2024:DHC:105

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

% Judgment Reserved on : 12.12.2023
Judgment Pronounced on : 08.01.2024

\+ CRL.M.C.2757/2023

INCOME TAX OFFICE ..... Petitioner

versus

ANIL TUTEJA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. S.V. Raju, ASG with Mr. Zoheb Hossain, Senior Standing Counsel and Mr. Sanjeev Menon, Junior Standing Counsel for Revenue/IT Department.

For the Respondents : Dr. Abhishek Singhvi and Mr. N. Hariharan, Senior Advocate with Mr. Arshdeep Singh Khurana, Mr. Harsh Srivastava and Mr. Sidak Singh Anand, Advocates for R-1 and R-2.
Mr. Mukul Rohatgi, Senior Advocate with Mr. Anshul Rai, Mr. Nimit and Mr. Harshwardhan, Advocates for R-3.
Mr. Mohit Mathur, Senior Advocate with Mr. Rahul Tyagi, Mr. Sangeet Sibou, Mr. Jatin, Mr. Aashish Chojer, Ms. Mizbah Dhebar and Mr. Shivam Batra, Advocates for R-4 & R-5.
Mr. P.Roychaudhuri, Advocate for R-8.
Mr. Sidhant Kumar, Mr. Shivankar Rao and Mr. Manyaa Chandok, Advocates for R-10.
Mr. Kapil Sibal and Mr. Dayan Krishnan, Senior Advocates with Mr. Ankur Chawla, Mr. Mahender Kumar

and Mr. Amir Khan and Mr. Mahesh Kumar, Advocates for Impleading party-State of Chattisgarh.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

CRL.M.A. 10323/2023 & CRL.M.A. 19314/2023 (Both for stay)

1. These are applications under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") for stay of operation of the impugned part of the order dated 06.04.2023 passed by the learned ACMM (Special Acts), Central District, Tis Hazari Courts, Delhi in CT Case No. 1183/2022 titled as *"Income Tax Office Vs. Anil Tuteja & Ors"*.

2. The brief facts culled from the impugned order dated 06.04.2023 are as follows:

> *"A complaint u/s 200 Cr.P.C was made by Income Tax Office through Mr. Seuj Kumar Saikia, DDIT, Inv. Unit-1(4), New Delhi, alleging commission of offence punishable u/s 276C(1)/277/278 read with Section 278B/278E of The Income Tax Act, 1961 (hereinafter referred to as 'The Act') and section 120B/191/199/200/204 of Indian Penal Code, 1860 (in short IPC). Since, the present complaint was filed by a public servant acting in discharge of his official duties and in course of his employment, so the formal examination of the AR of complainant was dispensed with, in terms of proviso (a) of Section 200 Cr.P.C.*
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> *The gravemen of accusation against accused persons is that Anil Tuteja (accused No. 1), a promotee IAS officer in the state of Chattisgarh is engaged in movement of unaccounted cash through different channels with regard to sectors such as agriculture, mining, liquor trade and licensing in the state of Chhattisgarh. His son Yash Tuteja (accused no. 2) and Saumya Chaurasia (accused no. 3) Deputy Secretary of Chief Minister of Chhattisgarh are his accomplices who are actively engaged and involved in aforementioned illegal operations. Numerous whatsapp chats*

betwixt accused no. 1 and accused no. 3 have been cited by complainant to show that they discussed matters like payment of Rs. 4.5 Crores bribe by a bureaucrat to Ram Gopal Aggarwal (Treasurer, PCC), Rs. 75 Lakhs utilized for construction of house of one Vikas Tiwari (PCC spokesperson), Rs. 3 Lakhs given to accused no. 4 namely Anwar Dhebar (brother of Mayor of Raipur) and amount paid by Ashok Chaturvedi (GM of Text Book Corporation) for settlement of a corruption case etc. In one whatsapp conversation, the accused no. 1 and 3 were discussing about 'payments' with respect to one Mukesh, Mandeep (accused no. 8), Kishore, Sonwani, RG and Bhatia. As per this chat, RG (believed to be Ram Gopal Aggarwal) and Bhatia (short for Pawan Bhatia) allegedly made by Mukesh (Rs. 12.96 Crores), Mandeep (Rs. 14.86 Crores) and Kishore (Rs. 16 Crore), all these three persons were representatives of companies empanelled with agricultural department as approved rate contractors. Investigation revealed that the amounts paid by representatives were neither paid to government nor for any lawful purpose. An amount of Rs. 3 Crores changed hands through one Manish at behest of accused no. 1 and 3 as revealed from their whatsapp chats. Accused no. 8 Mandeep Chawla allegedly sought favours for various mining works and contracts from accused no. 1 and 3. Chats show that accused no. 8 also collects money for accused no. 1.

Analysis of whatsapp chats of accused no. 1 and an IFS officer Anil Rai (Secretary PWD, Chhattisgarh) disclosed about payment of money from IFS officer to accused no. 4. The accused no. 4 allegedly collected bribes from traders at behest of accused no. 1 and 3. Whatsapp chat of accused no. 4 revealed that Rs. 5 Crores were delivered by some person to him at instance of accused no. 1. Further investigation revealed whatsapp conversations between accused no. 1 and 4 regarding proposals of percentage shares of manufacture of country liquor, beer amongst various distillers of Raipur for FY 2019-20. They also discussed about the shares to be allotted to each group of distillers and their objections etc. From chats of accused no. 4 information about collection of bribes from liquor and other businesses by him and transfer of that money to accused no. 1 is unveiled. Photos of Rs. 10 and Rs. 20 currency notes were exchanged on whatsapp between accused no. 1 and 4 in order to communicate in code language about exchange of money. Issues of allotment of mines and payment of royalty etc. were also parts of chats of accused no. 1 and 4.

Accused no. 9 M/s Lingraj Suppliers Pvt. Ltd. is a company incorporated in Kolkata on 12.02.2009 and is allegedly indirectly controlled by accused no. 1 and 2. Accused no. 9 is purportedly

managed by one CA Vikas Agarwal (accused no. 7). Bank account numbers were shared by accused no. 7 with accused no. 2 which was followed by transfer of money into the bank accounts of different companies from bank account of accused no. 9. It was also exposed during investigation that bogus companies like Chamunda Distributors Pvt. Ltd. and Mahadev Commodities Pvt. Ltd. made investments in accused no. 9 in the FY 2009-10 at very high valuation (Each share of Rs. 10/- face value was subscribed at a premium of Rs. 990/-) despite accused no. 9 not having any investments or worthwhile business at that time. Accused no. 10 Saurabh Jain and accused no. 11 Vaibhav Saluja were then shareholders of accused no. 9. Accused no. 10 and 11 failed to submit the bank account statement of accused no. 9 for FY 2009-10 which shows that the entire transaction of issue of shares at premium was a sham transaction designed to park unaccounted money. Accused no. 10 and 11 also owned one company namely M/s Safal Multi Trade Pvt. Ltd. M/s Safal Multi Trade Pvt. Ltd. acquired 93% shares of accused no. 9 in May 2010. M/s Safal Multi Trade had an asset base of few lakh rupees at the time of acquiring 93% shares of accused no. 9 which had securities premium its balance sheet of Rs. 13 crores. Accused no. 11 was an employee of M/s Meenakshi Beauty and Academy Pvt Ltd. (a business run by wife of accused no. 1). Accused no. 11 transferred his shareholding in Safal Multi Trade in 2017. Accused no. 7 disclosed that accused no. 9 is owned by M/s. Safal Multi Trade Pvt. Ltd. which itself is owned by Swati and Nishi Agarwal (accused no. 14 and 15 respectively) who purchased its shares in February 2019 but the sale consideration of Rs. 1.2 Crores had not been paid till date. Money was time and again transferred from bank account of accused no. 9 to M/s Meenakshi Beauty and Academy Pvt. Ltd. The directors of accused no. 9 are Ashok Kumar Agarwal and Garima Sharma (accused no. 12 and 13 respectively).

Text messages between accused no. 2 and Vishal Rahatgaonkar (accountant of Tuteja family) and bank account statements show that accused no. 9 was controlled by the Tutejas. Whastapp chats between accused no. 2 and 8 as well as between accused no. 4 and Nitesh Purohit (accused no. 5) show payments being made to Shamrock Hotel which is owned by accused no.8.

Search was conducted upon Minakshi Tuteja (w/o accused no. 10 on 27.02.2020. Search was also conducted at premises of accused no. 3. Accused no. 3 informed that her mobile phones were lost and when an attempt was made to take backup of her e-mails then a device made an access from Singapore and deleted entire data available in the mail. Whatsapp chats of accused no 1 and 3

also showed that accused no. 3 wrote that her personal secretary Jay will give money to Chaitanya Baghel (S/o Chief Minister of Chhattisgarh). A diary maintained by accused no. 3 was also recovered from her residence wherein various transactions done over the years were recorded about which no satisfactory replies were given by accused no. 3. Chats between accused no. 1 and 3 using code words and abbreviations were also discovered which showed movement of unaccounted cash of crores of rupees. Accused no. 6 Vikas Agarwal @ Subu Agarwal exchanged whatsapp messages with accused no. 4 regarding accounting of collection of bribes/commission from sale of liquor showing that he was also privy to and involved in illegal activity of raising and movement of unaccounted cash for accused no. 1. As per the complaint commission/bribes amounting to Rs. 14.41 crores went to accused no. 1 between 28.07.2019 to 20.12.2019."

3. The petitioner/complainant being aggrieved of that part of the impugned order whereby the learned ACMM had directed the return of the complaint to the extent of those offences, which, according to the learned ACMM had arisen beyond the territorial jurisdiction of Delhi, is assailing the same through the present petition under Section 482 Cr.P.C. The impugned part of the order is as under:-

"Ordinarily, every offence shall be tried by a court within whose local jurisdiction it is committed. The judgment passed by the High Court of Delhi in the case titled as Jolly Singh v. The State 2022 LiveLaw (Del) 1157: cited by the complainant is taken note of and the same is being adhered to. The entire case of prosecution is that for assessment year 2020-21, accused no. 1, 2 & 3 in collusion with each other took bribes, illegal commissions, unaccounted monies etc. (in state of Chhattisgarh), the collection work was clone by accused no. 4 to 6 & 13 on their behalf, thereafter with aid of accused no. 7, and 10 to 15, this unaccounted cash was deposited in bank account of accused no. 9 which in turn either kept it or transferred the same to the beauty saloon business run and owned by accused no. 2 and wife of accused no. 1. None of these acts had occurred within the territory of Delhi. The criminal conspiracy was not hatched at Delhi, the destruction of evidence was not done at Delhi, wilful evasion of tax or false verification of income tax returns did not occur at Delhi. No abetment of aforementioned offences was done at or from Delhi. No monetary transaction was executed at Delhi. The jurisdiction with regard to these offences is

either at Kolkata or at Raipur or Bhilai or at other places of Chhattisgarh where the conspiracy was put into effect by accused persons. The complaint with regard to these offences qua all the accused persons is returned in original and the complainant may present the same before the court of competent jurisdiction."

