make a false document or false electronic record –*
>
> *First. - Who dishonestly or fraudulently –*
>
> *(a) makes, signs, seals or executes a document or part of a document; (b) makes or transmits any electronic record or part of any electronic record;*

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly. - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was

made by the person in his lifetime, may amount to forgery.

[Note : The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories :

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

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

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

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document

claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. ***It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not***

his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted.

Section 420 Indian Penal Code

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows : (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not

*by the purchaser. On the other hand, the purchaser is made a co-accused**. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.***

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It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

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18. The averments in the complaint if assumed to be true, do not make out any offence under sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under section 341 and causing hurt under section 323 of Indian Penal Code. 19. For the reasons stated above, the appeal is allowed in part. The order of the High Court is set

> *aside. The order dated 14.12.2005 of the learned Sub-Divisional Magistrate is quashed insofar as offences under sections 420, 467, 471 and 504 Indian Penal Code. Consequently, the charges framed under those sections are also quashed. The order dated 14.12.2005 and the charges in so far as the offence under sections 323 and 341 Indian Penal Code are left undisturbed. The appeal is allowed in part accordingly."*

A perusal of the above judgment would show that the same was a case where an FIR had been registered on an application moved under Section 156(3) Cr.P.C. on the allegations that the first accused who had no connection with the land nor entitled thereto, had executed two registered sale deeds in favour of the second accused. It was held that neither the offence of forgery was made out nor the complainant, who was the owner of the property, was entitled to get an FIR registered under Section 420 IPC. It has been held that in a case where a person has merely acted fraudulently, it cannot be assumed that he has committed an offence punishable under the Code unless that fraudulent act is specified to be an offence under the Code or punishable under any other law. After examining the provisions of Sections 463, 464, 467, 471 IPC and related provisions, it has been observed by the Hon'ble Apex Court that even in case a person dishonestly or fraudulently claims a property to be owned by him and knows that it is not his property and yet executes a sale deed, he cannot be stated to have made a false document so as to constitute the offence of forgery as it is not sufficient that the document has been made or executed dishonestly or fraudulently and that in order to constitute the offence of forgery, there is a further requirement that it should have been made with the intention of causing it to be believed that such a document was made or executed by or by the

authority of a person, by whom or by whose authority he knows that it was not made or executed. It was further observed that when a document executed by a person claiming a property to be his, is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else and thus, the execution of a document purported to convey some property of which he is not the owner, is not execution of false document as defined under Section 464 of the Code and if, what is executed is not a false document then it cannot be said that forgery has been committed and thus, neither the offence under section 467 nor section 471 would get attracted. The above judgment of the Hon'ble Supreme Court has been followed by the Hon'ble Supreme Court in ***Sheila Sebastian's*** case (supra)**.** The relevant parts of which are reproduced hereinbelow:-

> *"The complainant alleges that, accused no. 1, (R. Jawaharaj), with the aid of an imposter who by impersonating as Mrs. Doris Victor created a Power of Attorney (hereinafter 'PoA') in his name as if he was her agent. It was further alleged that, using the aforesaid PoA the accused no. 1, attempted to transfer the property of complainant by executing a mortgage deed in favour of accused no. 2, (Rajapandi) for a sum of Rs.50,000/-. After getting the information about the aforesaid transaction, the owner of the property Mrs. Doris Victor gave a complaint to the police which was subsequently registered as FIR dated 14.03.1998.*
>
> *xxx xxx xxx*
>
> *3. The learned Judicial Magistrate framed charges against accused no. 1 for the alleged offences punishable under Sections 420,423 and 465, IPC and against the accused no. 2 for the offences under Sections 424 and 465 read with 109, IPC. Both the accused were tried by the learned Judicial Magistrate at Valliyoor in C.C. No: 62/1999, wherein accused no. 1 was convicted under*

Section 465, IPC and was sentenced to undergo 2 years of simple imprisonment and to pay a fine of Rs. 5,000/- and accused no. 2 was sentenced to undergo simple imprisonment for a period of 1 year and to pay a fine of Rs. 2,000/- for the offences under Section 465 read with Section 109, IPC vide order dated 12.03.2003. 4. Aggrieved by the same, the Respondents— Accused appealed before the Ld. Sessions Judge at Tirunelveli by way of Criminal Appeal Nos. 72 & 78 of 2003, which ended up in dismissal by upholding the order of conviction.

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7. The counsel for the appellant submits that, the High Court failed to appreciate the material placed on record and acquitted the respondent solely on the basis that their signatures are not found on the forged document. According to the appellant, this is an erroneous interpretation of Section 464 of IPC which mandates that anyone who makes a false document is guilty of forgery. The respondents allegedly created the forged power of attorney with the sole intention of grabbing the property belonging to Mrs. Doris Victor.

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13. PW 4 (Ms. Latha) was the Sub Registrar when the accused persons came with the imposter for the registration of the Power of Attorney. During the registration, along with the imposter, accused no. 2 Rajapandi put his signature as a witness. The left hand thumb impression of the imposter was maintained in the office of Sub Registrar. The original Power of Attorney was received by the accused no. 1 Jawaharaj who put his signature on the same.

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16. PW 8 (Mr. Albonse Xavier), a finger print recording inspector, has testified that the fingerprints present on

the alleged forged Power of Attorney do not match with that of Doris Victor.

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19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete 20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in Dickins v. Gill, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

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22. In Md. Ibrahim (supra), this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation

of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

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25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of "false document" is a part of the definition of "forgery". Both must be read together.

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29. Although we acknowledge the appellant's plight who has suffered due to alleged acts of forgery, but we are not able to appreciate the appellant's contentions as a penal statute cannot be expanded by using implications. Section 464 of the IPC makes it clear that only the one who makes a false document can be held liable under the aforesaid provision. It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation. The contentions of the appellant are contrary to the provision and contrary to the settled law."

A perusal of the above judgment would show that the same was a case where an imposter was produced for creating a power of attorney and

it was alleged that forged power of attorney had been prepared with the sole intention of grabbing the property of Doris Victor and even the finger prints present on the alleged power of attorney did not match with that of Doris Victor (complainant therein) even so, the Hon'ble Supreme Court of India upheld the acquittal of the accused persons and after considering the ratio of law laid down in ***Md. Ibrahim's*** case (*supra*), held that the offence of forgery cannot lie against the person who has not created or signed the document and for constituting offence under Section 464 IPC, it is imperative that a false document is made and that the accused person is the maker of the said false document. Even the plight of the person who had suffered due to the alleged act of forgery was noticed, but it was observed that a penal statute cannot be expanded by use of implications.

44. When applying the ratio of law laid down in the above said judgments to the facts of the present case, it would be apparent that even in case the allegations leveled in the complaint are taken on its face value then also, offences under Sections 465, 467, 468 and 471 IPC are not made out. The case of the petitioners is on the same footing as the case of the accused India in ***Md.Ibrahim's*** case (*supra*) and is on a higher footing than the case of the accused in ***Sheila Sebastien's*** case (supra). The judgment of the Hon'ble Supreme Court had considered Sections 467, 471 as well as Sections 464 and 470. The present FIR has been registered under Section 465 and 468, in addition to the sections which were under consideration in ***Md. Ibrahim's*** case (*supra*). Section 465 and Section 468 are reproduced hereinbelow:-

> *"465. Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

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468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

A perusal of the above would show that in both the sections, i.e., Sections 465 and 468 IPC, the term forgery has been used. The definition of forgery is provided in Section 463. Section 463 starts with the clause "whoever makes any false document". The definition of false document has been provided under Section 464. Thus, the principles of law laid down in ***Md.Ibrahim's*** case (*supra*) with respect to the offence under Sections 467, 471 IPC would also apply with respect to offences under Sections 465 and 468 IPC.

45. <u>(I). Applying the above-stated principles to the allegations with respect to the documents alleged to be forged:</u>

i) C-9, C-10 and C-12

Learned counsel for respondent no.2 in order to make out a case for forgery, has relied upon C-9, C-10 and C-12 (annexed with the application/complaint under Section 156 (3) Cr.P.C. which has been placed on record as Annexure R-2/8 by respondent no.2). A perusal of the said documents would show that the same cannot be stated to be false documents so as to constitute the offence of forgery. It is the case of respondent no.2 that Optum Inc., which is a US based company, had issued certificates certifying that United Health Group Information Services Private Limited (UHGIS) had executed a turnkey project in the year 2009, which was stated to be on going and it contained the name of

John Santelli, whose designation had been given as Chief Information Office, Optum and the date of issuance of the said document (C-9) has been mentioned as 14.02.2014. Further from the document C-9, reference has been made to the date of commencement of the project which is stated to be “since 2009”. Even in the document C-10, which is also a certificate issued by Optum Inc., American entity in favour of UHGIS, similar facts have been highlighted with the only difference being that in the said case, turnkey project is stated to have started from the year 2008. Reference has also been made to C-12 to show that the document states that Optum Inc. was founded on 17.09.2009 and on the basis of the said document, it has been argued that the said certificates are forged and fabricated. It has also been submitted that John Santelli is not the Chief Information Officer of Optum. With respect to the above aspect of forgery, reference has been made to paragraph 9 of the application under Section 156(3) Cr.P.C. (page 542). This Court has considered the said argument raised by the learned counsel for respondent no.2 and is of the opinion that the offences under Sections 465, 467, 468 and 471 IPC will not be made out for the following reasons:-

1.1) Annexure C-12 annexed with the present application under Section 156 (3),cannot be stated to be a document certifying the date of incorporation of Optum Inc. and does not inspire much confidence.

1.2) Even if the document C-12 is taken to be genuine and the argument of learned counsel for respondent no.2 to the effect that the said company i.e., Optum Inc was incorporated on 17.09.2009, is taken on face value then also, a perusal of the documents C-9 and C-10 would show that it has not even been alleged that the document was made or executed by some other person or by the authority of some other person by whom or

by whose authority it was not made or executed. In fact, as per the allegations made in paragraph 9 of the complaint (Page 452) it is the case of the complainant himself that the said document has been prepared by John Santelli. John Santelli or any other person has not stated that the said document does not bear his signature. It is not the case of the complainant that the said document shows that it has been made or signed by a person who actually has not made or signed the same.

1.3) Respondent no.2 could not point out even a single statement in the said documents which could be stated to be false. A perusal of the document would show that it has nowhere been stated that the project in the year 2009/2008, which was being executed by UHGIS, was being executed under Optum Inc. Learned counsel for respondent no.2 has not referred to any document to show that John Santelli was an employee of UHGIS. At any rate, whether John Santelli is or is not the Chief Information Officer would not be a relevant factor to assess if offences under Sections 406, 409, 420, 465, 467, 468, 471 IPC have been made out or not.

1.4) Even if all the allegations levelled by respondent no.2 are taken on face value, then also, since it has not been alleged by respondent no.2 that any signatures on the documents / experience certificate have been forged or that the said document was made or executed by some other person or by the authority of some other person, by whom or by whose authority it has not been executed, the offence of forgery would not be made out. It is not even the allegation of respondent no.2 that there is any alteration much less, of any material part, without lawful authority or that the document has been executed dishonestly or fraudulently from a person of unsound mind or an intoxicated person or by using means of deception.

