

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

**[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]**

**CRL.M.C. \_\_\_\_\_ of 2019**

**In the matter of:**

**Punjab National Bank**

**...Petitioner**

**Versus**

**NCT of Delhi & Another**

**...Respondents**

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Place: New Delhi

Dated: 15.05.2019

**FILED THROUGH:**

*nishant joshi*

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 (Advocates for Petitioner Bank)

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

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**CRL.M.C. \_\_\_\_\_ of 2019**

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**Punjab National Bank**

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Place: New Delhi

Dated: 15.05.2019

**FILED THROUGH:**

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

[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]

CRL.M.C. \_\_\_\_\_ of 2019

In the matter of:

Punjab National Bank

...Petitioner

Versus

NCT of Delhi & Another

...Respondents

NOTICE OF MOTION

To,

The Standing Counsel [Criminal]  
NCT of Delhi  
Delhi High Court

Ref.: Criminal M.C. [Main] No. \_\_\_\_\_ of 2019 [Punjab National Bank Vs.  
NCT of Delhi & Anr.]

Sir,

Please find enclosed herewith the Petition filed under Section 482 of the Code of Criminal Procedure 1973 for quashing of criminal complaint (Ct. Case No. 16711/2018) pending before the Learned Court of Metropolitan Magistrate, Patiala House Courts, New Delhi and order dated 11.03.2019 passed by the Learned Court of Metropolitan Magistrate, Patiala House Courts, Delhi in the aforesaid criminal complaint (Ct. Case No. 16711/2018). This Petition is being filed on 16.05.2019 and is likely to be listed on \_\_.05.2019 at 10:30 a.m. or anytime thereafter as per the convenience of the Hon'ble Court.

Please take notice accordingly.



for  
Shardul Amarchand Mangaldas & Co.  
Amarchand Towers,  
216, Okhla Industrial Estate, Phase-III,  
New Delhi-110020  
(Advocates for Petitioner Bank)



**IN THE HIGH COURT OF DELHI AT NEW DELHI****[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]****CRL.M.C. \_\_\_\_\_ of 2019****In the matter of:****Punjab National Bank****...Petitioner****Versus****NCT of Delhi & Another****...Respondents****To,****The Deputy Registrar****High Court of Delhi****New Delhi****URGENT APPLICATION****Sir,**

Kindly treat the accompanying petition under Section 482 of the Code of Criminal Procedure, 1973 as "urgent" in terms of the Delhi High Court Rules 1966 as urgent reliefs are prayed for.

**Thanking You.****Yours Faithfully,***Place: New Delhi**Date: 15.05.2019***for** **Shardul Amarchand Mangaldas & Co.****Advocates for Petitioner**

COURT FEES

IN THE HIGH COURT OF DELHI AT NEW DELHI

[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]

CRL.M.C. \_\_\_\_\_ of 2019

In the matter of:

Punjab National Bank

...Petitioner

Versus

NCT of Delhi & Another

...Respondents

MEMO OF PARTIES

Punjab National Bank  
Plot No. 4, Sector-10, Dwarka  
New Delhi-110 075

...Petitioner

Through its authorized signatory Versus  
Mr. Sudhir Sharma

1. National Capital Territory of Delhi  
Through The Standing Counsel (Criminal)  
Delhi High Court, New Delhi

...Respondent No. 1

2. Reserve Bank of India

Central office:

3<sup>rd</sup> Floor, Centre-I,

World Trade Centre, Mumbai-400 005

Regional Office:

6, Sansad Marg, New Delhi-110 001

...Respondent No. 2

FILED THROUGH:

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(Advocates for Petitioner Bank)



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**LIST OF DATES AND EVENTS**

<b>S. No.</b>	<b>Date</b>	<b>Event</b>
1.	2011	Punjab National Bank (" <b>Petitioner Bank</b> ") issued Book of instructions on foreign exchange to all its employees that dealt with foreign exchange. All employees of Petitioner Bank were to strictly adhere to the book of instructions. Chapter-5 of the said Book of instructions was guidelines in relation to outward and inward remittances.
2.	29.01.2016	An email was sent by Reserve Bank of India (" <b>RBI</b> ")/ " <b>Respondent No. 2</b> ") to PetitionerBank informing Petitioner Bank about the decision to carry out examination of the systems and procedures of Information Technology (IT) aspects being followed in