ARGUMENTS ON BEHALF OF THE PETITIONER:

4. Mr. S.V. Raju, learned Additional Solicitor General of India (hereinafter referred to as "ASG") appears on behalf of the petitioner and submits that the learned ACMM *vide* the impugned order dated 06.04.2023 took cognizance of only half or part of the offences and returned the complaint qua the offences under Section 276C(1)/278 read with Section 278B/278E of the Income Tax Act, 1961 (hereinafter referred to as "I.T. Act") and Sections 120B/199/200/204 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") committed by the accused persons on the ground that the Courts in Delhi lack the territorial jurisdiction over such offences, which is impermissible in law.

5. Learned ASG submits that the learned Magistrate taking cognizance of an offence must not necessarily have territorial jurisdiction to try the case as his power to take cognizance of the offence is not impaired by territorial jurisdiction. He further submits that even the provisions of Section 179 Cr.P.C. do not restrict the powers of any court to take cognizance of the offence. He relies upon the judgment of the Supreme Court in ***Trisuns Chemical Industry v. Rajesh Agarwal*** reported as **1999 8 SCC 686**, especially to Para Nos. 11 and 13 to submit that the Court cannot be impaired by territorial jurisdiction during pre-cognizance stage.

6. Learned ASG further submits that this is a case of criminal conspiracy which is a continuing offence and continues to subsist and

committed wherever one of the conspirators does an act or series of acts. In this regard, he relies upon the judgment of the Supreme Court in ***Ajay Aggarwal v. Union of India & Ors.*** reported in **(1993) 3 SCC 609,** specifically to Para 25 wherein it was held that so long as the performance of the conspiracy continues, it is a continuing offence and it will continue so long as there are two or more parties to it, intending to carry into effect, the design.

7. He further submits that the conspiracy in the present case is not just restricted to evasion of taxes but extends to misleading the petitioner authority by giving false statements. On this basis, he submits that the statements given by the accused/ respondents under Section 131(1A) of the I.T. Act forms part of the conspiracy against which the proceedings under Income Tax Act were initiated against them.

8. Learned ASG submits that even though the criminal conspiracy may not have been hatched in Delhi and the willful evasion of tax or false verification of IT returns did not occur at Delhi but the statements given by the Accused No. 1, 2 & 3 under Section 131(1A) I.T. Act before the Income Tax Authorities in Delhi form an important part of and are an extension of the offence under Section 276C of the I.T. Act and Section 120B of IPC. Consequently, Delhi becomes the place where the offence of criminal conspiracy was continued to be committed by the accused respondents, thus giving Courts in Delhi the territorial jurisdiction to try the case.

9. Learned ASG refers to Sections 178 and 179 of the Cr.P.C., which are extracted hereunder:-

> ***"178. Place of inquiry or trial.***

(a) When it is uncertain in which of several local areas an offence was committed, or
(b) where an offence is committed, partly in one local area and partly in another, or
(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or
(d) where it consists of several acts done in different local areas,
it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.
When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

On this, he submits that the present case is one of criminal conspiracy which has been committed in more local areas than one and thus, is covered by the provisions of Section 178 (c) of the Cr.P.C.

10. It is submitted that there is continuity in action and purpose which starts from the conspiracy to receipt of undisclosed income and extends to concealing such income from the returns of the respondents and concertedly evading and deflecting the authorities, including by way of the statements given under Section 131 (1A) of the I.T. Act within the territory of Delhi. Learned ASG contends that the respondents, in pursuance of the criminal conspiracy, gave misleading statements to the petitioner authority and as it is an admitted position of law that the overt acts committed in pursuance of the conspiracy would form part of the same transaction, the said giving of statements to the petitioner authority

in the present case would form part of the same transaction, thus invoking the territorial jurisdiction of Courts of Delhi.

11. Learned ASG relies upon the judgment of the Supreme Court rendered in ***Asit Bhattacharjee v. Hanuman Prasad Ojha & Ors.*** reported in **(2007) 5 SCC 786** wherein it was held that where a part of cause of action has arisen, the police station concerned situated within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) Cr.P.C., will have the jurisdiction to make investigation. On this basis, Mr. Raju submits that the petitioner is conducting the investigation in Delhi where a part of the cause of action arose when the accused respondents gave misleading statements to the petitioner authority and for this reason, the learned ACMM had the territorial jurisdiction to take cognizance and even try the case.

12. Mr. Raju further relies upon the judgment of the Supreme Court in ***Chandra Deo Singh vs. Prokash Chandra Bose alias Chabi Bose & Anr.*** reported as **AIR 1963 SC 1430**, specifically to para 7 which lays down that an accused person does not come into the picture at all, till the process is issued. He may remain present with a view to be informed but he has no right to take part in the proceedings. Taking strength from the same, learned ASG submits that an accused person does not have a right to interfere or even make submissions, rather just a right to be informed and be present.

13. He further submits that it is a clearly laid down law that the discretion must remain with the Police or the complainant to choose the place of trial and the accused should not have any say in the matter.

14. Reliance is further placed upon the judgment of the Coordinate Bench of this Court in ***Mahindra Kumar Narendra & Ors. Vs. State & Ors.*** reported as **2004 SCC OnLine Del 1025,** specifically to Para 7 to submit that the proceedings can be initiated at any of the places where the offence has been partly committed and the Magistrate exercising jurisdiction over all those areas are empowered to take cognizance of the offence under Sections 170 and 173 of the Cr.P.C.

15. Learned ASG next refers to Para 10, 11 and 12 of the judgment of the Supreme Court in ***Purushottamdas Dalmia vs. State of West Bengal*** reported as **AIR 1961 SC 1589** wherein it was held that the provisions of the Code should be construed to give jurisdiction to the Court trying the offence of criminal conspiracy, to try all the overt acts committed in pursuance of their conspiracy. This is for the reason that if such overt acts committed could not be tried by the Court due to lack of territorial jurisdiction, then it would mean that either the prosecution is forced to give up its right of prosecuting the accused for commission of those overt acts or that both the parties are put through the trouble of trying those offences in a second Court who would be determining the same questions and appreciating the same evidence. That apart, there would also be a risk of the second Court coming to a different conclusion from that of the first Court.

16. On this basis, Mr. Raju submits that the acts of criminal conspiracy and willful evasion of tax committed by the accused respondents extended to the local area of the NCT of Delhi by way of statements given in concert by the Respondent Nos. 1, 2 and 3 in order to evade and deflect the Tax Authorities and thereby, giving the Courts

in Delhi the territorial jurisdiction over the offences alleged in the complaint of the petitioner.

17. On the issue of maintainability, Mr. Raju draws support from the judgment in ***Prabhu Chawla Vs. State of Rajasthan & Another*** reported in **(2016) 16 SCC 30** wherein the Supreme Court made it clear that since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders, which is wholly unwarranted. On this basis, learned ASG submits that the present petition filed under Section 482 of the Cr.P.C. is maintainable regardless of the availability of remedy under Section 397 Cr.P.C.

18. Thus, on the basis of the above contentions and the judgements relied upon, learned ASG seeks indulgence of this Court to pass interim order restraining the operation of the impugned order dated 06.04.2023 passed by the learned ACMM returning the complaint *qua* the offences in respect of Section 276C(1)/278 read with Section 278B/278E of the Income Tax Act, 1961 and Sections 120B/199/200/204 of the Indian Penal Code, 1860.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 3

19. Mr. Mukul Rohatgi, learned Senior Counsel commenced his arguments challenging the very maintainability of the petition itself by discussing in detail provision under Section 482 Cr.P.C., to emphasize that although there is no legal bar to file a petition under Section 482 Cr.P.C. impugning such an order, but to maintain the same, the petitioner needs to demonstrate that there has been an "*abuse of process*

of law" or to *"secure the ends of justice"* or there are some "*exceptional or extraordinary circumstances*" which actually lead the petitioner to file such urgent petition under Section 482 Cr.P.C invoking the jurisdiction of the High Court.

20. Learned Senior Counsel further submits that as per the settled law, Section 482 Cr.P.C. must not be invoked when there is a clear cut statutory alternate remedy available to the petitioner and the same principle of law has been duly followed by the various High Courts while maintaining and observing such principle as a rule of prudence. Learned Senior Counsel contends that the petitioner, in the present case, has actually bypassed the statutory remedy, i.e., Criminal Revision, provided to the petitioner under Section 397 Cr.P.C., and had resorted to the jurisdiction of this Court without even displaying or pleading any signs of abuse of process of law or exceptional circumstance arising in the facts of the present case.

21. Learned Senior Counsel further emphasized upon the "Golden Thread" concept of the parameters which could entitle the petitioner to file the present petition under Section 482 Cr.P.C., that is only when the aggrieved is able to show that the complaint in question has been filed with ulterior motives which amounts to abuse of the process of law or to prevent any untoward incident or happening that constitute an exceptional circumstance.

22. To buttress his above submissions and to further emphasize upon the scope and jurisdiction in respect of Section 397 Cr.P.C. and Section 482 Cr.P.C., learned senior counsel had relied and read out the relevant paras from the following judgments:-

a) ***Amit Kapoor Vs. Ramesh Chander*** **(2012) 9 SCC 460 Para 20 and 21.**
b) ***Madhu Limaye Vs. The State of Maharashtra*** **(1977) 4 SCC 551 Para 8 to 10.**
c) ***Neeharika Infrastructure (O) Ltd. Vs. State of Maharashtra*** **2021 SCC OnLine SC 315 Para 11, 34, 36 to 41, 58, 59, 63 and 77.**

23. Learned Senior Counsel directly attacked the contention laid on behalf of the petitioner that learned ACMM should have taken the cognizance and then decided the aspect of territorial jurisdiction of the present complaint or rather an inquiry for the said purpose needs to be conducted, and submits that the same is absolutely erroneous and the inquiry for the said purpose was duly conducted by the learned ACMM while at the stage of taking cognizance of the present complaint. Learned Senior Counsel further invites attention of this Court to page 5 of the impugned order to submit that the learned ACMM had decided the issue of cognizance after conducting a proper inquiry from the concerned officials of the complainant.

24. Learned Senior Counsel further submitted that the learned ACMM was also cognizant of the law applicable with regard to jurisdiction inasmuch as the learned ACMM had duly noted in page 7 of the complaint that the jurisdiction at Delhi arises because of the fact that the assessment was centralized under the provisions of the Income Tax Act and also that there has been a violation of Section 131(1A) of the I.T. Act. Learned Senior Counsel further submits that the learned ACMM had, therefore, rightly returned the complaint for the other alleged offences after conducting a due inquiry concluding that entire conspiracy and its constituents are alleged to have been committed in

the State of Chattisgarh only and therefore, for those offences, the jurisdiction of the Courts at Delhi are not made out. Learned Senior Counsel further emphasizes that the transferring of the Income Tax Assessment does not confer jurisdiction upon any place and therefore the Learned ACMM was absolutely right in considering that mere transferring of assessment to Delhi does not render the jurisdiction of Criminal Courts at Delhi over the offences so alleged to have been committed in Chhattisgarh.