As per the law laid down in ***Md. Ibrahim's*** case (*supra*), offence of forgery would be committed in case a document is shown to be signed by "A" or by his authority and it is alleged/prima facie shown that it does not bear his signature or it is not by his authority. The same is not the case of Respondent no. 2 and thus, offence of forgery is not made out. It would be further relevant to mention that in the documents C-9 and C-10, the learned counsel for respondent no.2 could not highlight any false averment. In the documents C-9 and C-10, it has nowhere been stated that the projects had started in 2009 /2008 under the aegis of Optum Inc or that the Optum Inc was connected with the said project right from its inception. Thus, even if the Optum Inc was incorporated on 17.09.2009 and there was a mention that UHGIS was carrying out a project since the year 2008/2009, then also, it cannot be stated that the said certificates bear false statements. The same can be best explained by the following example:- in a case where, a person "A" certifies that a person "B" has been working as a lawyer for the last 10 years in the office of "A" who, himself has been practicing as lawyer and that "B" had started practice with "A" and had been assisting him from the very first day of his practice, would be different from "A" certifying that "B" had been working as a lawyer for the last 10 years. In the former situation, if it is found that "A" himself has been a lawyer only for the last 8 years, then it could be alleged that a false statement has been made by "A" but however, the same cannot be stated to be a false statement in the latter situation as "A" had merely stated that "B" has been working as a lawyer for the last 10 years. The facts of the present case depict the latter position as has been stated above. Furthermore, even if there is a false statement in the said certificates C-9 and C-10, then also by applying the

law laid down by the Hon'ble Supreme Court of India in ***Md.Ibrahim's*** case (*supra*), it cannot be stated that the said documents are "false documents" as none of the ingredients as mentioned in paragraph 10 of the said judgment are even remotely made out.

1.5) Further as per the judgment in ***Sheila Sebastian's*** case (*supra*), for constituting an offence under Section 464 IPC, it is imperative that there should be a false document and that the accused person should be the maker of the false document and in case the said twin conditions are not met, then, a person could not be stated to be liable for the offence of forgery. In the present case, apart from the fact that the documents in question cannot be said to be false document, none of the petitioners, other than John Santelli, as per the case of respondent no. 2, are the persons who had prepared the said documents. It has not even been remotely alleged by respondent no.2 that John Santelli has not signed the same or that his signatures are forged. Thus, no false document has been prepared within the meaning of Section 464 IPC and thus no offence under Sections 465, 467, 468 and 471 IPC is made out. No other document has been alleged to be forged / fabricated by respondent no.2.

1.6) In the complaint/ application under Section 156(3) Cr.P.C. in paragraph 2, reference has been made to the order dated 20.03.2017, passed by the National Company Law Tribunal, Hyderabad Bench at Hyderabad and the same is annexed as Annexure C-2 along with the complaint/ application under Section 156 (3) Cr.P.C. The relevant portion of the said order is reproduced hereinbelow:-

"BEFORE THE NATIONAL COMPANY LAWTRIBUNAL HYDERABAD BENCH AT HYDERABAD

COMPANY PETITION Nos. 361 of 2016

CP (TCAA) Nos.34/HDB/2017

DATE OF ORDER: 20.03.2017

In the Matter of Companies Act, 1956 (1 of 1956)

AND

In the Matter of Scheme of Amalgamation

AND

In the Matter of United Health Group Information Services Private Limited (Transferor Company)

WITH

In the Matter of Optum Global Solutions (India) Private Limited (Transferee Company)

AND

Their Respective Shareholders and Creditors

xxx xxx xxx

2. UnitedHealth Group Information Services Private Limited (hereinafterreferred to as UHGISPL/The Transferor Company) was incorporated on ***22nd July, 2002.*** *The authorised share capital of the Transferor Company is Rs. 1,37,87,50,000/- (One Hundred and Thirty Seven Crores Eighty Seven Lakhs Fifty Thousand only) divided into 1,00,00,000/- equity shares of Rs. 10/- each 12,78,75,000 optionally convertible cumulative redeemable participatory preference shares of Rs.10/- each and the issued subscribed and paid up share capital of the Transferor Company is Rs. 10,00,00,000/- (Ten crores only) divided into 1,00,00,000 equity shares of Rs. 10/- each and the entire share capital is held by the Transferee Company and its nominee.*

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10. The Official Liquidator has filed his report dated 17.01.2017,stating that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to public interest."

A perusal of the above order would show that in paragraph 2, it has been specifically stated that United Health Group Information Services Pvt. Ltd. (UHGIS) was incorporated on 22.07.2002. The experience certificate in question states that the said company had commenced the projects in the year 2008-09. Thus, the starting point of the said projects are subsequent to the date of incorporation of the above said company, which is 22.07.2002. The transferee company in the above said case in any case was Optum Global Solution India Limited (Optum India) and not Optum Inc (Optum US).

46. <u>(II). With respect to the allegations in the FIR to the effect that the bidder / petitioner-company did not fulfill the requirement of clause 4.3 of volume II of the RFP, inasmuch as, it had not been shown that they had a turnover of Rs.100 crore for the period of each relevant year i.e., 2008-09, 2009-10 and 2010-11, the following points are required to be taken note of:-</u>

2.1) The said allegation would not constitute any offence much less, the offence of forgery as there is no allegation to the effect that the balance sheet/ profit and loss accounts or any document with respect to the same, have been forged and/or fabricated.

2.2) The clause which contains the said condition, i.e., condition mentioned in para 4.3, has been reproduced in paragraph 6 of the present complaint and the relevant portion of paragraph6 of the said complaint/application under Section 156(3) Cr.P.C. is reproduced hereinbelow:-

> *"The Sr. No. 7 & 8 of para 4.3 (supra)(copy of the extract of tender document containing the above relevant conditions embodies in their RFP Request for Proposal is annexed herewith as Annexure C-4:*

> *a) The Bidder should have an annual turnover of at least Rs.100. Crores from the IT Business and operations during the last 3 financial years i.e**2010-2013** with positive net worth and profitability in last 2 years."*

The relevant portion of para 23 of the complaint/application under Section 156(3) Cr.P.C wherein, allegations with respect to the non-compliance of the said clause have been made, is reproduced hereinbelow: -

> *"23.That further the complainant has throughout maintained in his various complaints at every forum that the accused no.1 has not submitted any document till date which shows that it has fulfilled the requirement of the HSHRC that it should have a Rs. 100 crore turnover in each year i.e. in **2008-2009, 2009-2010 and 2010-2011** that too in the field of system integration. Instead the accused no.1, as already stated, has produced 3 spurious' experience certificates', which, as asserted by the complainant are in any case fabricated."*

A perusal of the above would show that although, the said 100 crore turnover is required for the financial year 2010-13 but the allegations have been made with respect to years 2008-09, 2009-10 and 2010-11. No allegation has been made with respect to the years 2011-12 and 2012-13. The allegations made regarding 2008-09 and 2009-10 are thus, irrelevant. Respondent no.2 has placed on record Annexure R-2/8, which is stated to be copy of application under Section 156(3) Cr.P.C. along with the annexures and a perusal of the same would show that with respect to the statements of profit and loss account for the year ending 31.03.2012, although pages containing up to note no.13 have been annexed but the subsequent page, which contains the relevant note no.15, has not been annexed. The petitioners have placed on record a complete copy of the said balance sheet, profit and loss accounts along with the auditor's report and the same is

Annexure P-32. The relevant portion of the statement for 31.03.2012 is reproduced hereinbelow:-

"UNITEDHEALTH GROUP INFORMATION SERVICES PRIVATE LIMITED
STATEMENT OF PROFIT AND LOSS FOR THE YEAR ENDED 31 MARCH, 2012

Particulars	Note No.	Year ended 31.03.2012 (Rupees)	Year ended 31.03.2011 (Rupees)
A. CONTINUING OPERATIONS			
1. **Revenue from operations**	15	**6,325,641,384**	**4,356,682,170**
2. Other income	16	160,400,186	13,056,592
3. Total revenue (1+2)		6,486,041,570	4,369,738,762

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UNITEDHEALTH GROUP INFORMATION SERVICES PRIVATE LIMITED
NOTES FORMING PART OF THE FINANCIAL STATEMENTS

Particulars	Year ended 31.03.2012 (Rupees)	Year ended 31.03.2011 (Rupees)
Note 15- Revenue from operations		
a. Sale of services (Refer Note (i) below)	6,325,641,384	4,356,682,170
Note:		
1. Sale of services comprises: (Refer Note 21.2)		
a. **Information Technology services**	4,073,367,817	2,924,122,694
b. Information Technology enabled services	2,251,690,603	1,429,067,283
c. **Data Analytics Services**	582,964	3,492,193
Total	6,325,641,384	4,356,682,170"

A perusal of the above would show that the criteria of Rs.100 crore has been *prima facie* met. Similar is the position with respect to the subsequent financial year as is apparent from the relevant portion of the balance sheet / profit and loss accounts along with the with auditor' report (Annexure P-32). The relevant portion of the same is reproduced hereinbelow:-

"United Group Information Services Private Limited
Statement of profit and loss for the year ended March 31, 2013
(Amount in Rs. unless otherwise stated

Particulars	Notes	March 31, 2013	March 31, 2012
Income			
Revenue from operations	17	8,990,874,581	6,325,641,384
Other income	18	120,978,359	460,400,186
		9,11,852,940	6,486,041, 570

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"United Group Information Services Private Limited

Summary of significant accounting policies and other explanatory information to the financial statements for the year ended March 31, 2013

(Amount in Rs. unless otherwise stated

Particulars	March 31, 2013	March 31, 2012
17 Revenue from operations		
Sale of services (Refer note below)	8,990,874,581	6,325,641,384
	8,990,874,581	6,325,641,384
Note:		
Sale of services comprises: (Refer note 28)		
Information technology services	4,831,481,686	4,073,367,817
Information technology enabled services	4,159,392,895	2,251,690,603
Data analytics services		582,964
	8,990,874,581	6,325,641,384

47. (III) Memorandum of Association

With respect to the amendment in the memorandum of association, it is not the allegation of respondent no.2 that the said documents have been forged or fabricated or that the resolution dated 29.04.2014 on the basis of which, the said amendment has been made is a forged or a fabricated document. Thus, even with respect to the Memorandum of Association, no criminal offence is made out.

48. This Court has to now consider whether Sections 406, 409 and 420 IPC are attracted in the present case or not. Sections 405, 406, 409, 415 and 420 IPC are reproduced hereinbelow:-

"Section 405 in The Indian Penal Code

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Section 406 in The Indian Penal Code

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 409 in The Indian Penal Code

409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 415 in The Indian Penal Code

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Section 420 in The Indian Penal Code

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed

or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Criminal breach of trust, which is the necessary ingredient of Section 406 and 409 IPC, has been defined in Section 405 IPC. The necessary ingredients of Section 405 IPC are detailed hereinbelow:-

i) A person must be entrusted with a property or with dominion over any property.

ii) The said person has to dishonestly misappropriate or convert to his own use that property or dishonestly use or dispose of that property in violation of any direction of law etc.