		Petitioner Bank, including IT operations, information security, IS/IT audit function and extent of IT risk assessment.
3.	08.02.2016- 12.02.2016	Respondent No. 2 carried out an examination of Petitioner Bank. There was no reference or knowledge being given that such exercise by Respondent No. 2 was in exercise of powers under section 35 of the Banking Regulation Act, 1949.
4.	02.06.2016	Petitioner Bank wrote an email to Respondent No. 2 duly informing Respondent No. 2 that there was no online integration with CBS at Petitioner Bank and also, Straight Through Processing (STP) has also not been developed.
5.	06.06.2016	<i>Vide</i> an email of the said date, Respondent No. 2 forwarded a report made during the inspection to Petitioner Bank.  In the said email, Petitioner Bank was called upon to submit its compliance/action taken report within thirty (30) days on the observations/drawbacks/findings of the inspection conducted by Respondent No. 2.



6.	04.07.2016	Internal documentary exchange took place within the officials of Petitioner Bank in order to formulate compliance/action taken report that was to be submitted by Petitioner Bank to Respondent No. 2.
7.	08.07.2016	In response to the email dated 06.06.2016 sent by Respondent No. 2, Petitioner Bank, through Mr. T.R. Venkateswaran, sent an email submitting the true and correct compliance/action taken report.
8.	03.08.2016	Respondent No. 2 issued a confidential circular, bearing number DBS.CO/CSITE/BC.4/33.01.001/2016-17, to all scheduled commercial banks, including Petitioner Bank, in relation to 'Cyber Security Controls-SWIFT' whereby the banks were advised to strengthen controls around operating environment for funds transfer through SWIFT or similar interfaces.
9.	19.08.2016	The confidential circular dated 03.08.2016 was discussed by various concerned divisions of Petitioner Bank and a letter, bearing number HO:IBD:SWIFT:22, was issued by Petitioner



		Bank to Respondent No. 2 confirming the fact that Petitioner Bank has adopted best practices and has put in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place.
10.	02.09.2016	An email was sent by Petitioner Bank to Respondent No. 2 responding to a questionnaire received from Respondent No. 2. In the said response, Petitioner Bank had specifically informed Respondent No. 2 that branches are generating SWIFT messages through Alliance Web based application and they are not using STP.
11.	27.10.2016	A questionnaire in the form of a caution advice/letter bearing number, DBS.ND.SSM.(PNB).No.865/14.47.009/2014-15 was issued by Respondent No. 2 to Petitioner Bank and response was sought from Petitioner Bank.
12.	31.10.2016	Petitioner Bank duly responded to the questionnaire and provided true and correct answers to Respondent No. 2.

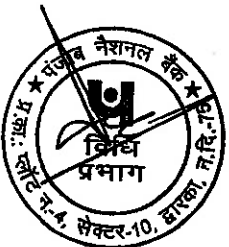


13.	25.11.2016	<p>Respondent No. 2 again issued a confidential circular bearing number, RBI/2016-17/DBS.CO/CSITE/BC.4226/31.01.015/2016-17 on 'Cyber Security Controls-frauds related to trade finance transactions-misuse of SWIFT', which was sent in a password protected form to Petitioner Bank.</p> <p>Respondent No. 2 in its communication advised all banks to explore Straight Through Processing between CBS and SWIFT messaging system. It was first such advisory issued by Respondent No. 2 on integration.</p>
14.	21.06.2017	<p>A status report was again sought from Petitioner Bank by Respondent No. 2.</p>
15.	27.06.2017	<p>Petitioner Bank sent a progress report highlighting the then status of IT mechanism vis-a-vis observations made in IT examination of Respondent No. 2 conducted in February, 2016.</p> <p>In the progress report, Petitioner Bank reiterated the response that was submitted previously by Petitioner Bank <i>vide</i> email dated 08.07.2016.</p>





16.	29.01.2018- 14.03.2018	Post surfacing of a fraud committed upon Petitioner Bank by perpetrators of fraud, Petitioner Bank filed Fraud Monitoring Reports (FMR)/FMR Update Applications with Respondent No. 2. <i>Vide</i> FMR/FMR Update Applications, Petitioner Bank informed Respondent No. 2 that a fraud of more than INR 13,000 Crores (Rupees Thirteen Thousand Crores only) has been detected at the Brady House branch of Petitioner Bank.
17.	13.03.2018- 15.03.2018	Respondent No. 2 deputed one of its officials at the head office of Petitioner Bank to assess the process put in place in submitting compliance/response to Respondent No. 2.
18.	23.08.2018	A Show Cause Notice was issued by Respondent No. 2 to Petitioner Bank calling upon Petitioner Bank to show cause in writing as to why penalty under section 47A(1)(c) read with section 46(4) of the Banking Regulation Act, 1949 be not imposed upon the Petitioner Bank.