25. Learned Senior Counsel further argues that the gravamen of offences in the present complaint is actually the offences alleged under Section 276(C) of I.T. Act and had nowhere provided that the accused are being prosecuted for offences committed under Section 131(1A) of I.T. Act. He further submits that even at the end, the complaint so filed, also contends that the prosecution is only for two offences, relief whereof are further sought in the prayer and thus, submits that same has nothing to do with the recording of statement. Rather the offences are alleged to have been committed in Delhi and thus the complaint in respect of other offences was rightly returned by the learned ACMM. It is also submitted that even the prosecution under the Section 131(1A) of I.T. Act is also premature and cannot withstand judicial scrutiny since the same needs to follow up the process of assessment proceedings.

26. Learned Senior Counsel then sought to distinguish the applicability of judgement in ***Trisuns Chemical Industry (supra)*** relied upon by the learned ASG. According to Learned Senior Counsel, since the offences in the present complaint are alleged to have been committed in Chattisgarh and no consequence has ensued anywhere else

outside Chhattisgarh, the learned ACMM is empowered to consider the question of jurisdiction at the stage of inquiry. He submits that Section 179 Cr.P.C enables and empowers the learned MM to conduct an inquiry on the question of jurisdiction to ascertain as to whether any offence or its consequence had ensued within the local limits of its territorial jurisdiction. He further brings the attention of this Court to Para 14 of the said judgement wherein it was held that the Magistrate is empowered to consider the question of jurisdiction at the stage of inquiry and trial.

27. Learned Senior Counsel also submits that the petitioner is actually pursuing the present complaint as a proxy litigation on behalf of the Enforcement Directorate despite there being no predicate offence on which ED can take action against the respondents. This is despite the fact that the ED itself was restrained by the Supreme Court against initiating any coercive action.

28. Learned Senior Counsel next argues that mere making of statements cannot be said to be part of the conspiracy by drawing analogy with the statements so made under Section 164 Cr.P.C. He submits that the learned ACMM had himself clearly understood that the statements so made by the respondent Nos. 1 to 3 in Delhi, in their individual capacities cannot relate back to the conspiracy which is alleged to have been committed in Chattisgarh. He also submitted that the learned ACMM, at the time of taking cognizance, had taken care to note that since the offences of cheating and tax evasion are distinct and different from making alleged false statements during the assessment

proceedings, there is a clear demarcation of the places of jurisdiction for the same.

29. Learned Senior Counsel further goes on to submit that the learned ACMM was also of the correct opinion that the filing of the income tax returns were on individual basis, squarely different from each other and thus there cannot be any conspiracy necessitating filing of a composite complaint. According to Learned Senior counsel, since there are separate causes of action, the direction to file three separate complaints was in accordance with law.

30. Learned Senior Counsel further points out to the order dated 01.08.2023 passed by the Revisional Court, on the issue of false and incorrect submissions made by the learned counsel for the Complainant before it to submit that the complainant had deliberately tried to take advantage as only a part of the impugned order was stayed by Revisional Court and not the entire impugned order. He submits that such kind of act should not be condoned by the Court while exercising jurisdiction under Section 482 Cr.P.C., particularly when the complainant/petitioner itself lacks *bonafide* in showing the abuse of the process of law or exceptional circumstances for this Court to entertain the present petition.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 1 & 2

31. Mr. N. Hariharan, learned Senior Counsel at the outset submits that Section 191 Cr.P.C. itself provides that the learned ACMM has an absolute discretion to take cognizance of any matter by emphasizing on the word *"may"*, used in the said section. Learned Senior Counsel argued that the learned ACMM had the power and discretion to consider

the issue of jurisdiction which he had duly exercised and is manifest even from the plain reading of the impugned order and the same is not taken away by the judgment in ***Trisuns Chemical Industry (supra)***.

32. Learned Senior Counsel had provided a brief flavour of the entire alleged conspiracy to submit that just by making the assessment centralized does not confer the jurisdiction of Criminal Courts at Delhi of the offences alleged to have been committed in Chattisgarh. Learned Senior Counsel contends that the same was examined in detail by the learned ACMM while passing the impugned order and any action thereagainst would tantamount to taking away the discretion which was rightly exercised by proper application of mind and applying the Local Jurisdiction Rule, being the *"thumb rule of jurisdiction"*, which could not be the intent of the judgment in *Trisuns Chemical Industry (supra)*. Further that, rightly or wrongly, the learned ACMM had himself bifurcated the offences on the basis of jurisdiction, for which power and discretion is statutorily conferred, as envisaged under the Code.

33. Learned Senior Counsel further submits that the offences alleged against the respondents are under the Income Tax Act and therefore, the offences, if any, give rise to different causes of action and separate set of offences committed by different individuals could not be clubbed to become part of the assessment proceedings or the conspiracy. Learned Senior Counsel further submits that allegation of conspiracy is wrong in its inception as all the transactions are independent in their entirety.

34. In that, learned Senior Counsel submits that every individual has his own assessment and tax return and after filing of tax returns, the conspiracy if any, ends there and then. The statements made subsequent

thereto cannot become a part of conspiracy. Learned Senior Counsel further argues that admittedly, the returns were duly filed 4 years back and thus, it cannot be presumed that the alleged false statements of certain individuals would now give rise to a cause of action against even those persons who had filed their Returns long back in time, which is the very question to be pondered upon. Learned Senior Counsel further submits that there is no continuum or continuity of conspiracy at Delhi as the alleged conspiracy ends with the filing of the tax returns. He further argues that the Court should be more cautious while dealing with the offences where Section 120B I.P.C. as is also alleged, since the statements so recorded can be read against the other accused persons under Section 10 of the Indian Evidence Act.

35. For those questions so raised, learned Senior Counsel argues that the learned Revisional Court was itself seized of the matter examining the propriety and legality of the impugned order concerned and since only part of the order is challenged here, it would be in the interest of justice as also prudent that the present matter be remanded back to it, to take a call on the entire issue as also to prevent the diversity of findings or multiplicity of proceedings.

36. Learned Senior Counsel further submits that by virtue of filing the present petition under Section 482 Cr.P.C., challenging the order of the learned trial court, the petitioner/complainant had actually caused great prejudice to the respondents in bypassing the procedure established under the Code. In that, by this contrivance, the right and opportunity to file an appeal against the order or to take the next step in line as per the Code are denied. Learned Senior Counsel further argues that revision so

filed by the respondents is actually ante-dated to the present petition, coupled with the fact the complainant/petitioner also does not point out any concrete evidence or incidence of abuse of process of law or exceptional circumstance to justify the filing and maintainability of the present petition here under Section 482 Cr.P.C.

37. Learned Senior Counsel further submits that even as per Section 201 and the entire conspectus of the Chapter-XIV of the Cr.P.C., it is the discretion which is bestowed upon the learned MM to try and take cognizance of the offences which further also provides that the learned MM should mandatorily return it, to be presented before the proper court, if there is lack of jurisdiction. Thus, the learned MM had rightly done so by returning the complaint and not dismissing it. The petitioner has been unable to show that they are remediless in such a situation.

38. Learned Senior Counsel further points out that the present complaint was filed on 11.03.2021 under the alleged sections based upon which the ED has also registered an ECIR under the Prevention of Money Laundering Act, 2002 (hereinafter referred as "PMLA"). Learned Senior Counsel specifically points out to this Court that there is no offence under the Income Tax Act which is Scheduled Offence under the PMLA and the entire edifice of the PMLA proceedings against Respondent Nos.1 and 2, is based only upon section 120B of IPC. Learned Senior Counsel further submits that without any scheduled offence being committed, offence under section 120B IPC cannot stand. He submits that the said move/action is draconian inasmuch as the subsequent implication under Section 120B IPC can make the accused liable for proceedings under the provisions of PMLA, which are

required to be considered by the Court to curb the ED from taking a back door entry by prosecuting a proxy litigation under the guise of the complainant ITO.

39. Learned Senior Counsel next points out the intrusion and orchestration conducted by the ED to submit that the complainant is pursuing the present matter at the behest of ED since the ED is deliberately and intentionally taking advantage of the order of the learned Revisional Court of partial stay and had started arraying the persons as accused in the PMLA proceedings. Learned Senior Counsel further relies upon the contentions in the present application for stay to emphasize that the pleadings are drafted in such a manner so as to provide benefit to the ED only.

ARGUMENTS OF THE RESPONDENT NO. 4

40. Mr. Mohit Mathur, learned Senior Counsel appearing on behalf of the respondent No. 4 refers to the Complaint Case No. 1183/2022 filed by the petitioner appended at page 73 of this petition and specifically to para 81, to submit the involvement and allegation *qua* the respondent No. 4. The same is extracted hereunder:-

> *"81. ……Therefore, from the entire conspectus of the searches conducted, statements recorded and the factual matrix of the entire matter detailed herein above, it is apparent that accused – Anil Tuteja, Yash Tuteja, Saumya Chaurasia have committed offences u/s 276C(1)/ 277 of Income Tax Act for A.Y. 2020 – 2021 read with Section 120B/191, 199, 200 and 204 of Indian Penal Code, 1860; further, the said offences have been abetted and facilitated by Anwar Dhebar, Nitesh Purohit, Vikas Agarwal alias Subbu, Vikas Agarwal (CA at Kolkata), Mandeep Chawla (businessman/ owner of Shamrock Hotel Raipur), M/s Lingraj Suppliers Pvt Ltd, Saurabh Jain, Vaibhav Saluja (Shareholder till 2017), Ashok Kr. Agarwal and Garima Sharma (Current Directors) alongside*

current shareholders Swati and Nishi Agarwal u/s 278 of Income Tax Act read with Section 120B."

41. Learned Senior Counsel upon reading the aggrieved part of the complaint submits that as regards the income aspect is concerned, the incorrect declaration of income or concealment of the unaccounted income is only *qua* the respondent Nos. 1, 2 and 3 and not against other respondents.

42. Mr. Mohit Mathur, learned Senior Counsel submits that there is a clear dichotomy drawn out in the complaint itself as the involvement of the respondent No. 4 does not figure in the complaint at all except the allegation against the respondent No. 4 for the offences under section 278 of I.T. Act read with section 120B IPC. The said provision is extracted hereunder:-

> *"**278. Abetment of false return, etc.**—If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to [6][any income or any fringe benefits chargeable to tax] which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 276C, he shall be punishable,—*
>
> *(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded, exceeds 7 [twenty-five hundred thousand rupees], with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*
>
> *(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to 8 [two years] and with fine."*

43. Learned Senior Counsel submits that the complaint against the respondent No. 4 by the petitioner is only under Section 278 of I.T. Act read with section 120B IPC. He further contends that in a complaint

where categorical offence is alleged, the prosecution cannot change their goal posts. On that, he submits that the petitioner's allegation against the respondent No. 4 is that he abetted and facilitated the respondent Nos. 1, 2 and 3 in filing the false return and concealing the income.