In the present case, there is no allegation levelled in the complaint to the effect that the petitioners have been entrusted with any property or dominion over any property and in pursuance of the entrustment have dishonestly misappropriated or converted the same to their own use or have dishonestly used and disposed of the same in violation of any direction of law etc. Thus, the ingredients of Section 405 IPC are not made out.

Section 406 IPC only provides for punishment of offence under Section 405 and will come into play only once the offence of criminal breach of trust is made out.

Section 409 IPC stipulates the offence of criminal breach of trust by public servant or by banker, merchant or agent. It has not been alleged by the complainant that any of the petitioners were entrusted with property in their capacity as public servant or as banker, merchant, factor, broker, attorney or agent, thus, the said offence is not attracted to the facts of the present case. Argument of learned counsel for respondent no.2 / complainant that the complainant was an employee of Optum India and

therefore, the said section is attracted is completely misconceived as firstly, the allegations in the application under Section 156 (3) Cr.P.C. on the basis of which prayer has been made for the registration of an FIR, are with respect to the tender floated by HSHRC and not with respect to the dispute between the company and respondent no.2, i.e., employer and ex-employee. Secondly, it is not even the case of respondent no.2 that he had entrusted any property etc. to the petitioners which has been misappropriated.

49. With respect to the offence under Section 420 IPC, it is relevant to note that for the commission of the said offence, there has to be cheating. The offence of cheating has been defined in Section 415. Necessary ingredients for the said offence of cheating have been detailed hereinbelow:-

i) A person must deceive another person fraudulently or dishonestly.

ii) A person so deceived must deliver any property to any person or to consent that any person shall retain any property or intentionally induce the person so deceived to do or omit to do anything, which he would not do or omit if he was not so deceived.

iii) Such act or omission would cause or is likely to cause damage or harm to that person in body, mind, reputation or property.

It is not the case of respondent no.2 that the petitioners had deceived the complainant either fraudulently or dishonestly and had induced him to deliver any property to any person and such act or omission has caused any damage or harm to respondent no.2. The Hon'ble Supreme Court in ***Md.Ibrahim's*** case (*supra*) had observed that with respect to the offence of cheating, i.e., Section 420, the person who has been cheated has to get the FIR registered and even in a case, where the owner of property had come to

the Court and had complained that his house had been sold by accused no.1 to accused no.2 therein, it had been observed by the Hon'ble Supreme Court that offence under Section 420 IPC would not be made out as it was not the case of the complainant therein that any of the accused tried to deceive him by making false or misleading representation or by any other action or omission, nor it was the case of the complainant therein that the accused persons made any fraudulent or dishonest inducement to deliver any property. Thus, the judgment in **Md.Ibrahim's** case (*supra*) applies with full force to the facts of the present case. Even the offence of cheating under Section 420 IPC is not made out on the allegation made in the complaint as per the ratio of law in the said judgment. Moreover, it has been repeatedly held that Sections 406 and 420 IPC are mutually destructive being anti-thesis of each other and thus, the registration of FIR under both the provisions displays the non-application of mind during passing of the impugned Order.

50. <u>Ground no.3:Non-Compliance of law laid down by the Hon'ble Supreme Court inPriyanka Srivastava's case (*supra*) and in Babu Venkatesh's case (supra)</u>

The law laid down by the Hon'ble Supreme Court of India in ***Priyanka Srivastava's*** case (*supra*) has not been followed inasmuch as, admittedly no complaint/application has been filed under Section 154(1) Cr.P.C. to the Officer Incharge of the Police Station Sector 5, Panchkula in the present case nor the provisions of Section 154(3) Cr.P.C. have been complied with as admittedly no complaint has been given to the Superintendent of Police of the area concerned.

Before coming to the facts of the present case, it is relevant to take a note of Section 154(1) and 154(3) Cr.P.C. The relevant part of which is reproduced hereinbelow:-

> *"**Section 154(1) in The Code Of Criminal Procedure, 1973***
>
> *(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> ***Section 154(3) in The Code Of Criminal Procedure, 1973***
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*

51. The Hon'ble Supreme Court of India in ***Priyanka Srivastava's*** case (*supra*), after considering all the relevant provisions and other aspects, has held as under:-

> *"1. The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively*

design in a nonchalant manner to knock at the doors of the Court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the Court at their own wild and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurise in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount.

xxx xxx xxx

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be
made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant forgiving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere,

> ***matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/ laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.***
>
> *xxx xxx xxx*
>
> *35. A copy of the order passed by us be sent to the learned Chief Justices of all the High Courts by the Registry of this Court so that the High Courts would circulate the same amongst the learned Sessions Judges who, in turn, shall circulate it among the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) Cr.P.C."*

A perusal of the above-reproduced provisions as well as the above-said judgment would show that it has been mandated under Section 154(1) of the Code that every information relating to the commission of a cognizable offence is to be given to the officer Incharge of the police station having jurisdiction. In the present case, the said officer Incharge would be Incharge of Police Station Sector 5, Panchkula as has been admitted by the all the contesting parties. It has further been provided in Section 154(3) Cr.P.C. that any person who is aggrieved by refusal on the part of the police in charge of a Police Station to record the information referred to in sub section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, in case is satisfied that such information discloses the commission of a cognizable offence, has the power to investigate the case himself or to direct an investigation. The Hon'ble Supreme Court of India in the above said judgment, after noticing a

trend of frivolous applications being filed under Section 156(3) Cr.P.C. as a matter of routine and without even first complying with the mandatory provisions of Section 154(1) and 154(3) Cr.P.C., has observed that the power under Section 156(3) C.r.P.C. warrants application of judicial mind since a court of law is involved in the same and a litigant, at his own whim, cannot invoke the authority of the Magistrate and when litigators take this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same. It was further directed that it would be mandatory to first comply with the stipulations under Sections 154(1) and 154(3) before filing an application under Section 156(3) Cr.P.C. and both the said aspects should be clearly spelt out in the application and necessary documents in support of this aspect are also to be filed. It was further directed that application under Section 156(3) Cr.P.C. should be supported by an affidavit so that in case, the averments made in the complaint are found to be false then the complainant could be prosecuted in accordance with law. The same would also help and assist the Magistrate in becoming aware of the delay in lodging of the FIR. The copy of the said judgment was ordered to be circulated amongst learned Magistrates all over the country so that they could remain more vigilant and diligent while exercising their powers under Section 156(3). The said judgment had been passed prior to the passing of the said impugned order.

52. The judgment in ***Priyanka Srivastava's*** case (*supra*) has been followed by the Hon'ble Supreme Court of India in judgment dated 18.02.2022 passed in Criminal Appeal no.252 of 2022 titled as ***Babu Venkatesh's*** case and connected matters in which case the Hon'ble Supreme Court of India has held as under:-

"25. This court has clearly held that, a stage has come where applications under section 156 (3) of Cr.P.C., 1973 are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

26. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The court has noted that, applications under section 156 (3) of the Cr.P.C., 1973 are filed in a routine manner without taking any responsibility only to harass certain persons.

27. This court has further held that, prior to the filing of a petition under section 156 (3) of the Cr.P.C., 1973 there have to be applications under section 154 (1) and 154 (3) of the Cr.P.C., 1973 This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under section 156 (3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

28. In the present case, we find that the learned Magistrate while passing the order under section 156 (3) of the Cr.P.C., 1973 has totally failed to consider the law laid down by this court.

29. From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under section 156 (3) of the Cr.P.C., 1973 The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of Priyanka Srivastava v. State

> *of U.P. (supra), and has dismissed the petitions by merely observing that serious allegations are made in the complaint.*
>
> *30. We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law.*
>
> *31. We therefore, allow these appeals and set-aside the judgments and orders of the High Court dated 22nd January 2021, passed in Criminal Petition Nos. 6719/2020, 6729/2020, 6733/2020 and 6737/2020. Consequently, the FIR Nos. 255/2019, 256/2019 filed on 16th December, 2019, FIR No. 257/2019 filed on 17th December, 2019 and FIR No. 258/2019 filed on 18th December, 2019 registered with Jayanagar Police Station, Bengaluru City are quashed and set aside. Pending application(s), if any, shall stand disposed of."*

A perusal of the above-reproduced judgment would show that it has been reiterated that the provisions of Section 154(1) and 154(3)C.r.P.C. are necessarily required to be complied with, prior to the filing of the application/complaint under Section 156(3) Cr.P.C. and even the affidavit is necessarily required to be filed and since the Magistrate while passing the order under Section 156(3) Cr.P.C. had failed to consider the law laid down in ***Priyanka Srivastava's*** case (*supra*) and even the High Court had failed to take into consideration the legal position, thus, the appeals were allowed and the criminal proceedings were quashed by the Hon'ble Supreme Court.

53. With respect to the above-said aspect, learned counsel for respondent no.2 has very fairly submitted that no complaint/application has been filed in the present case to the Officer Incharge of the Police Station or even to the Superintendent of Police as has been envisaged under Sections 154(1) or 154(3) Cr.P.C.

The fact that even the Chief Judicial Magistrate had not considered the non-compliance of the judgment of the Hon'ble Supreme court in ***Priyanka Srivastava's*** case (*supra*) case is apparent from the various zimni orders which were passed by the Court prior to the passing of impugned order and which have been placed on record by Respondent no. 2 in his reply. The said zimni orders are reproduced hereinbelow:-

> "*Present: Shri Sameer Sachdev, Advocate for complainant*
>
> *Complaint under Section 156(3) Cr.P.C. filed and it be checked and registered. Arguments for sending the present file for registration of FIR under Section 156(3) Cr.P.C. have been advanced.*
>
> *Learned counsel for the complainant forcefully argued that the accused in collusion with each other has forged the documents and has obtained the contract/tender floated by Haryana State Health Resources Centre, therefore, appropriate action be taken under Section 156(3)Cr.P.C.*
>
> *Heard. Gone through the case file meticulously.*
>
> *It is pertinent to mention that guidelines are laid down with respect of invoking provisions of Section 156(3) Cr.P.C. by Hon'ble Delhi High Court in Subhkaran Luharuka vs. State, (170) 2010 DLT516wherein it is stated that*
>
> ***(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO,***

(ii) or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

Drawing strength from above stated observation status report is hereby called upon from the SHO concerned to be filed on or before 15.09.2021.

Date of Order: 31.08.2021 *(Nitin Raj)*
CJM/PKL
HR0287

xxx xxx xxx

Present:- Shri S.K Bairagi, Ld. APP for the State.
Shri Sameer Sachdev, Advocate for complainant.

Learned counsel for the complainant further tendered the documents. Status report has been filed Arguments partly heard. Now, to come up on 17.09.2021 for further argument.