19.	10.09.2018	Petitioner Bank submitted a point-wise reply to the show cause notice dated 23.08.2018 issued by Respondent No. 2.
20.	November, 2018	Respondent No. 2 filed a criminal complaint under section 200 of the Code of Criminal Procedure, 1973 read with section 47 of the Banking Regulation Act, 1949 before the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi, seeking prosecution against Petitioner Bank and its then and current officials for alleged commission of offences under section 46 of the Banking Regulation Act, 1949 read with section 120B of the Indian Penal Code, 1860.
21.	21.12.2018	A personal hearing was given to Petitioner Bank by Respondent No. 2 in relation to show cause notice dated 23.08.2018.
22.	24.12.2018	Additional submissions were submitted by Petitioner Bank whereby certain clarifications and confirmations were given by Petitioner Bank to Respondent No. 2.
23.	25.02.2019	An order was passed by the Committee of Executive Directors of Respondent No. 2, in



		exercise of powers conferred under section 47A of the Banking Regulation Act, 1949 whereby an aggregate penalty of INR 20 million (Rupees Two Crores only) was imposed on Petitioner Bank.
24.	11.03.2019	The Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi passed an order whereby Petitioner Bank and other persons as named in the criminal complaint by Respondent No. 2 were summoned to appear before the Court on 24.05.2019.
25.	25.02.2019	The Committee of Executive Directors of Respondent No. 2 passed the order in the proceedings emanating from show cause notice dated 23.08.2018.
26.	25.03.2019	The order dated 25.02.2019 passed by Respondent No. 2 was communicated to Petitioner Bank. Petitioner Bank was directed to pay the said penalty within fourteen (14) days from the date of receipt of order passed by Respondent No. 2.
27.	__ .05.2019	Petitioner Bank has filed the present quashing petition before this Hon'ble Court seeking



		setting aside of the order dated 11.03.2019 passed in Ct. Case No. 16711/2018 and quashing of the impugned criminal complaint filed by Respondent No. 2 (Ct. Case No. 16711/2018), by the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi vis-à-vis Petitioner Bank.
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### SYNOPSIS

The present quashing petition has been filed by Petitioner Bank, invoking inherent powers of this Hon'ble Court, under section 482 of the Code of Criminal Procedure, 1973 ("CrPC"), seeking quashing of the criminal complaint (Ct. Case No. 16711/2018) filed by Respondent No. 2 before the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi and order dated 11.03.2019 passed in the said complaint (Ct. Case No. 16711/2018), by the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi (the "Learned MM") vis-à-vis Petitioner Bank whereby the Court of Learned MM has, *inter alia*, summoned Petitioner Bank and has directed it to remain present, through its Managing Director and CEO, Mr. Sunil Mehta alongwith the then and current employees of Petitioner Bank who have been arrayed as an accused, before the Court of Learned MM on the next date of hearing i.e., 24.05.2019.

Neither the criminal complaint filed by Respondent No. 2 nor the impugned order dated 11.03.2019 make any reference to any of the different sub-sections under Section 46 of the Banking Regulation Act, 1949 for which Petitioner Bank is proposed to be punished. On a plain reading of the impugned criminal complaint filed by Respondent No. 2, it is submitted that Petitioner Bank is not in a position to comprehend/ascertain under which sub-section of section 46 of the Banking Regulation Act, 1949, it is called upon to answer. It is pertinent to note that each sub-section of section 46 of the Banking Regulation Act, 1949 is different, and has different ingredients. In as much as section 46(1)



punishes who ever wilfully furnishes a statement which is false in any material particular while section 46(2) punishes whoever fails to furnish any statement under sub section (2) of section 35 of the Banking Regulation Act, 1949, and section 46(4) punishes any other violation of the provisions of the Banking Regulation Act, 1949. To that extent, each sub-section contemplates some different elements, but at the same time, prescribes widely varying punishments i.e., from imprisonment of upto three (3) years to a fine which may extend to INR 2000 (Rupees Two Thousand only). Moreover, keeping in mind the differing elements, the defence of Petitioner Bank would vary vastly and to that extent, the fact that the exact sub - section has not been identified prejudices the accused (Petitioner Bank) greatly. Considering the criminal complaint filed by Respondent No.2 is to be tried as a summons trial under Chapter XX of the Code of Criminal Procedure, 1973, Petitioner Bank, upon entering appearance would be subjected to the framing of notice under Section 251 of the Code of Criminal Procedure, 1973 without having had the advantage of knowing the substance of the accusation against it. Thus, the criminal complaint filed by Respondent No. 2 and the subsequent impugned order dated 11.03.2019 passed by the Court of Learned MM are *ex-facie* illegal and ought to be set aside.