44. Mr. Mathur, learned Senior Counsel submits that conspiracy has two parts and refers to section 120A & 120B IPC. The same is extracted hereunder:-

> *"**120A. Definition of criminal conspiracy.--** When two or more persons agree to do, or cause to be done,*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*
>
> *Explanation It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.*
>
> ***120B. Punishment of criminal conspiracy.--** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*
>
> *(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."*

Upon reading the abovementioned sections, he submits that abetment would tantamount to an offence when the act of the abettor is necessarily prequel to the act of the person who is committing the

offence. An act to become an offence must succeed the abetment, therefore the abetment is done prior to the act having been completed.

45. Learned Senior Counsel also submits that the respondent No. 4 is accused of abetting the offence allegedly committed by the respondent Nos. 1 to 3 in not filing the returns. He further submits that to re-create the offence, the petitioners have enumerated all the other offences *qua* the respondent Nos. 1 to 3 and the learned Trial Court has analysed and decided one part of the act as completed and as regards to the respondent No. 4, the learned Trial Court cannot take the cognizance of section 278 I.T. Act and should have tried separately. On this, he drew the attention of this Court to section 218 Cr.P.C. The same is extracted hereunder:-

> *"**218. Separate charges for distinct offences.***
> *(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:*
> *Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.*
>
> *(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223."*

46. Mr. Mathur, learned Senior Counsel submits that the learned Trial Court took cognizance of certain acts against the respondent Nos. 1 to 3. So far as the others are concerned, the learned ACMM has not discharged them but has merely returned the complaint to be filed in an appropriate forum. He further submits that the charge of Section 278 of I.T. Act is only limited to abetment alone, *qua* the respondent No. 4.

47. Learned Senior Counsel submits that in terms of section 2(n) of Cr.P.C., an offence is any act or the omission, whereupon cognizance is taken, stating that a particular act constitutes such offence. He further submits that section 482 Cr.P.C. is not a forum to test as to which offence ought to have been taken cognizance of.

48. Mr. Mohit Mathur, learned Senior Counsel submits that a revision petition is pending before the learned Sessions Court, wherein the other part of the impugned order is already challenged by the respondent Nos. 1 to 3. By relying upon section 397 Cr.P.C., learned Senior Counsel submits that both the Courts i.e. the Sessions Court and the High Court, exercise concurrent jurisdiction and when one of them is *in seisin* of such exercise, it would be inappropriate for the other Court to also simultaneously examine such matter. In this case, this Court under section 482 Cr.P.C. ought to restrain itself.

49. Mr. Mohit Mathur, learned Senior Counsel refers and relies upon the relevant paras of the judgement of the Supreme Court in ***Honnaiah Vs The State of Karnataka*** reported in ***2022 SCC OnLine SC 1001*** to submit that the present petition under Section 482 Cr.P.C. ought not to be allowed to be entertained by this Court as there is a remedy available with the petitioner under Section 397 Cr.P.C.

50. Learned Senior Counsel draws the attention of this Court to para 7 of the Stay application CRL.M.A. 19314/2023 filed by the petitioner. The same is extracted hereunder:-

> *"7. Further, it is submitted that as the impugned Order dated 06.04.2023 has not been stayed in the Petition filed by the Petitioner Department, the Petitioner Department as well as other law enforcement agencies are facing difficulties in discharging their functions. In this regard, reference is made to the Order of the Hon'ble Supreme Court dated 18.07.2023 in*

Yash Tuteja & Anr. vs. Union of India & Ors., WP(Crl.) No. 153 of 2023 filed by the Respondents No. 1 and 2 herein before the Hon'ble Supreme Court challenging proceedings under the Prevention of Money Laundering Act, 2002 initiated on the basis of Scheduled offences that form a part of the Ct. Case No. 1183 of 2022. By way of the Order dated 18.07.2023, the Hon'ble Supreme Court held as follows:-

> *"On hearing learned counsel for the parties it transpires that the complaints have been returned, the income tax authorities having taken that to a further Court in appeal and* ***there being any absence of stay, apart from the order already passed of no coercive action, the concerned respondent authorities must stay their hands in all manner. Ordered accordingly.*** *On our query of learned ASG,* ***we clarify that if the stay is obtained qua that order, it open to the respondents to move this Court for obtaining appropriate order."***

51. Mr. Mathur, learned Senior Counsel submits that when the Supreme Court in ***Honnaiah (Supra)*** has granted "*any third party*" to exercise the option of revision, in the present case, the petitioner despite being the complainant, instead of invoking the revisional powers has approached this Court for stay of the order of the learned Trial Court, which is *per se* not maintainable.

52. Learned Senior Counsel submits that jurisdiction cannot be assumed to have been conferred in Delhi merely on the basis that statements under Section 131(1A) of I.T. Act were recorded in Delhi. He submits that initiation of the proceedings under the Income Tax Act is contingent upon the petitioner's scrutiny of the accounts. According to learned Senior Counsel, the abetment to file false IT Returns, that too 4 years back, cannot be stretched to mean that the same continued till the alleged false statements tendered by respondent nos.1 to 3 at Delhi.

He submits that the respondent No. 4 has no role in respect of the affidavits filed by the respondent Nos. 1 to 3 in Delhi.

53. Mr. Mohit Mathur, learned Senior Counsel concludes by referring to paragraph No. 2 of the complaint to submit that on 27.02.2020, all the conspiracy came to an end when the object was achieved. The same paragraph No. 2 is extracted hereunder:-

> *"2. That Search action was conducted upon Smt. Minakshi Tuteja (wife of accused no. 1 i.e. Shri Anil Tuteja, Joint Secretary, Mantralaya, Atal Nagar, Raipur), accused no. 2, Accused no. 4, 6 and M/s A Dhebar Buildcon etc. at Chhattisgarh on 27.02.2020."*

ARGUMENTS ON BEHALF OF RESPONDENT NO. 5

54. Mr. Rahul Tyagi, learned counsel appearing for respondent No. 5 adopts the arguments of Mr. Mohit Mathur, learned Senior Counsel appearing for respondent No. 4, however, puts forth the following contentions.

55. Mr. Tyagi, learned counsel relies upon the provisions of section 397 Cr.P.C., to submit that when the Revisional Court is already seized with testing the correctness of the impugned order passed by the learned Trial Court, this Court ought to avoid examining the very same order.

56. Learned counsel submits on the concurrent powers of the Sessions Court by referring to Section 399 Cr.P.C. The same is extracted hereunder:-

> *"**399. Sessions Judge's powers of revision.**—(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.*
>
> *(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such*

proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

57. Mr. Tyagi, learned counsel submits that the allegations against the respondent No. 5 is that, the illegal money earned was collected and handed over by respondent No. 5 to the respondent Nos. 1 to 3. He further makes it clear by submitting that the respondent No. 5 was not earning any income from that.

58. Learned counsel submits the only allegation *qua* the respondent No. 5 is recorded in paragraph 5 of the impugned order dated 06.04.2022. The same is extracted hereunder:-

"5. That it was found that accused no. 4 to 8, were (being friends/aides to Tuteja Group/Family), managing the collection and distribution of unaccounted cash."

59. Mr. Tyagi, learned counsel refers to para 81 of the Complaint containing the allegations and sections invoked against respondent No. 5. The same is extracted hereunder:-

"81…further, the said offences have been abetted and facilitated by Anwar Dhebar, Nitesh Purohit, Vikas Agarwal alias Subbu, Vikas Agarwal (CA at Kolkata), Mandeep Chawla (businessman/ owner of Shamrock Hotel Raipur), M/s Lingraj Suppliers Pvt Ltd, Saurabh Jain, Vaibhav Saluja (Shareholder till 2017), Ashok Kr. Agarwal and Garima Sharma (Current Directors) alongside current shareholders Swati and Nishi Agarwal u/s 278 of Income Tax Act read with Section 120B."

60. Learned counsel draws attention of this Court to section 278 of I.T. Act to submit that there is no material to show that the respondent No. 5 had abetted the respondent Nos. 1 to 3 to file false returns.

61. Mr. Tyagi, learned counsel submits that the allegations presented before this Court by the petitioner *qua* the respondent No. 5 having abetted in signing false statements by the respondent Nos. 1 to 3 were never a part of the complaint and submits that the petitioner cannot go beyond what is alleged in the complaint.

62. Learned counsel submits that conspiracy comes to an end by one of the following three ways:-

i) When the object of the conspiracy is achieved, it will come to an end.

ii) When it is abandoned, it will come to an end.

iii) When the conspiracy is discovered, it will come to an end.

63. Mr. Tyagi learned counsel submits that allegations are predicated on the alleged recovery of WhatsApp chats of respondent Nos. 1 to 3 pertaining to the year 2020 for the alleged offences at Chattisgarh. On that, learned counsel submits that since the alleged conspiracy was discovered in Chhattisgarh, the same ends *qua* the respondent No. 5 with such discovery and cannot continue till Delhi.

64. Learned counsel further submits that respondent No. 5 is an ordinary resident of Chattisgarh and the alleged cause of action having arisen there, filing of the complaint at Delhi will impair the fundamental right to fair trial of the respondent No. 5 as he have to travel to Delhi every time.

ARGUMENTS ON BEHALF OF RESPONDENT NO. 8

65. Mr. P. Roychaudhuri, learned counsel appearing for respondent No. 8 though adopts the arguments of Mr. Mohit Mathur, learned Senior

Counsel appearing for respondent No. 4, put forth the following contentions.

66. Learned counsel submits that there is no Income Tax case pending against the respondent No. 8. The allegations against the respondent No.8 is of offences under Section 278 IT Act and Section 120B IPC. He further emphasizes on the principle that Section 278 IT Act and Section 120B IPC cannot co-exist for the reason that the ingredients of offence under Section 278 IT Act is one of inducement, whereas the ingredient of offence under Section 120-B IPC is of conspiracy, which are two distinct offences having no co-relation.

67. Mr. P. Roychaudhuri draws the attention of this Court to Memo of Parties and submits that the complaint was instituted by Income Tax Office through Deputy Director of Income Tax (hereinafter referred to as "DDIT") obtaining prior permission of competent authority. The affidavit was filed by the Additional Director of Income Tax (Investigation) rather than DDIT, who is the competent authority. Learned counsel refers to the first Stay Application CRL.M.A. 10323/2023 and submits that the petitioner prayed for the stay of the impugned part of the order dated 06.04.2023. He further submits that the petitioner has moved another identical Stay Application CRL.M.A. 19314/2023, which is impermissible in law as already notice has been issued in CRL.M.A. 10323/2023 The three ingredients of stay application are *prima facie* case, balance of convenience, irreparable loss or injury caused to the petitioner. On this, he submits that nothing has been stated in the Stay Application in support of any of the three conditions precedent before seeking stay.

68. Mr. P. Roychaudhuri submits that there is nothing against the respondent No. 8 except some alleged WhatsApp Chats exchanged between the respondent No. 8 and the respondents Nos. 1 to 3. He further submits that the respondent No. 8 has not been served by the Income Tax Office and till date there are no assessment proceedings against the respondent No. 8. The respondent No. 8 was never summoned in Delhi or Chhattisgarh.