Date of Order: 15.09.2021 *(Nitin Raj)*
CJM/PKL
HR0287

xxx xxx xxx

Present: Sh. Sameer Sachdev, learned counsel for complainant.

ORDER

Arguments heard. The perusal of the status report filed by the Investigating Officer, it is revealed that a complaint based on same facts/allegations has also been filed before M.D. Haryana Medical Services Corporation, Haryana and an inquiry is being conducted in the same. Therefore, before proceeding further in the present complaint, court deems fit to summon the documents pertaining to the said inquiry from the concerned Department, under Section 91 of Criminal Procedure Code,1973. Thus, Managing Director, Haryana

Health Medical Services Corporation, Haryana is hereby directed to send the complete record pertaining to the said inquiry in sealed cover by deputing a responsible officer, irrespective of the fact whether inquiry has been completed or not, on or before 5.10.2021.

Dated: 17.9.2021 *(Nitin Raj)*
Chief Judicial Magistrate,
Panchkula.

xxx xxx xxx

Present: Shri S.K Bairagi, Ld. APP for the State.
Shri Sameer Sachdev, Advocate for complainant.

Status report in compliance of order dated 17.09.2021 duly received from the Managing Director Health Medical Service Corporation Limited. It has been stated that vide memo No. 49/116/2019-4V-1 dated01.07.2020 of Government of Haryana matter was handed over to Chief Vigilance Officer of the Health Department Haryana for Inquiry. Accordingly, the record pertaining to the same was sent to the Additional Chief Secretary, Health Department, Haryana on 28.08.2020 for onward transmission to Additional Director General Health Services-cum-Chief Vigilance Officer, Health Department, Haryana.

In view of the same documents pertaining to the said inquiry be summoned under Section 91 of Code of Criminal Procedure, 1973 from Director General Health Services, Haryana, who is hereby directed to send the complete record pertaining to the said inquiry in sealed cover, by deputing a responsible officer, irrespective of the fact whether inquiry has been completed or not, on or before 19.10.2021. Ahlmad is directed to attach copy of order with summons.

(Nitin Raj)
CJM/PKL
Date of Order: 05.10.2021 *HR0287*

xxx xxx xxx

Present: Shri S.K Bairagi, Ld. APP for the State.
Shri Sameer Sachdev, Advocate for complainant.
Dr. Bavnish Arora, Deputy Director HSHRC, Sector6, Panchkula in person.

In pursuance of order dated 05.10.2021, Dr. Bavnish Arora, Deputy Director HSHRC, Sector 6, Panchkula appeared and suffered a statement that he will produce the enquiry record on 25.10.2021. His separate statement to this effect recorded. Heard. Now, to come up on 25.10.2021 for the said purpose.

(Nitin Raj)
CJM/PKL
HR0287

Date of Order: 19.10.2021

xxx xxx xxx

Present: Shri S.K Bairagi, Ld. APP for the State.
Shri Sameer Sachdev, Advocate for complainant.
Dr. Bavnish Arora, Deputy Director HSHRC, Sector 6, Panchkula in person.

Dr. Bavnish Arora, Deputy Director HSHRC, Sector 6, Panchkula appeared and suffered a statement that as per order dated 05.10.2021 he has submitted the sealed report in this case. His separate statement to this effect recorded. Heard. Now, to come up on 23.11.2021 for consideration.

(Nitin Raj)
CJM/PKL
HR0287

Date of Order: 25.10.2021

xxx xxx xxx

Present:- Ms. Monika Boora, Ld. APP for the State.
Shri Sameer Sachdev, Advocate for complainant.

Arguments not advanced. A date is requested by learned counsel for the complainant. Heard. Allowed. Now, to come up on 15.12.2021 for consideration.

(Nitin Raj)
CJM/PKL
HRO287

Date of Order: 23.11.2021"

A perusal of the above zimni orders would show that although at the time of passing order dated 31.08.2021, the Chief Judicial Magistrate, Panchkula, had specifically noticed the judgment of Delhi High Court which required the Magistrate to ensure that before coming to the Court, the complainant approached the police officer Incharge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the cognizable offence and also should examine as to what action has been taken by the SHO or even by the officer under Section 154(3) Cr.P.C. but however, the subsequent zimni orders as well as the impugned order would show that no observation had been made with respect to any complaint having been filed by respondent no.2 to the officer Incharge of concerned police station, i.e. Sector 5 Panchkula or to the Superintendent of Police, nor any reference has been made as to what action has been taken in case any such complaint had been filed. Even a perusal of the application under Section 156(3) of the Cr.P.C. would show that there is no reference to any complaint/application filed under Section 154(1) or under Section 154(3) and thus, the impugned order as well as subsequent proceedings including registration of the FIR, deserve to be set aside /quashed on the said ground alone, being in blatant violation of the ratio of law laid down in ***Priyanka Srivastava's*** case (*supra*) followed in ***Babu Venkatesh's*** case (supra).

54. Learned counsel for respondent no.2 has attempted to overcome the said legal objection raised against him by stating that he had made a complaint to the Director General of Police dated 11.02.2020 (P-24) (page

508) and further submitted that the said report percolated down to the Economic Offences Wing, which had submitted its interim report dated 01.09.2020 and the same has been taken note of in the impugned order. The said aspect even if taken to be true, cannot be considered to be strict compliance of the judgment of the Hon'ble Supreme Court of India in ***Priyanka Srivastava's*** case (*supra*). Admittedly, no complaint/application has been filed under Section 154(1) or 154(3) of the Code, to the concerned Officer Incharge / Police Station although, several complaints have been made to several forums/authorities both in Delhi and Haryana. Even the complaint which has been filed before the Director General of Police, Haryana, (P-24) (Page 508) is a complaint in which offence under Section 13 of the Prevention of Corruption Act, 1988 was also alleged to have been committed and in the said complaint prayer has been made that action be taken against the delinquent / erring officials of the Haryana State Health Resource Centre, Government of Haryana. In the present application under Section 156(3) Cr.P.C., allegations under Section 13 of the Prevention of Corruption Act have not been mentioned and thus, there are material differences in the said two complaints and the complaint to the DGP cannot be considered to be compliance of the provisions under Sections 154(1) and 154(3) Cr.P.C. In paragraph 3 of the impugned order, it has been noticed that the report dated 01.09.2020 was submitted by the Economic Offence Wing and not the Officer Incharge of Police Station Sector 5, Panchkula under Section 154(3) Cr.P.C. Moreover, the said report was an interim report which was superseded by the final report dated 09.10.2020 which was not taken into consideration in the impugned order.

55. Before parting with this part of the order, it would be appropriate to deal with the judgments cited by learned counsel for respondent no.2 on the said aspect.

The first judgment upon which **r**eliance has been placed by respondent no. 2 is the judgment of a Single Bench of Jammu and Kashmir High Court in ***Gulam Mohi-ud-Din's*** case (*supra*) on the basis of the said judgment it has been contended by learned counsel for respondent no.2 that even in case compliance of law laid down ***Priyanka Srivastava'*** case (*supra*) has not been made then also, the proceeding arising therefrom ought not be quashed. The said judgment is in the teeth of law laid down by the Hon'ble Supreme Court of India in ***Priyanka Srivastava's*** case (*supra*) which was subsequently followed in ***Babu Venkatesh's*** case (*supra*). This Court is bound by the law laid down by the Hon'ble Supreme Court of India. Further, even a perusal of the said judgment of the Single Bench of Jammu and Kashmir High Court would show that in the said case it was observed that the offences stood established against the accused persons therein and there was no material to show that the complaint / FIR which was registered was malafide, frivolous or vexatious and nor it was the case of the accused therein that the complainant had concealed material facts.

Further, reliance has been placed by respondent no.2 on the judgment of the Full Bench of Bombay High Court in ***Mr. Panchabhai Popotbhai Butani's*** case (*supra*). At the outset, it is noted that the said judgment was delivered on 10.12.2009 and the same was prior to the judgment of the Hon'ble Supreme Court of India in ***Priyanka Srivastava's*** case (*supra*). The law laid down in the said judgment would also not support the argument of learned counsel for respondent no.2. It was held in the said judgment that normally a person should invoke the provisions of Section 154

of the Code before recourse is taken to the power of the Magistrate competent to take cognizance under Section 190 of the Code by filing an application under Section 156(3) of the Code and at least intimation was required to be given to the police under Section 154(1) of the Code, which would be a condition precedent for invocation of powers of the Magistrate under Section 156(3) of the Code. In the said case, although it was observed that the said dictum of law is not free from exception and there could be cases where non-compliance of the above-said provisions would not divest the magistrate of his jurisdiction in terms of Section 156(3) Cr.P.C and there could be cases where the police fails to act instantly and the facts of the case show that there is a possibility of the evidence of commission of the offence being destroyed or an applicant could approach the magistrate directly by way of an exception. Even as per the said judgment, the mandate is to comply with the provisions Sections 154(1) and 154(3). Nothing has been shown by the respondent no.2 so as to bring his case within the exceptions as mentioned in the judgment, rather the applicant-respondent no.2 has filed one complaint after another including an earlier application under Section 156(3) Cr.P.C. before Rohini Courts, New Delhi. At any rate, it is the law laid down by the Hon'ble Supreme Court which is the law of the land and has to be followed and adhered to by all the High Courts.

56. The third judgment relied upon by learned counsel for respondent no.2 on the above aspect is the judgment of Hon'ble Supreme Court in ***Sakiri Vasu's*** case (*supra*). The relevant paras 9, 10 and 11 of the said judgment are reproduced hereinbelow:-

> *"9. The petitioner (appellant herein) prayed in the writ petition that the matter be ordered to be investigated by the Central Bureau of Investigation (in short 'CBI').Since*

his prayer was rejected by the High Court, hence this appeal by way of special leave.

10. It has been held by this Court in CBI & another v. Rajesh Gandhi and another, 1997 Cr.L.J63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Criminal Procedure Code, then he can approach the Superintendent of Police under Section 154(3) Criminal Procedure Code by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Criminal Procedure Code before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation."

A perusal of the above judgment would show that even as per the same, it had been stated that an application is to be made before the Police Station under Section 154(1) and in case, FIR has not been registered, the complainant should approach the Superintendent of Police under Section

154(3) and only thereafter, an application under Section 156(3) Cr.P.C. could be filed. The said observations made are in consonance with the judgment of Hon'ble Supreme Court in ***Priyanka Srivastava's*** case (*supra*) and ***Babu Venkatesh's*** case (*supra*) which are sought to be relied upon by learned senior counsel for the petitioner and do not in any way further the case of respondent no.2

57. **Ground no. 4: Infirmities/illegalities in the Impugned Order**

The impugned order dated 15.12.2021 has been passed on the basis of interim reports without considering the final report thereon and without considering the earlier application filed under Section 156(3) Cr.P.C. in Rohini Courts, Delhi and also other important aspects. The impugned order, apart from the grounds which have been stated hereinabove, also deserves to be set aside on account of the following factors:-

(i) In paragraph 4 of the impugned order, reliance has been sought to be placed on the interim report dated 22.07.2020,prepared by respondents no.3 and 4. The impugned order does not take into consideration the fact that ultimately as per the report dated 22.07.2020, the recommendations which were made (**Page 501**) are as follows:-

> ***"Recommendation***
>
> *1. It is suggested that company Secretary/ Chartered Accountant/Legal may be consulted that whether a company can work in the field other than mentioned in MOA, before making amendments in their MOA, In case, the said point is valid, then the experience certificates provided to UHGIS become null and void.*

2. It is suggested that competent authority may call some financial expert(s)on this matter to further get profit & Loss statements checked that whether the revenue sales/income is within the scope mentioned in RFP.