It is further respectfully submitted that the only indicator of which sub-section of section 46 of the Banking Regulation Act, 1949, Petitioner Bank is charged with, is provided in the show cause notice issued by Respondent No. 2 dated 23.08.2018 under Section 47A of the Banking Regulation Act,



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

The criminal complaint filed by Respondent No. 2 is grossly illegal and erroneous as neither wilfully there was any false statement made nor wilfully there was any omission on part of Petitioner Bank, to make a material statement. Respondent No. 2 itself in an advisory dated 25.11.2016 in relation to 'cyber security controls-frauds related to trade finance transactions-misuse of SWIFT' issued to all scheduled commercial banks,



including Petitioner Bank had only asked the banks to explore Straight Through Processing between CBS and SWIFT messaging system. It was only in the circular dated 20.02.2018 issued by Respondent No. 2 that Respondent No. 2 for the first time directed all scheduled commercial banks, including Petitioner Bank to ensure Straight Through Processing (STP) between CBS/accounting system and SWIFT messaging system is put in place, expeditiously and not later than 30.04.2018. Additionally, in series of communications written by Petitioner Bank to Respondent No. 2, including the email dated 02.06.2016 issued by Petitioner Bank to Respondent No. 2, email dated 02.09.2016 and response to questionnaire dated 31.10.2016, Petitioner Bank had always maintained that Petitioner Bank does not have interface for undertaking Straight Through Processing (STP).

*Furthermore*, Respondent No. 2 has wilfully concealed material facts while filing a criminal complaint under section 200 of the CrPC read with section 46 of the Banking Regulation Act, 1949 before the Court of Learned MM. Respondent No. 2 did not inform the Court of Learned MM that Respondent No. 2 had issued a show cause notice dated 23.08.2018 (prior to institution of criminal complaint) for similar set of alleged violations on part of Petitioner Bank and has imposed a penalty of INR 20 million (Rupees Two Crores only) on Petitioner Bank *vide* order dated 25.02.2019 (communicated to Petitioner Bank on 25.03.2019). *Furthermore*, the main grievances that Respondent No. 2 had with Petitioner Bank were that Petitioner Bank did not create messages in SWIFT system after passing





necessary entries in CBS and Petitioner Bank failed to introduce STP between SWIFT messaging and CBS. However, in the order dated 25.02.2019 passed by Respondent No. 2 under section 47A of the Banking Regulation Act, 1949, Respondent No. 2 has accepted the explanations given by Petitioner Bank on both the counts and has further decided not to enforce the charge against Petitioner Bank. Thus, Respondent No. 2 could not be allowed to take two inconsistent views at the same time and hence, the criminal complaint filed by Respondent No. 2 against Petitioner Bank ought to be set aside.

It is most respectfully submitted that the impugned order dated 11.03.2019 has been passed by the Court of Learned MM in a mechanical manner without application of mind. The said order is not a reasoned order and solely relies upon the averments made by Respondent No. 2 in the criminal complaint. The said order does not provide any reasons/specify as to what weighed in the mind of the Learned Metropolitan Magistrate and what were the reasons to issue the process against Petitioner Bank. It is submitted that the Hon'ble Supreme Court in a catena of decisions such as *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 and *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 has held that a summoning order must reflect the due application of mind and that the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused. The absolute absence of application of mind in the impugned order is reflected by the fact that the same is nothing more than a reproduction of the impugned criminal complaint filed by Respondent No. 2 and in any



event, there is no indication which sub-section of Section 46 of the Banking Regulation Act, 1949, Petitioner Bank has been summoned under.

Petitioner Bank has thus filed the present petition under section 482 of the CrPC seeking setting aside of the criminal complaint filed by Respondent No. 2 and the order dated 11.03.2019 passed by the Court of Learned MM in Ct. Case No. 16711/2018.