69. Learned Counsel submits that the only allegation in the complaint against the respondent No. 8 is contained in Para 41. The same is extracted hereunder:-

> *"41. That Shri. Mandeep Chawla alias Mandy (accused no. 8) is a businessman based in Raipur and he runs hotels in the name of Shamrock Hotel in Raipur. He is a close friend of Shri Anil Tuteja (accused No. 1). There are several chats between Shri Mandeep Chawla and Shri Yash Tuteja. It has been found that Shri Mandeep Chawla and Shri Yash Tuteja used to communicate lakh through the word Inova/inoa. Extracts of these chats in the chronological order along with Certificate u/s 65B of Indian Evidence Act, 1872, are annexed herewith as* ***Annexure-AJ."***

70. Mr. P. Roychaudhari concludes his arguments by submitting that the respondent No. 8 has neither visited Delhi nor has been summoned by the Income Tax office and as such no case is made out qua respondent no.8.

ARGUMENTS ON BEHALF OF RESPONDENT NO. 10

71. Mr. Sidhant Kumar, learned counsel appearing for respondent No. 10 adopts the arguments of Mr. Mohit Mathur, learned Senior Counsel appearing for respondent No. 4, however, puts forth the following contentions.

72. Learned counsel submits at the very outset that this court, while hearing the stay application against the impugned order, is concerned only with the prosecution of the present case and not with the prosecution being conducted by other investigation agencies.

73. He further submits that the question before this court is only limited to the jurisdiction of the Court trying the present case and if the present stay application is allowed, the consequence of it would be that the complaint would be restored to its original number. On this, Mr. Kumar vehemently argues that until this Court has a definitive view on the issue of territorial jurisdiction, which is the very root of the proceedings, the learned ACMM cannot, in abhorrent subordination, proceed further and take any decision till the present case has been finally decided by this court.

74. Learned counsel submits for the sake of argument that even if all the facts in the complaint are assumed against the respondents herein, there is no prejudice caused to the prosecution and there is no cause or requirement to pass any orders in the present application.

75. Mr. Kumar refers to the order dated 18.07.2023 passed by the Supreme Court wherein the petitioner authority was directed to stay their hands in all manner as no stay had been granted of the order returning the complaint, impugned herein and in fact, a protection order was passed in favor of the respondents herein. It was further noted that the Supreme Court itself had permitted the predicate agency i.e., the Income Tax Department to move an application for stay in the present case. He further submits that the aforesaid order of the Supreme Court relied upon by the applicant/petitioner in its stay application, is in regard

to the challenge made by the Respondent no. 1 and 2 against the PMLA proceedings against them. Therefore, he submits that such liberty to seek stay of the proceedings granted by the Supreme Court is only in respect of the PMLA proceedings, which has no relation with the proceedings impugned in the present case.

76. Learned counsel submits that reliance placed on the order of the Supreme Court by the petitioner is an act of completely obliterating the separation observed by this Court. What the Supreme Court holds in terms of the PMLA proceedings is of no consequence herein and the present case has to be independently examined on its own legs and the piecemeal adjudication where the applicant seeks interference by this Court at the interlocutory stage, to revive a complaint that has been returned, cannot be allowed.

77. He further submits that the revision proceedings are also pending, where it is open to the learned Revisional Court to come to any conclusion, be it in favor of or to the prejudice of the respondents, and as such, at this stage, deciding the present application would be pre-adjudicating the proceedings, causing prejudice to the rights and interests of the respondents herein. It is further submitted that the learned Revisional Court which presently has the jurisdiction of the proceedings under section 397 Cr.P.C. has all the powers to adjudicate and pass any effective order, after proper consideration of the case in its entirety, and this Court would be pre-judging a cause which is not before it and which in fact is pending before a subordinate Court. Mr. Kumar submits that such situation, in all likelihood, would bring inconsistent or contradictory outcomes and as such, the present

application/petition is an abuse of process of law and the same cannot be allowed by this Court, especially at an interlocutory stage.

78. Learned counsel next submits that respondent no. 10 is similarly placed as respondent no. 8, who are not being proceeded by the Income Tax authorities. They have not been called to give any statement and as such, cannot be tied to the offence of conspiracy, that too retrospectively, merely on the basis of alleged false statements given by respondent nos. 1 to 3 to the petitioner authorities. He further submits that foundational facts of the offence of conspiracy are of the same transaction, however, none of the essential elements of conspiracy such as the offences constituting a part of the same transaction or continuity of action, are satisfied by the allegations made in the complaint. Looking at it factually, the respondent no. 10 is not concerned with the statements given by the respondent nos. 1 to 3 or with the filing, preparation or verification of the income tax returns by them individually, to be even associated with the alleged offence of conspiracy, and on this basis, submits that the complaint is very cryptic on this aspect.

79. Learned counsel refers to the complaint to point out that the two other groups i.e. Bhatia Group and one Sh. Vivek Dhand (Retd. IAS, posted as RERA Chairman) along with their accomplices have been dealt with separately on the aspect of prosecution by sanctioning authority, in that, they have been centralized under section 127 of I.T. Act to Central Circle-08, New Delhi, except the cases of Sh. Amalok Bhatia, Sh. Bhupendra Pal Singh Bhatia, Sh. Prince Bhatia and Sh. Vikas Aggarwal alias Subbu (an accomplice) which have been

centralized to Central Circles, Bilaspur and Raipur. On this basis, he questions the very basis of the bifurcation of the complaints and their jurisdiction against the accused persons, who are said to be allegedly working in deep cahoots with each other. He further submits that the sole jurisdictional basis as against the respondent is the centralization of his returns, and if the case of the prosecution is taken to be true and if there was infact a larger conspiracy hatched between the said groups, then where is the question of such bifurcation and what is the basis of such pick and choose policy, where parts of the offences are prosecuted not together at one place, rather prosecuted arbitrarily at different places holding separate jurisdictions.

80. Learned counsel painstakingly took this Court through the allegations made against the respondent no. 10 in the complaint and submits that the cause of action, as per their own complaint, has not arisen within the territorial jurisdiction of Delhi. He further explains that none of the companies have been incorporated in Delhi, none of the alleged transactions have taken place in Delhi, and as such, the allegation that respondent no. 10 have conspired to generate the share premiums in the said companies and the actual control vests with the Tuteja Group, has no concern with the section 131(1A) of I.T. Act proceedings under the Income Tax Act against the respondent no. 10, which in fact is the only basis of seeking trial of the case in Delhi, by the petitioner.

81. He further submits that there is no averment in the complaint of any subsequent action committed by the respondent no. 10 after 2010, nor can he be said to be involved with the filing of income tax returns by

the respondent nos. 1 and 2. Mr. Kumar refers to Para 81 of the complaint wherein it is clearly mentioned by the petitioner authority itself that reporting of the correct incomes and paying taxes on the same as per the Income Tax Act, 1961 is an act mandated by the statute in their individual capacity.

82. It is further mentioned that the offences against the respondent nos. 1 to 3 are made on the entire conspectus of the searches conducted as well as the statements recorded. On this basis, it is submitted that no search was ever conducted upon the respondent no. 10, and no statements were taken of him.

83. Mr. Kumar submits that the complaint is misconceived for the reason that it does not even attempt to lay down the foundational facts, and merely a brazen attempt has been made to pull in a *malafide* prosecution against respondent no. 10.

84. He also submits that the allegations *qua* the respondent no. 10 of abetting and facilitating the said accused persons, is dated back to 2010 and there is no whisper as to how the allegations against respondent no. 10 forms part of the same transaction forming an offence of conspiracy, except a very cryptic mention of the allegation that all the accused persons worked in cahoots with each other, in the said complaint.

85. Mr. Kumar questions the validity and legality of the notification of the CBDT SO2914(E) relied upon by the petitioner wherein it is stated that the Principal Director/Director or Income Tax (Investigation), Delhi-1 or Principal Director/Director of Income Tax (Investigation), Delhi-2 can exercise Pan India jurisdiction with regard to Chapter XXI penalties imposable and Chapter XXII offences and prosecution, to

submit that the entire basis of the concept of jurisdictions of the courts, as provided under the Code of Criminal Procedure, 1973 is sought to be amended by the said notification. He further submits that a notification cannot override the fundamental provision that the territoriality has to be established for the court to try the cases before it, as provided by the Cr.P.C.

86. He further draws attention of this Court to the impugned order wherein the learned Trial Court had very categorically laid down that the said notification only enhances or enlarges the powers of the investigating authority to exercise pan India jurisdiction but the same does not have any bearing on Jurisdiction of Criminal Courts as contained in section 177 to 189 Chapter XIII Cr.P.C., as the power of an authority to investigate an offence is not co-terminus with the jurisdiction of a Court to entertain a case and anyway, such power of altering the jurisdiction of a criminal court is not vested in CBDT.

87. Mr. Kumar submits that the entire case of the prosecution is that for the assessment year 2020-21, accused no. 1, 2 & 3 in collusion with each other took bribes, illegal commissions, unaccounted monies etc. (in the state of Chhattisgarh), the collection work was done by accused no. 4 to 6 & 8 on their behalf, thereafter with aid of accused no. 7, and 10 to 15, this unaccounted cash was deposited in bank account of accused no. 9 which in turn either kept it or transferred the same to the beauty salon business run and owned by accused no. 2 and wife of accused no. 1. Learned counsel explains that none of these acts had occurred within the territory of Delhi. The criminal conspiracy was not hatched at Delhi; the destruction of evidence was not done at Delhi; the willful evasion of tax

or false verification of income tax returns did not occur at Delhi; no abetment of aforementioned offences was done at or from Delhi; no monetary transaction was executed at Delhi. On this basis, Mr. Kumar concludes that the prosecution has no legs to stand on and the present application seeking stay of the impugned order be dismissed.

ARGUMENTS ON BEHALF OF INTERVENORS

88. Mr. Dayan Krishnan, learned Senior Counsel appearing for the applicant/intervenor State of Chattisgarh has moved the present impleadment application bearing CRL. M.A. No. 19972/2023 for impleadment in the present petition on the premise that the State of Chattisgarh had intervened in the Supreme Court proceedings *vide* order dated 16.05.2023 and notice was issued to the State of Chattisgarh. Thus, making the State of Chattisgarh a necessary party.

89. Learned Senior Counsel further submits that on 18.07.2023 when the order was passed, the State of Chattisgarh had appeared. Mr. Krishnan, learned Senior Counsel drew attention of this Court to section 280B of I.T. Act to address the issue of jurisdiction. The same is extracted hereunder:-

> *"**280B. Offences triable by Special Court.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
>
> *(a) the offences punishable under this Chapter shall be triable only by the Special Court, if so designated, for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed:*
>
> *Provided that a court competent to try offences under section 292,—*
>
> *(i) which has been designated as a Special Court under this section, shall continue to try the offences before it or offences arising under this Act after such designation;*
>
> *(ii) which has not been designated as a Special Court may continue to try such offence pending before it till its disposal;*

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed for trial."