3. It is suggested that the Department may call QCBS expert, members of Bid Evaluation Committee and HSHRC members to give their comments on the technical score given to UHGIS, IL& FS and HP.

4. The Department may look into the aspect that who prepared the internal DPR estimate and whether the same was informed to the bidders? In case, any firm quoted less rates than the, DPR estimate, then whether it was mentioned to the bidders that their quote will not be accepted?

5. Both the parties namely the complainant and HSHRC should be called in front of the formed committee and their perspective may be listened in front of competent authority for a free and fair inquiry.

6. A new committee should be formed including the members from HSHRC who were not part of Bid Evaluation Committee), NISG, Health Department, Hartron, DITECH, ISMO and NIC for in-depth study of all the documents including the complaint and to give their expert view.

S/d
(Sanjay Sethi)
Asst. General Manager
Hartron

S/d
(Puneet Brar)
Sr. Consultant,
SIT"

A perusal of the said recommendation would show that several suggestions were made including, the suggestion in clause 6, that a new committee should be formed which would include the members from HSHRC, NISG, Health Department, HARTRON etc. After the said recommendation had been made, a joint committee was constituted which

was under the Chairmanship of Sh. Prabhjot Singh, IAS, Mission Director, National Health Mission, Haryana in which, there were 11 persons in addition to the said Prabhjot Singh which also included Sanjay Sethi and Puneet Brar, respondents no.3 and 4 respectively who had prepared the said interim report and after considering all the documents available on the file and report of all the members, it was observed that the Committee could not find any act of omission or commission on the part of the Bid Valuation Committee and detailed reasons regarding the same were given. It was also observed that respondent no.2/complainant himself was very much involved in the bidding process as he was visible in the video of the proceedings and there was no sufficient evidence to prove any corrupt act or criminal breach of trust or that the said certificates were forged and fabricated or there was any issue regarding balance sheet or profit and loss account which was examined by the finance and legal experts and ultimately, the complaint was filed. The relevant portion of the report/letter dated 12.01.2021 is reproduced hereinbelow:-

> *"3.* ***Accordingly, a Committee of two officers from the O/o HARTRON examined the tender document and other relevant documents to conclude in the matter of corruption and irregularities committed in grant of tender floated by HSHRC for implementation of HIS. The Committee made its observations and recommended the following:***
>
> *i. It is suggested that Chartered Accountant/ Legal/ Company Secretary may be consulted that whether a Company can work in the field other than mentioned in MOA, before making amendments in their MOA. In case, the said point is valid, then the experience certificates provided to UHGIS become null and void.*

ii. It is suggested that competent Authority may call some financial experts on this matter to further get Profit and Loss statement checked that whether the revenue sales/Income is within the scope mentioned In RFP.

iii. It is suggested that the Department may call QCBS Expert, members of Bid Evaluation Committee and HSHRC Members to give their comments on the technical score given to UGHIS, IL&FS and HP.

iv. The department may look into the aspect that who prepared the internal DPR estimate and whether the same was informed to the bidders? In case, any firm quoted less rates that he DPR estimate, then whether it was mentioned to the bidders that their quote will to be accepted?

v. Both the parties namely the complainant and HSHRC should be called in front of the formed Committee and their perspective may be listened in front of the competent authority for a free and fair enquiry.

vi. A new Committee should be formed including the members of HSHRC (who were not part of Bid Evaluation Committee), NISG, Health Department, HARTRON,DITECH, ISMO and NIC for in-depth study of all the documents including the complaint and give their expert view.

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4. On the perusal of report and in view of the recommendations submitted by O/o HARTRON, CVO had proposed that a Joint Committee of experts from Health Department, HSHRC, NISG, HARTRON, DITECH, ISMO and NIC containing Chartered Accountant, Legal Expert be constituted to look into the complaint. The same was submitted to the Govt. and the proposal was accepted by Hon'ble Health Minister and worthy ACS Health and a Joint Committee under the chairmanship of Sh. Prabljot Singh (IAS) Mission Director, National Health Mission Haryana was

constituted with the following members:

1.Dr. J.S. Grewal, ADCHS-cum-CVO

2. Dr.Bhavneesh Arora, SMO, HSHRC

3. Sh. Rahul Jain, Scientist-F, NIC, Haryana

4. Sh. Harish Bhatia, System Executive Officer, DITECH, Haryana

5. Sh. Sudipta, CISO (ISMO)

6. Sh.Sanjay Sethi, AGM, HARTRON

7. Sh.Puneet Brar, Senior Consultant, HARTRON

8.Ms. Asha Hooda, Company Secretary, HMSCL

9. Sh. Harkesh Anand, CA, NHM, Haryana

10.Ms. Reenu Pathania, Law Officer, NHM

11. Sh. Rahul Mathur, Sr. General Manager, NISG

The said Joint Committee deliberated upon the issues mentioned in the complaint while conducting four meetings. All the members were provided all the relevant documents pertaining to the matter via e-mail/ hard copies/ pen drives etc. The video recordings of the tender process/ representations were also made available to the members. In the 4th meeting of the Joint Committee, all the members submitted their individual reports after perusal of which the Chairman also submitted his own report.

After going through all the documents available on file and the reports of all the members (12 in number) of the Joint Committee, it is drawn that the committee couldn't find any act of omission or commission on the part of bid evaluation committee. Following are some of the worth mentioning points which form the basis of conclusion:

xxx xxx xxx

6. The complainant was very much involved the bidding process as he is visible in video and his signatures are there as witnessed while signing the MoU, He was present when the matter was taken up in High Powered Purchase Committee meeting held on 2.7.14.

The meeting was presided over by the then Finance Minister and had the then Education Minister, ACS Industries, ACS Health, DG MER, Director Supplies & Disposal, ED HSHRC and many other senior officers of the Govt.

7. The complainant has not given sufficient evidences that why and how he is justifying his claims of the 16-member committee being corrupt or has committed criminal breach of trust or causing wrongful and huge financial loss to the ex-chequer. His allegations w.r.t. UHG experience certificates being false and fabricated ones or w.r.t UHG balance sheets or profit& loss statements etc. are examined in detail by financial experts and legal experts of the Joint Committee, namely, Sh. Harkesh Anand CA, Smt Asha Hooda CS, Smt.Renu Pathania LO. whose reports were also considered while finalizing the report.

8. Besides financial and law experts, other members of this inquiry committee have also given their reports which were also considered while finalizing the report.

Thus, based on the reports of all the members and based on above conclusive points, it is prayed that a client (Haryana Govt.) should not be made a party of the dispute between employer and ex employee and hence, the complaint may be filed.

Director General Health Services-cum-CVO
Health Department, Haryana"

As is apparent from the zimni orders, which have been reproduced in the earlier part of the judgment, the Chief Judicial Magistrate, Panchkula had called for the entire record and thus, to selectively reproduce portions of the interim report dated 22.07.2020, without taking into consideration the final recommendation by the said committee, and also non-

consideration of the observations made in the letter dated 12.01.2021 has resulted in a serious illegality in the impugned order.

ii) A perusal of the impugned order would show that it has not even been remotely observed that in the present case there is compliance of the statutory provisions of Section 154(1) and 154(3) Cr.P.C. and the judgment of ***Priyanka Srivastava's*** case (*supra*) passed by the Hon'ble Supreme Court of India.

iii) In paragraph 8 of the impugned order, it has been observed that respondent no.2 was also involved in the bidding process on behalf of accused no.1-company and the Court had thus, taken cognizance of the report dated 22.07.2020 of respondents no.3 and 4. Apart from the above fact that recommendations made in the said report had not been seen and the letter dated 12.01.2021 as stated hereinabove had also not been taken note of, it is also relevant to note that even respondent no.2 had challenged the impugned order dated 15.12.2021 before the Sessions Judge, Panchkula by filing a criminal revision and the same has been annexed with the reply as Annexure R-2/7. The prayer clause in the said revision petition is reproduced hereinbelow:-

> *"It is therefore, respectfully prayed that this Hon'ble Court may be pleased to call for the records of the Ld. Trial Court and after perusing the same, may be pleased to:-*
>
> *(i) Partially modify the impugned order dated 15/12/2021 passed by Sh.Nitin Raj, Ld.Chief Judicial Magistrate, Panchkula in COMI/63/2021 decided on 15/12/2021 to the extent that the present petitioner-Sharad Kothari be arrayed as a complainant replacing i.e. Assistant General Manager Sanjay / Puneet Brar in the FIR No.508, dated 23/12/2021 u/ss 406/409/420/465/467/ 468/471/120b IPC.*

(ii) Expunge the erroneous lines (finding of fact) in para 8 of the impugned order "… It is pertinent to mention here that as the complainant was also involved in the bidding process on behalf of the accused no.1…."

(iii) Dispense with notice/s to the private respondent/s since the said respondents were never summoned by the Ld Court of CJM, Panchkula, proceedings being u/s 156-3 of the Cr.P.C.

(iv) Stay the police investigation vis a vis any proceeding which involves Assistant General Manager Sanjay Sethi / Puneet Brar as complainants till the decision of this revision petition.

(v) This Hon'ble Court may pass any other orders or directions deemed appropriate in the facts and circumstances of the case.

(vi) Call for record of total investigation proceeding of EOW/Panchkula/2937/F/19.10.2020.

Note:- Affidavit in support is attached.

Place: Pkl *Sharad Kothari-Petitioner*
DATED: 7/1/22 *Through Counsel*
(Sameer Sachdev, Bhanu Kathpalia)
P-2966/99 D-2545/2012
Advocates,
Counsel for the Petitioner."

A perusal of the above would show that even as per the case of respondent no.2, in the impugned order there were erroneous observations. Further, a prayer had been made in the abovesaid revision that respondent no.2 should be arrayed as the complainant again. The same clearly shows that the plea of respondent no.2 to the effect that he is a whistleblower, is completely farcical and respondent no.2 only intended to extract money out of the petitioners and wanted to harass the petitioners on account of the fact that he was made to resign from the petitioner-company after the illegalities committed by him were brought to surface.

iv) A perusal of the paragraph 2 of the impugned order would show that the Chief Judicial Magistrate, Panchkula had been impressed by the observation of the Hon'ble High Court in the order dated 26.07.2021, which have been highlighted in the impugned order. The Chief Judicial Magistrate, Panchkula, has failed to take note of the fact that the said petition had been withdrawn and even an earlier petition filed before this Hon'ble Court had also been dismissed as withdrawn. Thus, the prayer of respondent no.2 to the effect that an FIR be registered / SIT be constituted, had not been granted by the Coordinate Benches of this Court. The portion of the order which had been highlighted by the CJM, Panchkula in the impugned order were submissions made by learned senior counsel appearing for the respondent no.2 herein before the Coordinate Bench of this Court and the same was not the finding / observation of the Hon'ble Court. A perusal of the said order dated 26.07.2021 (Annexure P-26) (Page 537) would show that neither the counsel for the State nor any counsel for the present petitioners had appeared in the said matter. Although, the said order was passed on 26.07.2021 but respondent no.2 had not brought it to the notice of the High Court that the interim report dated 01.09.2020 of the Economic Offence Wing had merged into the final report dated 19.10.2020 and even the factum of letter dated 12.01.2021 (P-23) (Page 503) was not brought to the notice of the Hon'ble High Court.