IN THE HIGH COURT OF DELHI AT NEW DELHI

[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]

CRL.M.C. \_\_\_\_\_ of 2019

In the matter of:

Punjab National Bank

...Petitioner

Versus

NCT of Delhi & Another

...Respondents

PETITION UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 FOR QUASHING OF ORDER DATED 11.03.2019 PASSED BY THE LEARNED COURT OF METROPOLITAN MAGISTRATE, PATIALA HOUSE COURTS, NEW DELHI IN CT. CASE NO. 16711/2018 AND OF CRIMINAL COMPLAINT FILED BY RESERVE BANK OF INDIA (CT. CASE NO. 16711/2018) BEFORE THE LEARNED COURT OF METROPOLITAN MAGISTRATE, PATIALA HOUSE COURTS, NEW DELHI

To  
The Hon'ble Chief Justice as well as his  
Lordships other Companion Justices of the  
Hon'ble High Court of Delhi at New Delhi

The Petitioner above named

**MOST RESPECTFULLY SHOWETH:**

1. The present petition has been filed by Punjab National Bank ("PNB"/ "Petitioner Bank") invoking the inherent powers of this Hon'ble Court under section 482 of the Code of Criminal Procedure, 1973



("CrPC") seeking quashing of the criminal complaint (Ct. Case No. 16711/2018) filed by Reserve Bank of India ("Respondent No. 2") before the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi (the "Impugned Complaint") and order dated 11.03.2019 passed in the said complaint (Ct. Case No. 16711/2018), by the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi (the "Learned MM") vis-à-vis Petitioner Bank whereby the Court of Learned MM has, *inter alia*, summoned Petitioner Bank and has directed it to remain present, through its Managing Director and CEO, Mr. Sunil Mehta, before the Court of Learned MM on the next date of hearing i.e., 24.05.2019 (the "Impugned Order"). A copy of the impugned order dated 11.03.2019 passed by the Court of Learned MM is annexed hereto and marked as Annexure-P/1. A copy of the criminal complaint filed by Respondent No. 2 before the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi is annexed hereto and marked as Annexure-P/2.

2. Petitioner Bank is a bank constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 rendering banking and financial services. Petitioner Bank is a public sector bank based in New Delhi, India.
3. Petitioner Bank has duly authorized Mr. Sudhir Sharma, Deputy General Manager-Law, PNB as its authorized



representative/signatory. A copy of the general power of attorney dated 22.03.1997 issued by Petitioner Bank in favour of Mr. Sudhir Sharma is annexed hereto and marked as Annexure-P/3.

4. It is most respectfully submitted that the Impugned Order has been passed by the Court of Learned MM in a cavalier manner without according any reasons as to why process is being issued against Petitioner Bank. The Court of Learned MM has passed the Impugned Order in the most mechanical manner, without any application of mind, and has simply relied upon the bare contents of the Impugned Complaint in passing the Impugned Order. It is submitted that the Hon'ble Supreme Court in a catena of decisions such as *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 and *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 has held that a summoning order must reflect the due application of mind and that the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused. The absolute absence of application of mind in the Impugned Order is reflected by the fact that the same is nothing more than a reproduction of the Impugned Complaint filed by Respondent No. 2 and in any event, there is no indication which sub-section of section 46 of the Banking Regulation Act, 1949 Petitioner Bank has been summoned under.
5. The Impugned Complaint filed by Respondent No. 2 and the Impugned Order do not make any reference to the different sub-



sections under Section 46 of the Banking Regulation Act, 1949 for which Petitioner Bank is proposed to be punished. On a plain reading of the Impugned Complaint, it is submitted that Petitioner Bank is not in a position to understand under which sub-section of section 46 of the Banking Regulation Act, 1949, it is called upon to answer. It is pertinent to note that each sub-section of section 46 of the Banking Regulation Act, 1949 is different, and has different ingredients in as much as section 46(1) punishes whoever willfully furnishes a statement which is false in any material particular while section 46(2) punishes whoever fails to furnish any statement under sub section (2) of Section 35 of the Banking Regulation Act, 1949, and Section 46(4) punishes any other violation of the provisions of the Banking Regulation Act, 1949. To that extent each sub-section contemplates some different elements, but at the same time, prescribes widely varying punishments i.e., from imprisonment of upto three (3) years to a fine which may extend to INR 2000 (Rupees Two Thousand only). Moreover, keeping in mind the differing elements, the defence of Petitioner Bank would vary vastly and to that extent, the fact that the exact sub-section has not been identified prejudices the accused (Petitioner Bank) greatly. Considering the Impugned Complaint filed by Respondent No.2 is to be tried as a summons trial under Chapter XX of the CrPC, Petitioner Bank upon entering appearance would be subjected to the framing of notice under Section 251 of the CrPC without having had the advantage of knowing the substance of the



accusation against it. Thus, the Impugned Complaint (and also the Impugned Order which is a mere reiteration of the Impugned Complaint) are *ex-facie* illegal and ought to be set aside.