90. Mr. Krishnan, learned Senior Counsel submits that the various offences alleged under I.T. Act and sought to be tried in Delhi, are all in respect of returns filed in Chhattisgarh. It is submitted that the conspiracy in the present case relates to alleged evasion of tax, committed by filing the false Income Tax Returns within the State of Chhattisgarh, and not only initiating the investigation but also conducting the trial in Delhi directly attacks the federal structure of India, which is part of the basic structure of the Constitution of India.

91. Mr. Krishnan, learned Senior Counsel further submits that the reason for intervention by the State of Chhattisgarh in this present case is because of extreme danger of administratively transferring the investigation. He further submits that the jurisdiction will remain where the cause of action had arisen and that the administrative transfer of investigation cannot displace the statutory provision by virtue whereof a Court will try and adjudicate a particular case.

92. Learned Senior Counsel further submits the allegation in the complaint are in respect of officers who served or are serving the State Government of Chhattisgarh. He refers to paragraph 3, 6, 10 and 14 of the complaint to submit that all these allegations are in the context of alleged official acts. He further refers to para 72 of the complaint to submit that inclusion of Department of Horticulture and Farm Forestry, Chhattisgarh, makes it clear that the act was alleged to have been committed in the course of official duty or under the colour of official

duty or under purport of discharge of official duty. Therefore in respect of penal offences attracted, particularly section 120B IPC, the petitioner should not and could not have proceeded without mandatory sanction. The State of Chhattisgarh's sanction was neither sought nor given. Learned Senior Counsel refers to the judgement dated 15.06.2023 of the Hon'ble Supreme Court in Criminal Appeal No. 2417 of 2010 titled as ***A. Srinivasulu vs. The State Rep. By the Inspector of Police*** reported in **2023 SCC OnLine SC 900**. The relevant relied upon portion is extracted hereunder:-

> *"42. In D. Devaraja vs. Owais Sabeer Hussain[9], this Court explained that sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/ or act done under colour of or in excess of such duty or authority. This Court also held that to decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty."*

93. Learned Senior Counsel submits that the power under Article 226/227 of the Constitution of India and section 482 Cr.P.C., does not empower or entitle this Court to usurp the jurisdiction of the learned Sessions Court, which is *in seisin* of the revision unless there is an extraordinary situation. He further submits that law does not countenance parallel proceedings being conducted simultaneously before the lower Courts and the High Court.

94. That apart learned Senior Counsel refers to the further contentions raised in the application seeking impleadment.

REBUTTAL OF THE PETITIONER

95. Mr. Zoheb Hossain, learned counsel for petitioner, in rebuttal, had handed over the bench, detailed written submissions on behalf of the petitioner. In pursuance thereof, learned counsel had sought permission to restrict his arguments for the adjudication of the stay applications filed on behalf of the petitioner. Accordingly permitted, he started his contentions by reiterating the arguments already made with supplanting them with additional arguments which are as follows:-

95.1 With regard to the contention of the Respondents that since there is already a Revision Petition pending before the Sessions Court challenging the same impugned order, proceeding with the present Petition might lead to the possibility of conflicting opinions, he submits that if there are two conflicting views, the view of the Hon'ble High Court would prevail over the view of the learned Sessions Court. Hence mere pendency of the Revision Petition before the Sessions Court does not in any way impede this Hon'ble Court from proceeding to hear and decide the present Petition.

95.2 Mr. Hossain pertinently points out that the Respondent No.1 has challenged the impugned Order dated 06.04.2023 before the Revisional Court insofar as the said order takes cognizance of the offences u/s 277 of the Income Tax Act, 1961 and Section 191 of the Indian Penal Code, 1860 committed by the Accused No. 1, 2 and 3. On the other hand, the Petitioner has approached this Hon'ble Court challenging the impugned Order dated 06.04.2023 insofar as it has not taken cognizance of the offences u/s 276C(1)/278 read with

section 278B/278E of The Income Tax Act, 1961 and section 120B/199/200/204 of Indian Penal Code, 1860. Hence, the grievance and cause of action of the Revision Petition preferred by the Respondent No. 1 and the present Petition are different. Moreover in ***L.N. Mukherjee vs. State of Madras*** reported in **(1962) 2 SCR 116,** the Hon'ble Supreme Court has held that the court having jurisdiction to try the offences committed in pursuance of the conspiracy, can try the offence of conspiracy even if it was committed outside its jurisdiction. He relies on the following extracts of the said judgement:-

> *"2. The sole question for consideration in this appeal is whether the offence of conspiracy alleged to have been committed at Calcutta can be tried by the Court of Session at Madras.*
>
> *3. We have held this day, in Purushottamdas Dalmia v. State of West Bengal that the court having jurisdiction to try the offence of criminal conspiracy can also try offences committed in pursuance of that conspiracy even if those offences were committed outside the jurisdiction of that court, as the provisions of Section 239 CrPC, are not controlled by the provisions of Section 177 CrPC, which do not create an absolute prohibition against the trial of offences by a court other than the one within whose jurisdiction the offence is committed. On a parity of reasoning, the court having jurisdiction to try the offences committed in pursuance of the conspiracy, can try the offence of conspiracy even if it was committed outside its jurisdiction. We therefore hold that the order under appeal is correct and, accordingly, dismiss this appeal."*

95.3 He submits that the case and assessment records, all evidences including the records of statements of the Accused No. 1-3 are in Delhi. The office of the concerned Investigating Officer who would be required to depose before Court is located in Delhi. If the Petitioner is now required to present a

Complaint before a Court of another jurisdiction and present all evidence there and thereafter, this Hon'ble Court allows the present petition, that may lead to a situation where the petitioner is required to unnecessarily present evidence in two different Courts in two different locations. The costs associated with the same would have to unnecessarily be borne by the public. Hence, it is submitted that balance of convenience would lie in favour of granting of stay on the impugned order. Further, if such a stay on the operation of impugned order is not granted, irreparable injury maybe caused to the Revenue.

96. Mr. Hossain, learned counsel for the petitioner, also raised serious objections to the impleadment of the State of Chattisgarh sought *vide* application bearing CRL. M.A. No. 19972/2023, and has raised the following objections in the written submissions which are extracted hereunder:-

> "66. It is a settled principle of law that a person who is not arrayed as an accused in the complaint cannot be arrayed as a party or seek quashing of a complaint (See ***Hukum Chand Garg vs. State of UP SLP (Crl.) No. 762 of 2020; Janata Dal v. H.S. Chowdhary, (1991) 3 SCC 756 at Paras 25-26)***. Furthermore, a total stranger who has no direct personal stake in the outcome of a case cannot be a party to the case as neither the Cr.P.C. nor any other statute provides for the same (See ***Simranjit Singh Mann* V/s. *Union of India***, **(1992) 4 SCC 653** @ para 7).
>
> 67. Taxes on income other than agricultural income falls under entry 82 of List I/Union List of the Seventh Schedule to the Constitution and hence offences under Income Tax Act, 1961 and its prosecution is exclusively vested in the Income Tax Department. It would be a breach of settled constitutional

principles if State Government uses the judicial process to interfere with Income Tax Prosecutions.

68. The only limited issue in this case is whether the facts as stated in the complaint when uncontroverted would demonstrate that the Ld. Trial Court had sufficient territorial jurisdiction to take cognizance of the entire complaint and therefore there maybe no requirement to enter into the thicket of disputed issues which the State of Chhattisgarh seeks to introduce by way of its impleadment application.

69. Without prejudice to the above, it is submitted that there is no requirement to seek sanction u/s 197 CrPC as the allegations in the complaint would demonstrate that the same would not have been in discharge of official duty. It is well-settled that Section 197 of the CrPC does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those *acts or omissions* which are done by a public servant in discharge of official duty. Hence, the act or omission for which the accused was charged has to have a *reasonable connection* with discharge of his duty, for Section 197 to apply. (See ***HBB Gill & Anr. vs. The King AIR (1948) PC 128; Phanindra Chandra Neogy vs. The King AIR (1949) PC 117; Ronald Wood Mathams v. State Of West Bengal, AIR 1954 SCC at Para 11; Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411 at Para 13; Army Headquarters v. CBI, (2012) 6 SCC 228 at Para 42; Choudhary Parveen Sultana vs. State of West Bengal & Anr., (2009) 3 SCC 398 at Paras 18-21; State of Bihar & Anr. vs. P.P. Sharma (1992) Supp 1 SCC 222 at Paras 64-65; Punjab State Warehousing Corporation vs. Bhushan Chander (2016) 13 SCC 44 at Para 20***). "

ANALYSIS AND CONCLUSION:

97. This court has heard the arguments addressed by Mr. S.V. Raju, learned ASG for the petitioner, Mr. Mukul Rohatgi, Mr. Dayan Krishnan, Mr. N. Hariharan, Mr. Mohit Mathur, learned Senior Counsel

as well as other learned counsels for the remaining respondents. With their able assistance, this Court was also taken through the records of the present petition.

98. With the consent of parties, *vide* the Order dated 31.07.2023, only the arguments in respect of the stay application are being considered. The said order dated 31.07.2023 is extracted hereunder:

> *"1. Mr. S.V. Raju, learned ASG requests that the application seeking urgent stay of the order dated 06.04.2023 in respect of the challenge so made in present petition be taken up at first instance.*
> *2. Learned senior counsels appearing for the respondents have no objection in case the application is taken up for hearing prior to the main petition."*

99. Though all the learned senior counsel alongwith other learned counsel on record had argued at length on many dates on each aspect of the case, however, since this Court at the moment is concerned with the interim application seeking stay of that portion of the impugned order dated 06.04.2023 passed by the learned ACMM (Special Acts), whereby the said learned ACMM had returned the complaint in respect of the offences under Sections 276C(1)/278 read with Sections 278B/278E of the Income Tax Act, 1961 and Sections 120B/199/200/204 of the Indian Penal Code, 1860 to the petitioner for filing the same before the Court of competent jurisdiction, it appears to this Court that the entire length of arguments addressed on both sides need not be referred to in detail. Suffice it to say that the arguments and the questions of law including relevant facts required to be dealt with for the purposes of the aforesaid stay application alone are being considered.

100. The examination and consideration for the purposes of deciding the stay application is narrow and limited. In that, this Court has to decide precisely the following issues:-

i. ***Whether the Respondents had any right to appear and address arguments or raise any issue on facts or on law, before the learned ACMM at the pre-cognizance stage?***

ii. ***Whether the issue of conspiracy can be proved or disproved only during trial at the time of evidence?***

iii. ***Whether the petitioner/complainant has made out a case for stay of the impugned order?***

101. To appreciate the aforesaid issue (i), this Court needs to consider the law laid down, particularly in the cases of ***Chandra Deo Singh v. Prokash Chandra*** **AIR 1963 SC 1430** ; ***Nagawaa v. V.S. Konjalgi*** **(1976) 3 SCC 736** ; ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*** **(2012) 10 SCC 517** ; ***Meenakshi Jain v. State*** **(2012) 194 DLT 745** ; ***Adalat Prasad v. Rooplal Jindal*** **(2004) 7 SCC 33**, which are succinctly provided in the judgement of the Co-ordinate Bench of this Court in WP. Crl. 2864/2019 titled as ***Mahua Moitra v. State,*** reported in **2019 SCC OnLine Del 10666**. The relevant paras are extracted hereunder :-

> *"**23.** I have considered the rival submissions. Law on the point of intervention by the prospective accused at pre-summoning stage in a complaint case before Ld. MM is well settled by series of the judgment of the Hon'ble Supreme Court. In case titled "Chandra Deo Singh v. Prokash Chandra, (1964) 1 SCR 639" the Hon'ble Supreme Court has held as under;*
>
> > *"7. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded*

from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person….. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under s. 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry."