(v) Reliance sought to be placed in the impugned order upon Paragraph 3 of the report dated 01.09.2020, is also misconceived inasmuch as, firstly the same is by the Economic Offences Wing and not by the officer Incharge of the Police Station concerned. Secondly, even as per the said report, Inspector Rajeev of the Economic Offence Wing had submitted the

same to the senior officers for further orders. The relevant portion of the said report is reproduced hereinbelow:-

> *"Therefore, the report alongwith original complaint, original statements and the documents duly received/ obtained (total 1-603 pages) is submitted for further orders.*
>
> *Sd/-*
> *(INSPECTOR RAJEEV)*
> *S.H.O./ECONOMIC OFFENCE WING*
> *IST FLOOR, POLICE STATION 2, PANCHKULA*
> *01.09.2020*
>
> *Forwarded pls*
> *Sd/-*
> *Asstt. Commissioner of Police*
> *Panchkula"*

In pursuance of the same, the Police Commissioner, Panchkula *vide* report dated 19.10.2020,had submitted that the complaint be filed. The relevant portion of the said report dated 19.10.2020 is reproduced hereinbelow:-

> *"To,*
>
> *Deputy Commissioner of Police,*
> *Panchkula.*
>
> *From*
>
> *Commissioner of Police*
> *Panchkula*
>
> *No.2237P dated 19.10.2020*
>
> *Subject: Complaint of Shri Sharad Kothari Resident of H.No.107, Swastic Kunj Apartment, Sector -13, Rohini Delhi.*
>
> *xxx xxx xxx*
>
> *9. That with respect to above an opinion is obtained from District Deputy Judicial Panchkula. According to the advice of District Deputy Judicial Panchkula Haryana medical Services Corporation is also doing investigation in a similar complaint of the complaint, in*

which investigation is pending. It will be appropriate to take further action only after obtaining results of that complaint.

Therefore, there is no logic to keep pending the complaint accordingly it is recommended that the present complaint be sent to the record room.

Report is submitted accordingly.

Sd/-19.10.2020
Police Commissioner,
Panchkula."

The report dated 19.10.2020 has not been taken into consideration by the CJM, Panchkula nor the opinion of the Deputy District Attorney dated 23.09.2020 has been taken into consideration in spite of the fact, that the said two documents have been annexed as Annexure C-20 and C-19 respectively with the present application under Section 156(3) Cr.P.C., which fact is apparent from the paras 32 and 33 of the complaint (page 549).

(vi) In paragraph 5 of the brief submissions / reply on behalf of respondent no.2, it has been averred that the case had been heard by the Chief Judicial Magistrate, Panchkula on seven different dates, over the span of three months and the Chief Judicial Magistrate, Panchkula had conducted his own inquiry into the whole episode and also called for records in a sealed cover, to which, even the respondent's counsel had no access and the verbal prayer of respondent no.2 to inspect the record was declined by the Court of the Chief Judicial Magistrate, Panchkula and it is after the Chief Judicial Magistrate, Panchkula had satisfied itself, he had passed the impugned order. The relevant part of para 5 of the reply / brief submission by respondent no.2 is reproduced hereinbelow:-

"It shall be pertinent to place on record the orders of the Ld. CJM, Panchkula, whereby the complaint case of the

> *respondent no.2 here was listed on 7 occasions.* ***Over a span of 3months as the Ld. CJM, Panchkula conducted his own enquiry into the episode and also called for records in a 'sealed cover (Orders dated 5/10/2021: even the respondent's counsel had and has no access to the said sealed record as the verbal prayer to inspect the record by the counsel for the complainant was declined by the Ld. Court of the CJM, Panchkula) from the concerned government departments and after his own satisfaction has passed perfectly legal order of directing the Police to register the FIR.*** *A copy of zimni orders is collectively annexed herewith as Annexure R2/2.)"*

It was only respondent no.2 or his counsel who were aware as to what transpired during the above proceedings as neither the petitioners nor their counsel was present in the said proceeding. The averments made in the said paragraphs raise another issue, which has been highlighted by learned senior counsel for the petitioners, to the effect that under Section 156(3) Cr.P.C., the Court was only required to see whether cognizable offence is made out or not and in order to see compliance of the provisions of Sections 154(1) and 154(3), the CJM, Panchkula was required to only call for the reports from the concerned police station, i.e. Sector 5, Panchkula and in case, the averments made by respondent no.2 in the reply hereinabove are taken on face value, then, it is apparent that the CJM, Panchkula had made an inquiry in the matter himself and even the record was not made available to counsel for the complainant and thus, the CJM, Panchkula had moved from Chapter XII of Cr.P.C. to Chapter XV of Cr.P.C. and once, the Court had decided to conduct the inquiry itself, then the Court could not have resorted to the provisions under Chapter XII and order the registration of the FIR. Once the inquiry had been made then the Court should have proceeded in accordance with the subsequent provisions as contained in

Chapter XV. Although, in view of the facts of the present case, it cannot be affirmatively stated that the Magistrate had moved to Chapter XV of Cr.P.C., but keeping in view the averments made in paragraph 5 of the reply filed by respondent no.2, it is apparent that the procedure adopted by the Chief Judicial Magistrate, Panchkula was not in consonance with law.

58. It would now be relevant to note the judgments relied upon by the learned counsel for respondent no.2 with respect to the above aspects. The first judgment relied upon by the learned counsel for respondent no.2 is the Judgment of the Hon'ble Supreme Court in ***State of Punjab vs. Davinder Pal Singh Bhullar's*** case (*supra*). The said judgment would in fact support the proposition that if initial action is not in consonance with law then all consequential proceedings including FIR etc., must fail. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"105. The FIR unquestionably is an inseparable corollary to the impugned orders which are a nullity. Therefore, the very birth of the FIR, which is a direct consequence of the impugned orders cannot have any lawful existence. The FIR itself is based on a preliminary enquiry which in turn is based on the affidavits submitted by the applicants who had filed the petitions under Section 482 CrPC.*
>
> *106. The order impugned has rightly been challenged to be a nullity at least on three grounds, namely, judicial bias; want of jurisdiction by virtue of application of the provisions of Section 362Criminal Procedure Code coupled with the principles of constructive res judicata; and the Bench had not been assigned the roster to entertain petitions under Section 482 Criminal Procedure Code. The entire judicial process appears to have been drowned to achieve a motivated result which we are unable to approve of.*

107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. State of Tamil Nadu &Ors., 2000(4) S.C.T. 832 ; and State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191 , this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109. Similarly in Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. &Ors., (2005) 3 SCC 422 , this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110. In C. Albert Morris v. K. Chandrasekaran &Ors., 2005(4) RCR (Civil) 603 : 2005(2) RCR(Rent) 498 : (2006) 1 SCC 228 , this Court held that a right in law exists only and only when it has a lawful origin.(See also: Upen Chandra Gogoi v. State of Assam &Ors., 1998(2) S.C.T. 235 : (1998) 3SCC 381 ; Satchidananda Misra v. State of Orissa &Ors., 2004(4) S.C.T. 221 : (2004) 8SCC 599 ; Regional Manager, SBI v. Rakesh Kumar Tewari, 2006(1) S.C.T. 451 : (2006) 1SCC 530 ; and Ritesh Tewari &Anr. v. State of U.P. &Ors., AIR 2010 Supreme Court3823).

76. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/

> *orders/ FIR / investigations and automatically vitiated and are liable to be declared non est."*

A perusal of the above judgment would show that if initial action is not in consonance with law, then all such consequential proceedings would fail since, illegality strikes at the root of the order. It was further observed that since the impugned order could not be sustained, the subsequent orders / FIR / investigation would stand automatically vitiated and liable to be declared non est. The said principle would in fact support the case of the petitioners inasmuch as, on several legal counts, the impugned order and the FIR deserve to be set aside / quashed and necessarily all proceedings in relation to the same would also stand set aside / quashed.

On the basis of the above said judgment, learned counsel for respondent no.2 has argued that this Court has power to refer the matter to CBI, with respect to the said aspect it would be relevant to note that the matter is already pending before the Lokayukta, Haryana. Even the proceedings for acceptance/non-acceptance of the cancellation report in the FIR registered by Respondent no.2 in Delhi is pending in which, no objection/protest petition has been filed by respondent no.2. The present case is not even remotely a case which ought to be referred to the CBI and in fact, a perusal of the complaint would show that no cognizable offence is made out even if the allegations in the FIR are taken to be true. This Court has further found that entire proceedings are *malafide*, malicious and have been instituted with an ulterior motive. It is also being observed that respondent no.2 has been found to be indulging in forum shopping. Moreover, as per the observations made by the Hon'ble Supreme Court, the matter is only to be referred to the CBI in case, the investigation has been

conducted in a biased manner and only in exceptional circumstances. Although, respondent no.2 has challenged the impugned order by filing his own criminal revision but the same is a limited challenge as it has been prayed in the same that respondent no. 2 be continued as the complainant. Thus, the observations made on the said aspect by the Hon'ble Supreme Court would not apply in the present case. In view of the law laid down in the said judgment, the same would further the case of the present petitioners rather than the case of respondent no. 2.

59. Reliance has also been placed upon by respondent no.2 on the judgment of Hon'ble Supreme Court of India in ***Kaptan Singh's*** case (*supra*). The said case also does not further the case of respondent no.2 inasmuch as, in the said case, apart from the other factors, the complainant in the said case was beaten up with fist blows and one of the accused therein who was carrying a knife like weapon, kept the "edged" part of it on the chest of the complainant and threatened him to sign the document failing which, he threatened to kill him and in the said case, the complainant also produced a medical report in support of his allegations. In the said case, apart from Section 406 IPC, FIR was under Sections 329, 386, 147, 148, 149, IPC. Further, allegations were made that a document which was alleged to have been executed by Munni Devi in favour of Mamta Gupta was forged and fabricated. The High Court had observed that Section 406 IPC could not be made out and the rest of the allegations being tangent to the main allegation were also quashed. It was observed by the Hon'ble Supreme Court that there was serious triable issue including the issue of forgery of document which was executed between the parties and the question whether the document had been duly executed or not was even observed to be seriously disputed before the High Court and thus, in view of the above, the

order passed by the High Court quashing the proceedings were set aside. No legal arguments, as have been raised in the present petition, were raised by the accused in the above-said case.