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



Bank by the Impugned Complaint filed by Respondent No. 2 and the impugned order dated 11.03.2019 passed by the Court of Learned MM.

7. *Furthermore*, Petitioner Bank neither made any false statement nor willfully omitted to make a material statement and thus, the entire premise based on which the Impugned Complaint has been filed by Respondent No. 2 before the Court of Learned MM is erroneous and faulty. Respondent No. 2 itself in an advisory dated 25.11.2016 in relation to 'cyber security controls-frauds related to trade finance transactions-misuse of SWIFT' issued to all scheduled commercial banks, including Petitioner Bank had only asked banks to explore Straight Through Processing (STP) between CBS and SWIFT messaging system. It was only in the circular dated 20.02.2018 issued by Respondent No. 2 that Respondent No. 2 for the first time directed all scheduled commercial banks, including Petitioner Bank to ensure Straight Through Processing (STP) between CBS/accounting system and SWIFT messaging system is put in place, expeditiously and not later than 30.04.2018. Additionally, in series of communications written by Petitioner Bank to Respondent No. 2, including the email dated 02.06.2016 issued by Petitioner Bank to Respondent No. 2, response to questionnaire dated 31.10.2016, Petitioner Bank had always maintained that Petitioner Bank does not have interface for undertaking Straight Through Processing (STP).





8. A set of facts leading Petitioner Bank to file present revision petition before this Hon'ble Court are as follows:

a. In 2011, Petitioner Bank issued A Book of instructions on foreign exchange to all its employees that dealt with foreign exchange. All employees of Petitioner Bank were to strictly adhere to the book of instructions while dealing with foreign exchange. Chapter-5 of the said book of instructions were in relation to outward and inward remittances. A copy of the Book of instructions-foreign exchange internally circulated by Petitioner Bank is annexed hereto and marked as Annexure-P/4.

b. An email dated 29.01.2016 was sent by Respondent No. 2 to Petitioner Bank wherein Respondent No. 2 expressed its intention to conduct an IT examination of Petitioner Bank. The email dated 29.01.2016 issued by Respondent to Petitioner Bank stated as follows:

*"It has been decided to carry out a focused IT Examination of Punjab National Bank from 8<sup>th</sup> February to 12<sup>th</sup> February 2016. The RBI Team would be headed by Shri. RLK Rao, GM, RBI Chennai along with the following team members. Shri. Manmohan, DBS, CO, AGM and Shri. Pravin Bhavsar, DBS, CO Manager."*



A bare perusal of the aforesaid communication makes it abundantly clear that Respondent No. 2 did not mention/specify that IT Examination that was to be conducted at Petitioner Bank was in exercise of powers of Respondent No. 2 under section 35 of the Banking Regulation Act, 1949 or any other related provision. There was no circular or notification issued by Respondent No. 2 in relation to conduct of such an IT examination for banks and the process and procedure for the same. A copy of the email dated 29.01.2016 issued by Respondent No. 2 to Petitioner Bank is annexed hereto and marked as Annexure-P/5.

- c. Pursuant to the email dated 29.01.2016, Respondent No. 2 carried out a study (which Respondent No. 2 seemingly as an afterthought termed it as an inspection) of Petitioner Bank between 08.02.2016 and 12.02.2016..
- d. Between 08.02.2016 and 12.02.2016, a study of the systems and procedures of Information Technology aspects was carried out by Respondent No. 2 of Petitioner Bank. However, subsequent to the study carried out between 08.02.2016 and 12.02.2016, there was no communication from Respondent No. 2's end for three long months. It was only on 06.06.2016 that Respondent No. 2 shared a report titled "Report of the IT Examination: Punjab National Bank" with Petitioner Bank



vide an email dated 06.06.2016 (the "Report"). A copy of the report dated 06.06.2016 shared by Respondent No. 2 with Petitioner Bank is annexed hereto and marked as Annexure-P/6.