(Emphasis Supplied)

24. *Perusal of the above judgment reveals that Hon'ble Supreme Court has categorically held that permitting an accused to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision to this effect.*

25. *In another case titled "Nagawaa v. V.S. Konjalgi, (1976) 3 SCC 736" the Hon'ble Supreme Court has categorically held that at the stage of Section 202 or Section 204 of the CrPC, the prospective accused has no locus standi and the Magistrate has no jurisdiction to look into any material or evidence which may be produced by the prospective accused.*

26. *Similarly in "Chitra Narain v. NDTV, (2004) 72 DRJ 547" Division Bench of this High Court has held that at the pre summoning stage unless a person becomes an accused after process is issued against him by the Ld. MM, he has no right to participate in the proceedings under Section 202 CrPC.*

27. *In "Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517" the Hon'ble Supreme Court has held under;*

"46. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a

matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing…"

28. *Similarly in "Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 33" the Hon'ble Supreme Court has held under;*

> *"14… In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under sections 200 and 202, and the only stage of dismissal of the complaint arises under section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage."*

29. *In "Meenakshi Jain v. State, (2012) 194 DLT 745" the Hon'ble Supreme Court has again held that so far as the legal position is concerned, the accused/respondent or the prospective accused has no right of participation in the proceedings at the pre-summoning stage or till the time he is summoned. He has no locus standi to assail the order passed by the learned Magistrate."*

102. Upon a scrutiny and appreciation of the law as laid down by the aforesaid judgments, it is clear that so far as an accused person is concerned, till the stage when the accused has been summoned by the Criminal Courts, he has no locus to interject or interfere with the proceedings before a Magistrate. The reason is not far to see, in as much as, till the cognizance of the offence is taken, the accused is not a person who is identified as such, for him to be vested with any right of

audience, apart from the fact that it is possible that even after the preliminary inquiry under Section 202 Cr.P.C., the magistrate may dismiss the complaint, without even calling upon the accused. Even this Court in ***Mohua Moitra's*** case, while relying upon the judgements of the Supreme Court, has assertively concluded that the prospective accused cannot stall the proceedings.

103. In the present case, the learned ACMM had not only entertained and heard detailed arguments on behalf of the Respondent No.8/Accused No.8, but had actually dismissed the said application *vide* its order dated 01.11.2022 and yet, had retained the arguments/contentions raised by the Applicant/Accused No.8 regarding the very maintainability of the complaint as also the lack of territorial jurisdiction to entertain such complaint, for consideration at an appropriate stage. The order dated 01.11.2022 is extracted hereunder:-

> ***"01.11.2022 At 4 p.m.***
>
> ***Present***:- *Sh. Manmeet Singh Arora, Ld. SPP for the complainant.*
> *None for the applicant.*
>
> *An application made on behalf of Mandeep Chawla, proposed accused no. 8 under section 202 and 203 Cr.P.C is pending disposal. The application was filed inter-alia stating that (i) This court lacks territorial jurisdiction to entertain the present complaint, (ii) Inquiry u/s 202 Cr.P.C is mandatory, (iii) The cognizance of offences pertaining to IPC be declined as they are not part of same transaction which may disclose commission of offence under the Income Tax Act, (iv) Violation of extant CBDT circular dated 09.09.2019 and (v) The complaint in the present form is not maintainable. Reliance was placed by the applicant on the judgment of "State of Bihar & Anr. v. P. P. Sharma, IAS & Anr. 1991 AIR 1260", to submit that he can intervene and ought to be heard at this stage of proceedings.*
>
> *Detailed, para wise reply on each of the contentions raised by the applicant had been filed by the complainant and additionally, the*

maintainability of the application filed by the intervenor has been questioned. Reliance has been placed by complainant upon the Apex Court judgments in the case of "Nupur Talwar v. CBI & Anr. Review Petition (Crl.) No. 85 of 2012, M/s Cheminova India Limited & Anr. v. State of Punjab & Ors.' Crl. Appeal no.749/2021 decided on 04.08.2021, Chandra Deo Singh v. Prokash Chandra Bose & Anr. 1963 AIR 1430 and A-One Granites v. State of UP & Ors. Appeal (civil) 6459 of 1998 etc." to buttress the submissions made. Complainant submitted that the application be dismissed at the threshold.

Arguments on this application were heard at length. Entire material placed on record had been perused. It is neither necessary nor desirable to delve into each and every issue argued by the counsels. Moreover, it is also not profitable to discuss the plethora of judgments cited by the rival counsels for the parties.

At this juncture, it is apposite to advert to the following observation of Apex Court in State of Bihar & Anr. v. P. P. Sharma (supra):-

> ***.....Simply because the investigating officer, while acting bona fide rules out certain documents as irrelevant, it is no ground to assume that the acted mala fide. The police-report submitted by the investing officer has to pass through the judicial scrutiny of a Magistrate at the stage of taking cognisance. Although the accused person has no right to be heard at that stage but in case the accused person has any grouse against the investigating officer or with the method of investigation he can bring to the notice of the Magistrate his grievances which can be looked into by the Magistrate.***

A plain reading of this observation made by Apex Court shows that the applicant does not have any right of being heard at this stage of proceedings (when summons have not been issued to him). The only limited aspect on which the applicant could have been heard was his grouse against the complainant that the complainant is acting in a mala fide manner and in contravention of law of the land. Needless to reiterate that the applicant's counsel had been heard at length on all grounds raised in application. The various contentions raised by the applicant (qua jurisdiction, procedure, maintainability, bias and violation of circulars etc.) are taken note of and the same would be considered at appropriate stage of proceedings. The application is dismissed as the applicant has no locus standi to move the present application u/s 202 and 203 Cr.P.C (Reliance is placed in this regard upon para 19 of judgment of Nupur Talwar v. CBI & Anr. (supra)).

*List the matter for appearance of AR of complainant for his examination in terms of order dated 01.08.2022 on **02.12.2022**."*

(Quoted as it is)

104. Applying the ratio in ***Mohua Moitra*** and other cases to the facts of the present case, it is clear that the learned ACMM had committed a grave illegality and irregularity of procedure by not only entertaining the application but also hearing detailed arguments on behalf of the proposed accused person, admittedly at a stage when cognizance was yet to be taken. In other words, learned ACMM appears to have not only committed a procedural irregularity but simultaneously also violated the law as declared by the Constitutional Courts.

105. Learned senior counsel for Respondents 1, 2 and 3 had argued at great lengths on facts in respect of whether learned ACMM at Delhi had any territorial jurisdiction, whether conspiracy arose or not, and whether there were any extraordinary or special circumstances arising in the present case entitling the petitioners to approach this Court under Section 482 Cr.P.C. In the considered opinion of this Court, the aforesaid arguments, though very attractive at the first blush, however, are not able to overcome the embargo or the bar created by the ratio laid down in the aforesaid judgements. If this Court were to follow the ratio in the judgement of Supreme Court in ***Chandra Deo Singh (Supra)***, the locus of the respondents/accused persons itself becomes questionable and therefore, there could not have been any occasion for the learned ACMM to have considered any arguments at all. This is not to say that the learned ACMM was bereft of any power to *prima facie* consider the contents of the complaint and apply his mind to form an opinion whether a case is made out or not for the issuance of process. However,

in the present case, the learned ACMM appears to have overlooked the aforesaid ratio.

106. Though the learned ACMM appears to have applied his mind, however, seems to have been misdirected to reach definitive conclusions on issues like territorial jurisdiction and conspiracy, which in the opinion of this Court could not have been reached without there being evidence on such aspects. This Court has cursorily examined Section 177 Cr.P.C through till Section 187 Cr.P.C., and observes that the Cr.P.C. itself provides for varied places of jurisdiction in varied kind of situations depending upon case to case basis. It would be relevant to consider the provisions of Section 178 Cr.P.C. whereby different situations in respect of an offence, be it where the said offence is committed partly in one local area and partly in another or, where an offence is a continuing one and continues to be committed in more local areas than one or where it consists of several acts done in different local areas may be inquired into or tried by a Court having jurisdiction over any of such local areas. Likewise, the other sections also give simultaneous power to Magistrates in such various jurisdictions, provided some cause of action as contained in the aforesaid sections arises. Similar would be the effect of Section 220 Cr.P.C. The relevant portion of the impugned order leading this Court to observe as above is extracted hereunder:

> *"...The entire case of prosecution is that for assessment year 2020-21, accused no. 1, 2 & 3 in collusion with each other took bribes, illegal commissions, unaccounted monies etc. (in state of Chhattisgarh), the collection work was done by accused no. 4 to 6 & 8 on their behalf, thereafter with aid of accused no. 7, and 10 to 15, this unaccounted cash was deposited in bank account of accused no. 9 which in turn either kept*

it or transferred the same to the beauty saloon business run and owned by accused no. 2 and wife of accused no. 1. None of these acts had occurred within the territory of Delhi. The criminal conspiracy was not hatched at Delhi, the destruction of evidence was not done at Delhi, wilfull evasion of tax or false verification of income tax returns did not occur at Delhi. No abetment of aforementioned offences was done at or from Delhi. No monetary transaction was executed at Delhi. The jurisdiction with regard to these offences is either at Kolkata or at Raipur or Bhilai or at other places of Chhattisgarh where the conspiracy was put into effect by accused persons. The complaint with regard to these offences qua all the accused persons is returned in original and the complainant may present the same before the court of competent jurisdiction…."

107. Thus, so far as issue (i) is concerned, this Court is of the firm opinion that the respondents had no locus to either file an application or raise any objections *qua* territorial jurisdiction, conspiracy or bias etc. at the pre-cognizance stage. Equally, the learned Magistrate had, by entertaining the said application and retaining the arguments on such objections and considering the same *vide* the impugned order, acted with material irregularity necessitating entertaining of the present petition under section 482 Cr.P.C.

(ii) Whether the issue of conspiracy is an issue of fact which can be proved or disproved only during trial at the time of evidence?

108. Regarding the issue of conspiracy as argued at length by all the learned Senior Counsel, this Court observes that the learned ACMM had yet again heard arguments at great lengths to make some observations which in the opinion of this Court were definitive.