60. Further, reliance has been placed by learned counsel for respondent no. 2 upon the judgment of Hon'ble Supreme Court of India in ***M/s Neeharika Infrastructure's*** case (*supra*). In the said case, an interim order to the effect that "no coercive measures shall be adopted" was passed by the High Court without giving any reason, while the petition under Section 482 Cr.P.C. was kept pending. It was the said interim order which had been challenged before the Hon'ble Supreme Court and it was highlighted that apart from there being no reasons given in the said order, the same would result in a blanket direction to the investigating officer restraining him from taking coercive measures. In the said case, the Hon'ble Supreme Court of India deprecated the practice of passing of order of **"no coercive steps"** and that too without giving any reason. Even while setting aside the said order, it had been observed that in a case where no cognizable offence or offence of any kind is disclosed in the FIR, the Court may not permit the investigation to go on and further observed that the Court in case thinks it fit having regard to the parameters of quashing as laid down in various judgments including ***State of Haryana and others vs. Bhajan Lal and others,*** reported as ***1992 Supp(1) Supreme Court Cases 335***, the Courts were vested with the jurisdiction to quash the FIR/complaint. It was stated that the said parameters would also be considered in case interim order is to be passed but however, the interim order is to be passed only in exceptional circumstances and that too, by giving reasons for the same and by clearly stating as to why the interim order has been passed. In the present case, there is no challenge to any such order granting "no coercive action" and thus, the

said judgment would not apply to the present case. In fact, it would be relevant to state that at the time when the present petition first came up for hearing, learned senior counsel for the petitioners had strongly prayed for grant of such an interim relief but this Court thought it appropriate to decide the entire matter, with the consent of all the parties and while doing so, this Court was conscious of the judgment of the Hon'ble Supreme Court in ***M/s Neeharika Infrastructure's*** case (*supra*).

61. Learned counsel for respondent no.2 has also placed reliance upon the judgment of Hon'ble Supreme Court in ***HDFC Securities Ltd.'s*** case (*supra*) and the same also does not further the case of respondent no.2 in any manner. The arguments raised in the said case to challenge the proceedings under Section 156(3) Cr.P.C. were completely different from the argument raised by learned counsel for respondent no.2 in the present case. In the said case, the Hon'ble Supreme Court had observed that after considering all the facts, it had been found that the complaint disclosed the commission of cognizable offence. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"11. The scope of Section 156(3) Cr.P.C. came up for consideration before this Court in several cases. This Court in Maksud Saiyed case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order."*

The above said observation would not further the case of respondent no.2 in any manner.

Reliance has also been placed upon by respondent no.2 on the judgment of Mosiruddin Munshi's case (supra) and the same also would not further the case of respondent no.2. In the said case, the sole argument which was raised by the accused therein was that the dispute was a civil dispute and thus, the FIR should not have been registered. None of the arguments as have been raised by the present petitioners in the present case were raised in the cited judgment. It was further observed by the Hon'ble Supreme Court of India that keeping in view the averments made in the complaint therein, it could very well be made out that there was a fraudulent/ dishonest inducement made by accused no.1 and 2 therein in pursuance of which, the complainant therein had parted with money. It was further observed that the accused no.2 therein did not even have title over the property as he had no registered document in his favour and there were allegations that both the accused have entered into a criminal conspiracy and had cheated the complainant who had parted with money and thus, the complaint prima facie made out a case which required further investigation. The facts of the said case are thus, clearly different from the facts of the present case.

62. The above-noted factors in addition to the fact that earlier complaints had already been filed in Delhi and the reports in pursuance of the same as well as earlier proceedings under Section 156(3) Cr.P.C. filed in Delhi Courts as well as the orders passed thereto, having been concealed from the Chief Judicial Magistrate, Panchkula, thus, calls for setting aside of the impugned order.

63. **Ground no. 5: Delay in filing the present application u/s 156(3) Cr.P.C.**

The present application under Section 156(3) Cr.P.C. has been filed on 27.08.2021. A perusal of the Paragraph 26 (page 547) as well as Paragraph 39 (page 550) of the present application filed under Section 156 (3) Cr.P.C. would show that even as per the case of respondent no.2, he acquired knowledge with respect to the alleged illegalities and commission of offences during the bidding process, on 01.10.2015, from accused no.2-Sandeep Khurana who, in a drunken state had disclosed all the facts to respondent no.2. However, application under Section 156(3) Cr.P.C. has been filed after a delay of more than 5 years and 9 months from the date respondent no.2 gained knowledge qua the alleged incident.

64. **Ground no.6: Non-challenge to the tender proceedings and the Award in favour of the petitioner-company, by the four companies which had participated in the tender process along with the petitioner-company.**

In the present case, the allegations levelled stem from the alleged illegalities committed in the tender process. It is pertinent to note that none of the competitors who had participated in the bidding process have challenged the tender process or the award of tender to the petitioner no.1-company. A perusal of paragraph 12 of the application under Section 156(3) Cr.P.C. would show that as per respondent no.2 apart from the petitioner company, there were four other competitors which were as follows:-

"S.No. Company Name

1. IL& FS Technologies Limited
2. Hewlett-Packard India Sales Private Limited
3. Accenture Services Pvt. Ltd.
4. EY/NDSL"

It is the admitted case of the parties concerned that none of the said four companies, which are well established companies, have challenged the bidding process and in case, there were any illegalities committed in the bidding process, then, the other bidders would have been the first ones to have challenged the same. At any rate, this Court has to primarily consider whether the commission of criminal offences, as alleged in the complaint, are made out or not and on the said aspect, it has been found that no criminal offence is made out.

65. **Ground no.7: Complaint filed by respondent no.2 on the same set of the allegations before the Lokayukta, Haryana, in which prayer has also been made for registration of FIR, the proceedings whereof are pending.**

Complaint filed by respondent no.2 before the Lokayukta, Haryana (P-21) (Page 478) is still pending. As is apparent from the facts hereinabove, a complaint dated 23.01.2020 (**COMPLAINT-5)** was filed before the Lokayukta, Haryana. The relevant portion of the said complaint is reproduced hereinbelow:-

> *"FORM I*
> *(SEE RULE 3)*
> *FORM OF COMPLAINT*
> *BEFORE THE LOKAYUKTA, HARYANA*
>
> *COMPLAINANT Sharad Kothari, aged about 41 years, son of Shri Ramesh Chandra Kothari, resident of 107, Swastik Kunj Apartment,Sector-13, Rohini, Delhi at present working at Baker Tilly JFC Infotech Pvt. Ltd.. Hyderabad.*
>
> ***IN THE MATTER OF ALLEGATION AGAINST*** *(THEN)*
>
> *(1) Dr. Ashish Gupta, Executive Director, HSHRC (Chairman)*
>
> *(2) Dr. Bhavesh Singh, Project Consultant HSHRC*
>
> *(3)Dr. Parveen Sethi, Director, Dental/Planning*

(4)Dr. Parveen Garg, Director, Hospital Management Division.

(5)Dr. Varesh Bhushan, Deputy Civil Surgeon, Sirsa.

(6)Dr. Sanjeev Trehan, Surgeon and Senior Medical Officer, GHPanchkula.

(7) Dr. M.P. Sharma, Medical Officer, (IT Cell) Office of DGHS

(8)Mr. Ramesh Chehal. representative of Directorate of Medical Education.

(9) Mr.Rajiv Monga, HARTRON (Nominated by IT Department)

(10) Mr. Sandeep Modgil, NIC (Nominated by IT Department).

(11) Mr. Alok Sharma, Head State E-Mission Team (SeMT)(Nominated by IT Department).

(12) Mr. Nitin Sood. Senior Consultant. SeMT (Nominated by IT Department).

(13) Dr. Amit Phogat, Deputy Director IT and Monitoring, NRHM.

(14) Sh. Sanjeev Jain, Accounts Officer, NRHM.

(15) Sh. Harish Bisht, Programme Officer (IT), NRHM.

(16) Mr. G. Chamu, Senior Manager, NISG

(17) Mr. Gautam Sinha. Principal Consultant, Price Waterhouse Coopers (PwC).

Officials and staff of UHGIS

(1) Sandeep Khurana, then Vice President - India Business.

(2) Anurag Khosla then Managing Director & CEO of United Health Group.

(3) Tim Trujillo, then Chief Compliance Officer and Deputy General Counsel.

(4) Rajat Bansal then Chief Financial Officer.
(5) Gayatri Verma then HR Head.

(6)Partha Mishra then CEO.

(7)John Sentelli, Chief Technical Officer.

All C/o United Health Group Information System Private Limited, 12th and 14th Floor, Tower-B, Unitech Cyber Park, Sector-39,Gurugram, Haryana -122001.

xxx xxx xxx

(6) It is pertinent to mention here that UHGIS applied for the aforesaid tender on 13.3.2014 and the same was granted to UHGIS, totally in violation of the terms and conditions/qualifications as prescribed under Sr.No. 7 of para 4.3 Volume-II of the tender/RFP. The clause stated that the Bidder should have an annual turnover of at least INR100 Crores from the IT Business and operations (System Integration Services, Software Development Services, Hardware supply, installation, commissioning, and facilities management services) during each of the last three financial years (i.e. 2010-2011, 2011-12, 2012-13), with positive net worth and profitability in last 2 years. Also, the participant/bidder was required to furnish 'extracts from the audited Balance sheet and profit & loss; or certificate from the Statutory auditor' in evidence of the qualification.

Whereas, UHGIS while submitting the bid, neither filed the extracts of the audited balance sheet and profit and loss as required nor it furnished a certificate from its statutory auditor certifying that the company had turnover of INR 100 crores from the services.

Further, UHGIS ought to have had worked in all the above fields/services. It is pertinent to mention here

that UHGIS could not have worked in the said field which is clear from the perusal of their MOA and AOA. The MOA and AOA do not permit the company undertake such activities.

The directors and other officials of UHGIS for procuring the said tender amended the Memorandum Of Association of UHGIS vide special resolution dated 29.04.2014 and incorporated clauses IB and 1C in the Objection Clause of the memorandum of association of UHGIS thereby including the above activities /services(supra) in the objectives of the company. It is relevant to mention here that the bids were submitted by UHGIS in the month of March 2014 whereas the amendment of memorandum of association was carried out in the end month of April 2014 and the same was approved by the Registrar of Company on 3.6.2014. Copy of the Amended Memorandum of Association is ANNEXURE-C-2.

(7) That with regards to Sr. No. 8 of Chapter 4.3 Volume-II of RFP ,the participant/bidder should have experience of successfully completed / be in the process of executing large three Turnkey IT projects over multiple locations. Turnkey IT Projects should relates to projects involving IT Application including development, configuration, customization & integration, IT Infrastructure including its installation & commissioning of server, client-end and networking infrastructure, Operations and Maintenance Services of the application & infrastructure including manpower, IT Support & Helpdesk Support. Also, the bidder was required to submit copy of work order completion certificate(s).