- e. In an email dated 02.06.2016 that was sent by Petitioner Bank to Respondent No. 2, Petitioner Bank categorically stated that there was no online integration with CBS, Treasury, EDMS or overseas system. Petitioner Bank further clearly informed Respondent No. 2 that the processing is non Straight Through Processing (non STP). Petitioner Bank had issued below email to Respondent No. 2:

"Sir,

*The responses are as given below in respect of the SWIFT set up in our bank.*

*(1) Network diagram enclosed (The CISCO ASA mentioned is the Firewall for SWIFT) – connectivity Bidirectional – shift through VPN. Processing – Non straight through processing. There is no online integration with CBS, Treasury, EDMS or overseas system.*

*(2) Status of patching:-*

*SWIFT patches – Base 7.0.1, patch 7.1.10, 7.1.11, 7.1.13 and 7.1.14 applied.*

*Anti Virus patches – Applied on Windows Server and all Endpoints.*

*(3) Has been taken up with IBD and IAD for the report. Will be sent separately.*



*(4) No security incidents have been reported for SWIFT (during the last 2 years)*

*(5) In respect of outward messages, the KYC compliance is checked for the remitter at the branch level.*

*In respect of inward remittance messages, the watchlist scanning happening in the AML system (for the remitter and beneficiary) before credit to beneficiary accounts. This is happening at out Back office.*

*Reconciliation systems are in place for Nostro/Vostro accounts.*

*The Authorized branches are also subject to periodical FEMA Audits.*

*Process audit has been got conducted for the SWIFT centre at Mumbai.”*

A copy of the email dated 02.06.2016 that was sent by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/7.

- f. Respondent No. 2 took note of the contents of aforesaid email dated 02.06.2016 and in the Report that was later submitted by Respondent No. 2 on 06.06.2016, Respondent No. 2 did note the aforesaid fact in paragraph no. 10.7 of the Report. This makes it abundantly clear that Petitioner Bank's email dated 02.06.2016 was taken note of, by Respondent No. 2. At no point in time, Petitioner Bank relayed any untrue or incorrect information to Respondent No. 2. Petitioner Bank, at all times, informed the true and correct set of facts to Respondent No. 2 and hence, the entire premise based on





Recommendations did not contain any reference to the status of integration of critical applications with CBS or the online integration of SWIFT with CBS. There were no instructions given by Respondent No. 2 during IT Examination for integration of CBS with SWIFT and even in Report, the status as was conveyed by Petitioner Bank that CBS and SWIFT are not integrated was reported without any mandate to integrate the systems. Alongwith the Report, Respondent No. 2 in a covering email requested Petitioner Bank to submit compliance/action taken report within thirty (30) days.

- i. Duly honoring the request made by Respondent No. 2 to submit an action taken/compliance report, Petitioner Bank submitted its compliance/action taken report to Respondent No. 2 on 08.07.2016. A copy of action taken/compliance report dated 08.07.2016 that was submitted by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/8.
- j. Thereafter, on 03.08.2016, Respondent No. 2 issued a confidential circular, bearing number DBS.CO/CSITE/BC.4/33.01.001/2016-17, to all scheduled commercial banks, including Petitioner Bank, in relation to 'Cyber Security Controls-SWIFT' whereby the banks were advised to strengthen controls around operating environment



for funds transfer through SWIFT or similar interfaces. The said circular was an advisory issued to all scheduled commercial banks to strengthen controls around operating environment for funds transfer through SWIFT and had no linkage to IT examination conducted by Respondent No. 2 at Petitioner Bank in February 2016. A copy of the circular dated 03.08.2016 issued by Respondent No. 2 is annexed hereto and marked as Annexure-P/9.

- k. On 19.08.2016, a letter bearing reference number HO:IBD:SWIFT:22 was issued by Petitioner Bank to Respondent No. 2 confirming the fact that Petitioner Bank has adopted best practices and has put in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place. In the said letter issued by Petitioner Bank, Petitioner Bank did not make any statement to the effect that Petitioner Bank has integrated SWIFT with CBS and/or Straight Through Processing (STP) has been introduced between SWIFT messaging and CBS. A copy of the letter dated 19.08.2016 issued by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/10.
- l. On 02.09.2016, an email was sent by Petitioner Bank to Respondent No. 2 responding to a questionnaire received



from Respondent No. 2. In the said response, Petitioner Bank had specifically informed Respondent No. 2 that branches are generating SWIFT messages through Alliance Web based application and they are not using STP. A copy of the email dated 02.09.2016 issued by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/11.