109. In order to appreciate this issue, this Court examines the judgement of the Supreme Court in ***Purushottamdas Dalmia (supra)***,

and the relevant paras in relation to the dispute at hand, are extracted hereunder: -

> *"10. The jurisdiction of the Calcutta High Court to try an offence of criminal conspiracy under Section 120-B IPC, is not disputed. It is also not disputed that the overt acts committed in pursuance of the conspiracy were committed in the course of the same transaction which embraced the conspiracy and the acts done under it. It is however contended for the appellant, in view of Section 177 of the Code of Criminal Procedure, that the court having jurisdiction to try the offence of conspiracy cannot try offence constituted by such overt acts which are committed beyond its jurisdiction and reliance is placed on the decision in Jiban Banerjee v. State. This case undoubtedly supports the appellant's contention. We have considered it carefully and are of opinion that it has not been rightly decided.*
>
> *11. The desirability of the trial, together, of an offence of criminal conspiracy and of all the overt acts committed in pursuance of it, is obvious. To establish the offence of criminal conspiracy, evidence of the overt acts must be given by the prosecution. Such evidence will be necessarily tested by cross-examination on behalf of the accused. The court will have to come to a decision about the credibility of such evidence and, on the basis of such evidence, would determine whether the offence of criminal conspiracy has been established or not. Having done all this, the court could also very conveniently record a finding of "guilty" or "not guilty" with respect to the accused said to have actually committed the various overt acts. If some of the overt acts were committed outside the jurisdiction of the court trying the offence of criminal conspiracy and if the law be that such overt acts could not be tried by that court, it would mean that either the prosecution is forced to give up its right of prosecuting those accused for the commission of those overt acts or that both the prosecution and the accused are put to unnecessary trouble inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to test the credibility of that evidence a second time. The time of another court will be again spent a second time in determining the same question. There would be the risk of the second court coming to a different conclusion from that of the first court. It may also be possible to urge in the second court that it is not competent to come to a different conclusion in view of what has been said by this Court in Pritam Singh v. State of Punjab at p. 422:*
>
> > *"The acquittal of Pritam Singh Lohara of that charge was tantamount to a finding that the prosecution had failed to*

establish the possession of the revolver Ext. P-56 by him. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged. That fact was found against the prosecution and having regard to the observations of Lord MacDermott quoted above, could not be proved against Pritam Singh Lohara in any further proceedings between the Crown and him."

12. In these circumstances, unless the provisions of the Code of Criminal Procedure admit of no other construction than the one placed upon them by the Calcutta High Court, they should be construed to give jurisdiction to the court trying the offence of criminal conspiracy to try all the overt acts committed in pursuance of that conspiracy. We do not find any compelling reasons in support of the view expressed by the Calcutta High Court."

110. It can be discerned from the ratio laid down by the aforesaid judgement that the conspiracy is an issue of fact and can be proved or disproved by the parties by leading evidence during trial and cannot be ascertained merely by appreciating either documents or arguments and therefore, no definitive conclusion on such issue can be reached by any Court at the stage of taking cognizance. The petitioner in the present case has leveled an allegation that the conspiracy has continued at Delhi, which may need to be tested in trial.

111. In the present case, the learned ACMM appears to have committed the error of precisely reaching a definitive conclusion regarding conspiracy. In order to appreciate this issue, it would be apposite to extract the relevant portion of the impugned order which is as under:-

"...The entire case of prosecution is that for assessment year 2020-21, accused no. 1, 2 & 3 in collusion with each other took bribes, illegal commissions, unaccounted monies etc. (in state of Chhattisgarh), the

collection work was done by accused no. 4 to 6 & 8 on their behalf, thereafter with aid of accused no. 7, and 10 to 15, this unaccounted cash was deposited in bank account of accused no. 9 which in turn either kept it or transferred the same to the beauty saloon business run and owned by accused no. 2 and wife of accused no. 1. None of these acts had occurred within the territory of Delhi. The criminal conspiracy was not hatched at Delhi, the destruction of evidence was not done at Delhi, wilfull evasion of tax or false verification of income tax returns did not occur at Delhi. No abetment of aforementioned offences was done at or from Delhi. No monetary transaction was executed at Delhi. The jurisdiction with regard to these offences is either at Kolkata or at Raipur or Bhilai or at other places of Chhattisgarh where the conspiracy was put into effect by accused persons. The complaint with regard to these offences qua all the accused persons is returned in original and the complainant may present the same before the court of competent jurisdiction..."

112. A plain simple perusal of the relevant portion as extracted above leads this Court to an inference that the learned ACMM had yet again misdirected itself into believing as to where, in the first place, the conspiracy was hatched, where, when and how it blossomed and as to whether the alleged conspiracy concluded or not in Delhi and reached the definitive conclusion that the said alleged conspiracy had indeed not hatched in Delhi. Moreover, the learned Magistrate had also definitively concluded that the conspiracy had indeed ended in Chattisgarh and no part of the said conspiracy continued till Delhi. This conclusion could not and ought not to have been reached by the learned ACMM, particularly at the stage where cognizance of the offences was to be taken. In case such an order is made to stand, then at the stage of taking cognizance, the accused by mere arguments would get an opportunity to show that no such conspiracy was hatched, that too without any evidence. This would be contrary not only to the aforesaid judgement in ***Mahua Moitra (supra)*** but also against all cannons of law and

procedure. It is trite that conspiracy is an issue of fact which can be proved or disproved only during trial.

113. In view of the above, this Court is of the considered opinion that the definitive conclusion reached by the learned Magistrate in respect of issue (ii), that is, the alleged conspiracy in the present case, is contrary to the law and *prima facie* unsustainable.

114. Another profound error in the arguments rendered on behalf of respondents no. 1, 2 and 3 is the submission that since there was no territorial jurisdiction to adjudicate upon those offences arising under Sections 276C(1)/278 read with Sections 278B/278E of the Income Tax Act, 1961 and Sections 120B/199/200/204 of the Indian Penal Code, 1860 and thus, there was no prejudice caused to the Petitioner/Complainant since that portion of the complaint in respect of those offences has been returned to be filed at the Court of competent jurisdiction in the State of Chattisgarh. This argument is not only contrary to but also destructive of the stand taken by the Respondent Nos. 1, 2 and 3 before the learned Revisional Court which granted Stay on the basis that the learned ACMM had no right, authority or jurisdiction to split the complaint or the offences arising from the same transaction. This is clear from the order dated 17.04.2023 of the learned ASJ which is extracted hereunder for better clarity:-

> *"3. Ld. Counsel for the petitioner has contended that in addition to the section 277 of the said Act and 191 IPC, the complainant had instituted a complaint u/s. 276(c)(i)/278/278E of the said Act read with section 120B/199/200/204 IPC and vide impugned order, the ld. Trial Court concluded that it does not have territorial jurisdiction to entertain the said complaint for the later sections. Consequently, it directed return of the complaint qua the said later sections for its institution before the*

competent court having territorial jurisdiction. He has contended that there was no lawful occasion for the ld. Trial Court to bifurcate the complaint into two parts, even though, the allegations in both the said parts are in respect of the same transaction. He has further contended that the first part of the complaint, on which the ld. Trial Court took the cognizance, should also have been returned along with the bifurcated part which has been directed to be returned. ***He has contended that the ld. Trial Court has committed a grave error in unlawfully bifurcating a single complaint based on the same cause of action/transaction.***

4. Ld. Counsel for the petitioner has further contended that the statements of the petitioner which were recorded in Delhi on 28.09.2020, 08.10.2020 and 02.02.2021 u/s. 131 (1A) of the Act before DDIT, Unit 1(4), Delhi, were not financial statements as stipulated under Section 277 of the Act. They were misconstrued to be statements under the said section by the ld. Trial Court. He has contended that since they were not financial statements as prescribed in section 277 of the Act, the ld. Trial Court committed a grave error in summoning the accused for commission of the offence under the said section. In respect of provisions of Section 191 IPC, he has contended that the said statements of the petitioner have not been concluded to be false. He has further contended that only after conclusion of assessment and determination of evasion of tax, the concerned Income Tax Authorities could have arrived to the conclusion whether the said statements are false or not. He has further contended that the said proceedings have not been concluded and thus, invoking of Section 191 IPC is premature. Therefore, at this stage, there is no lawful occasion for the ld. Trial Court to assume that the offence u/s.191 IPC has been committed by the petitioner. With these submissions, he has sought setting aside of the impugned order."

(emphasis supplied)

115. A party cannot be permitted to approbate and reprobate in the same breath or take mutually destructive pleas and it appears that the respondents are taking varying stands according to their own convenience which is impermissible in law.

116. That at the closure of arguments in respect of the stay application, Mr. Hariharan, learned Senior Counsel had apprised that an application has been filed on behalf of respondent no. 1 to place on record the judgement dated 29.11.2023 of the Supreme Court in Criminal Appeal

No. 2779 of 2023 captioned as ***Pavana Dibbur vs. Directorate of Enforcement*** reported in **2023 SCC OnLine SC 1586**. Learned Senior counsel submits, by referring to the said judgement, that the Supreme Court has held that in cases where predicate/scheduled offences under PMLA are not alleged against a person/accused, the Enforcement Directorate cannot, with the aid of section 120B IPC, 1860, prosecute such person/accused.

117. This court is unable to appreciate as to how the said ratio would be applicable to the facts of the present case. Though the learned counsel had argued extensively on the aspect that the present complaint by petitioner/ Income Tax Office is proxy litigation on behalf of the ED, however, the same are speculative inasmuch as apart from the complaint containing some such references, the offences alleged in the complaint under consideration are only under the provisions of the Income Tax Act, 1961 and not PMLA.

118. Before concluding, it would be relevant to note that so far as the arguments rendered by Mr. Dayan Krishnan, learned Senior Counsel regarding impleadment of the State of Chattisgarh is concerned, no one had appeared on the last date of hearing after the counter arguments were addressed by Mr. Zoheb Hossain, learned Standing Counsel for the petitioner and as such, remain inconclusive for lack of rejoinder arguments. The same shall be considered at a later stage by directing presence of the State of Chattisgarh to conclude the said arguments. As such, the said application is kept pending for further consideration.

119. In the light of the *prima facie* observations rendered above in respect of issue nos.(i) and (ii) and the material illegality and irregularity committed by the learned Magistrate, this Court is also of the opinion that the issue no.(iii) regarding relief of stay of the impugned order has to be in the affirmative.

120. Resultantly, the operation of the impugned order dated 06.04.2023 passed by the learned ACMM in Ct. Cases 1183/ 2022 to the extent of return of complaint *qua* the offences under Section 276C(1)/278 read with Section 278B/278E of the Income Tax Act, 1961 and Sections 120B/199/200/204 of the Indian Penal Code, 1860 is restrained till further orders.

121. The aforesaid observations are purely *prima facie* in nature and shall not tantamount to any expression on the merits of the matter, at this stage.

122. The applications stand disposed of in above terms.

CRL.M.C.2757/2023, CRL.M.A.19972/2023, CRL.M.A. 32859/2023 & CRL.M.A. 32860/2023

123. List before the Roster bench on 19.01.2024, subject to orders of Hon'ble the Acting Chief Justice.

TUSHAR RAO GEDELA
(JUDGE)

JANUARY 8, 2024
nd/rl