As per the information received under RTI, UHGIS in order to comply with the conditions/qualifications as mentioned at Sr.No.8 of

Para 4.3, submitted two experience certificates, one from M/s Optum Inc (USA) and another from M/s Advance Care (Portugal). However, these certificates are false and fabricated ones. Copies of experience certificates submitted by UHGIS are annexed as ANNEXURES C-3, C-4 & C-5 respectively.

The authenticity and credibility of the experience certificates is highly doubtful due to the fact that UHGIS and OPTUM filed amalgamation petition before Learned NCLT, Hyderabad, which was allowed vide order dated 20.3.2017. In para 4 of the said order, there is a categorical finding that OPTUM is in fact holding company of UHGIS. Copy of the order passed by Learned NCLT is annexed as ANNEXURE C-6.

It is further learnt that Mr. John Santelli who has issued the experience certificate for OPTUM was in fact the reporting Manager of Mr. Partha Mishra at the relevant time who at that time was heading UHGIS and was also leading the bid review committee of UHGIS which was involved in the bid process.

xxx xxx xxx

PRAYER

It is therefore. prayed that an inquiry be made against the public servant mentioned above and FIR may be registered under all the enabling provisions of law, for committing the serious cognizable offences of corruption, criminal breach of trust etc. and causing wrongful and huge financial loss to the ex-chequer, in the interest of justice.

It is further prayed that this Hon'ble Court, if, may deem fit entrust the investigation of the present case to an independent investigation agency like Central Bureau of Investigation (hereinafter referred to as 'CBI') in view of the peculiar facts and circumstances of the case.

It is further prayed that this Hon'ble Court may direct the public servants involved to produce the entire record with regards to the issuance of tender and allotment of tender against the Request for Proposal dated 14.12.2013for implementation of Hospital Information System (HIS) in the State of Haryana.

SD/-

Signature of the complainant
(SHARAD KOTHARI)"

A perusal of the above would show that the complaint filed before the Lokayukta, Haryana contains similar allegations to the allegations as have been levelled in the present application under Section 156(3) Cr.P.C. wherein, a prayer has also been made for registration of an FIR and the same was filed prior to the present application under Section 156(3) Cr.P.C. and is currently pending before the Lokayukta Haryana. The complainant / respondent no.2 has been filing one complaint after another, in every forum available with an ulterior motive to wreak vengeance upon the petitioners. In spite of the inquiry pending in the above-stated matter, respondent no.2 has chosen to file the present application under Section 156(3) Cr.P.C., on the basis of which, the present FIR has been registered, so as to somehow extract money from the petitioners, regarding which, a legal notice had been issued by him on 01.06.2016. The conduct of respondent no.2 as has been observed hereinabove, is an abuse of the process of the Court and thus, cannot be permitted.

66. **<u>Ground no.8: Lack of locus standi of the complainant to file present application under Section 156(3) Cr.P.C.</u>**

Learned counsel for respondent no.2 had submitted that respondent no.2 had every locus to institute the complaint under Section

156(3) Cr.P.C. and for the said purpose, he has referred to provision of Section 39 Cr.P.C. Section 39 Cr.P.C. is reproduced hereinbelow:-

> *"39. Public to give information of certain offences.*
>
> *(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code, (45 of 1860), namely:-*
>
> *(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);*
>
> *(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);*
>
> *(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);*
>
> *(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);*
>
> *(v) sections 302, 303 and 304 (that is to say, offences affecting life);*
>
> *(va)[1] section 364A (that is to say, offence relating to kidnapping for ransom, etc.);*
>
> *(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);*
>
> *(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);*
>
> *(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);*
>
> *(ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property);*

> *(x) sections 449 and 450 (that is to say, office of house-trespass);*
>
> *(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house- trespass); and*
>
> *(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes) shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.*
>
> *(2) For the purposes of this section, the term" offence" includes any act committed at any place out of India which would constitute an offence if committed in India."*

It has been argued that every person who is aware of the commission of or of the intention of any person to commit any offence which have been detailed in Section 39, can institute a complaint. Sub-clause (viii) has been highlighted by respondent no.2 to state that for the offence committed under Section 409 IPC, he has locus standi to file a complaint. The said argument has been considered by this Court and is found to be sans merit. A perusal of Section 39 Cr.P.C. would show that none of the other offences, i.e., Sections 406, 420, 465, 467, 468, 471 and 120B IPC in the FIR find mention in Section 39 Cr.P.C.. Thus, as per the said provision respondent no.2 would not have locus standi to get an FIR registered as the third person, as per provision of Section 39 Cr.P.C., can only get FIR registered under the sections mentioned in Section 39 Cr.P.C. With respect to Section 409, it would be relevant to note that the said section is not even remotely attracted in the present case as has been detailed hereinabove and as it has not even been alleged by respondent no.2 that any of the petitioners were entrusted with property much less, by the respondent no.2 in their

capacity as public servants or as banker, merchant, factor, broker or agent. Even the judgment of the Hon'ble Supreme Court of India in ***Dr.Subramanian Swamy's*** case (*supra*) on which reliance has been placed by respondent no.2, in order to make out a case for locus standi would show that in the said case the Hon'ble Supreme Court had observed that complaint can be filed for prosecuting a public servant for offence under the Prevention of Corruption Act. The said proposition of law would not apply to the facts of the present case inasmuch as, in the complaint under Section 156(3), no public servant has been made a party nor the provisions of Prevention of Corruption have been sought to be invoked in the application / complaint under Section 156(3) Cr.P.C.

67. **Conclusion:**

That on the basis of above-said factors, this Court is of the opinion that the impugned order as well as the subsequent FIR arising therefrom, deserve to be quashed. Apart from the judgments which have been noticed hereinabove, the Hon'ble Supreme Court of India as well as various High Courts have repeatedly held that where the grounds, as are there in the present case, are made out then, the High Court can exercise its powers under Section 482 Cr.P.C to quash the proceedings as well as to set aside the impugned order. The Hon'ble Supreme Court of India in ***State of Haryana and others vs. Bhajan Lal and others*** (supra) has held as under:-

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482of the Code which we have extracted and reproduced above, we give the following*

categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there

> *is sufficient ground for proceeding against the accused.*
>
> *6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> ***7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."***

In the above said case, the Hon'ble Supreme Court of India had enumerated categories of various cases, by way of illustrations, wherein power under Section 482 Cr.P.C. could be exercised either to prevent abuse of the process of any Court or to otherwise secure the ends of justice. It is held that the present case would fall within the said parameters moreso, category 1, 2, 3 and 7.

68. The Hon'ble Supreme Court in "***T.T. Antony's case (supra)*** has observed as under: -

> *"However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Criminal Procedure Code, 1973 It would clearly be beyond the purview of sections 154 and 156 Criminal*

> *Procedure Code, 1973 nay, a case of abuse of the statutory power of investigation in a given case**. In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Criminal Procedure Code, 1973 or under Articles 226/227 of the Constitution.***
>
> *xxx xxx xxx*
>
> *The course adopted in this case, namely, the registration of the information as the second FIR in regard to the same incident and making a fresh investigation is not permissible under the scheme of the provisions of the Criminal Procedure Code as pointed out above, therefore, the investigation undertaken and the report thereof cannot but be invalid. We have, therefore, no option except to quash the same leaving it open of the investigating agency to seek permission in Crime No. 353/94 or 354/94 of the Magistrate to make further investigation, forward further report or reports and thus proceed in accordance with law."*

A perusal of the above-reproduced judgment would show that it had been observed by the Hon'ble Supreme Court of India that in case, with respect to one incident an FIR already stands registered, then a second FIR with respect to the same incident cannot be registered and in case the same is registered then, the High Court while exercising its powers under Section 482 Cr.P,C, would be well within its rights to quash the second FIR. The same principle has been followed by the Hon'ble Supreme Court in the case of "***Amitbhai Anil Chandra Shah's*** case (supra). Thus, in a situation where

a second FIR is registered with respect to the same incident on which an FIR has already been registered as in the present case, the petition for quashing of the second FIR should not be thrown out on the ground that the report under Section 173 CrPC has not been submitted.

69. The Hon'ble Supreme Court in ***Ajay Mitra vs. State of M.P. & Ors.*** reported as ***2003(3) SCC 11*** has held as has observed as under: **-**

> *"Leave granted.*
>
> *These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482Cr.P.C. were dismissed.*
>
> *xxx xxx xxx*
>
> ***Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.***
>
> *xxx xxx xxx*
>
> *The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in* ***State of West Bengal &Ors. V. Swapan Kumar Guha &Ors., AIR 1982 Supreme Court 94****9 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are*

prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in ***State of Haryana &Ors. V. Ch. Bhajan Lal &Ors. 1991(3) RCR (Criminal) 383 (SC)*** *and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were sumarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :*

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

The said judgment by a three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in case ***Bhajan Lal's*** case (supra), in which, it was observed that the High Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

70. The Hon'ble Supreme Court of India in "***R Kalyani vs. Janak C. Mehta"*** reported as ***2009 (1) SCC 516*** has held as under:

> *"Leave granted.*
>
> *2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.*
>
> *3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004.**Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :***
>
> ***(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.***

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorize the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

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In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly

arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

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One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

xxx xxx xxx

A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the Ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. V. State of Haryana [(1989) 4 SCC 630], this Court held :

> *"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."*

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> *27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.*
>
> *xxx xxx xxx*
>
> *30. The appeal is dismissed with the aforementioned observations."*

A perusal of the said judgment would show that the High Court had, in a petition under section 482 Cr.P.C., quashed the FIR without the investigation having been completed and the said order was upheld by the Hon'ble Apex Court qua the persons who had filed the petition under Section 482 of the Code.

Relief:

71. Keeping in view the eight grounds, as have been detailed in the preceding paragraphs and the facts and circumstances of the present case and the ratio of law laid down in the plethora of judgments referred to hereinabove, both the petitions i.e., CRM-M-6692/2022 and CRM-M 6698/ 2022 are allowed and the impugned order dated 15.12.2021 is set aside and FIR no.508/2021 dated 23.12.2021 registered under Sections 120B, 406, 409, 420, 465, 467, 468 and 471 of the IPC at Police Station Sector 5, Panchkula and all the subsequent proceedings arising therefrom, are quashed.

It is, however, clarified that the setting aside of the impugned order and quashing of the FIR and the subsequent proceedings as well as the observations made in the present case would not affect the proceedings / complaint which is pending before the Lokayukta, Haryana and also the

proceedings pending before the Rohini Courts in New Delhi arising out of the FIR no.419 dated 18.08.2017 registered at Police Station Prashant Vihar, Delhi which had been registered in pursuance of the application dated 07.06.2017 filed under Section 156(3) Cr.P.C. by Respondent no.2 in the Court of Chief Metropolitan Magistrate, Rohini Courts, New Delhi.

(VIKAS BAHL)
JUDGE

March 16, 2022
Davinder Kumar

Whether speaking / reasoned Yes/No

Whether reportable Yes/No