- m. Thereafter, on 27.10.2016, a questionnaire in the form of a caution advice/letter bearing number, DBS.ND.SSM.(PNB).No.865/14.47.009/2014-15 was issued by Respondent No. 2 to Petitioner Bank and response was sought from Petitioner Bank to questions mentioned therein. A copy of the questionnaire dated 27.10.2016 issued by Respondent No. 2 to Petitioner Bank is annexed hereto and marked as Annexure-P/12.
- n. Petitioner Bank submitted its response to questionnaire *vide* response dated 31.10.2016. In the said response, Petitioner Bank had itself categorically informed Respondent No. 2 that Petitioner Bank then did not have any interface for undertaking STP. Petitioner Bank had given below response to Respondent No. 2 against the query seeking list of SWIFT message for which STP is available and not available:

*“Presently, we do not have any interface for undertaking Straight Through Processing (STP).*





*We have system in place, where in following activity is performed:-*

- *Before undertaking any transactions, the entry is made in the CBS by invoking the respective menu options.*
- *The entry in CBS is authorized and approved by two different users having access with delegated powers based on their profiles/designation.*
- *The documents on the basis of which entry is made in CBS, is duly signed by both the maker/checker.*
- *On the basis of such documents authorized official will create/approve the message on SWIFT which would be approved by other officer.*
- *The swift message sent is generated and hard copy is kept with documents.*
- *As regards SWIFT, it is conventional approach adopted for undertaking the transactions as above.”*

A copy of the response to questionnaire dated 31.10.2016 issued by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as **Annexure-P/13**.



- o. On 25.11.2016, Respondent No. 2 in its communication pertaining to 'Cyber Security Controls-frauds related to trade finance transactions-misuse of SWIFT' to various banks itself commented that most of banks have not integrated SWIFT with CBS. Respondent No. 2 in its communication advised all banks to 'explore' Straight Through Processing (STP) between CBS and SWIFT messaging system. This abundantly shows that Respondent No. 2 had not mandated STP between CBS and SWIFT messaging till that date. It is further submitted that it was only on 20.02.2018(after expiry of almost one year and three months) that Respondent No. 2 mandated the same and provided timelines within which banks, including Petitioner Bank were to develop STP between SWIFT messaging and CBS, and mandated all banks to ensure that no SWIFT message is sent without first ensuring that the underlying transaction has been duly reflected in CBS/accounting system, with immediate effect. There was no other communication on SWIFT integration from Respondent No. 2 thereafter till 20.02.2018. A copy of the communication dated 25.11.2016 issued by Respondent No. 2 to all scheduled commercial banks is annexed hereto and marked as **Annexure-P/14** and a copy of the confidential circular dated 20.02.2018 bearing number DBS (CO).CSITE/4493/31.01.015/2017-18 issued by Respondent



No. 2 to Petitioner Bank is annexed hereto and marked as Annexure-P/15.

- p. After passage of several months, on 21.06.2017, a status report was again sought from Petitioner Bank by Respondent No. 2. On 27.06.2017, Petitioner Bank sent a progress report highlighting the status of IT mechanism vis-a-vis observations made in Report dated 06.06.2016. In the progress report, Petitioner Bank reiterated the response that was submitted previously by Petitioner Bank *vide* email dated 08.07.2016 and informed Respondent No. 2 that checks and balances are in place at Petitioner Bank. A copy of the action taken report dated 27.06.2017 submitted by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/16.

- q. In the month of January, 2018, post surfacing of a fraud committed upon Petitioner Bank by perpetrators of fraud and their affiliates, Petitioner Bank acted *bona fide* and filed Fraud Monitoring Reports (FMR)/FMR Update Applications with Respondent No. 2. *Vide* FMR/FMR Update Applications, Petitioner Bank duly informed Respondent No. 2 that a fraud of more than INR 13,000 Crores (Rupees Thirteen Thousand Crores only) has been detected at the Brady House branch of Petitioner Bank. Copies of Fraud



Monitoring Reports filed by Petitioner Bank with Respondent No. 2 between 30.01.2018 and 14.03.2018 is annexed hereto and marked as Annexure-P/17 (Colly.).

r. Thereafter, on surfacing of fraud committed upon Petitioner Bank, on 20.02.2018, Respondent No. 2 issued a confidential circular bearing number DBS (CO).CSITE/4493/31.01.015/2017-18, in furtherance of previous circular dated 03.08.2016 bearing number DBS.CO/CSITE/BC.4/33.01.001/2016-17. The circular was in relation to time-bound implementation and strengthening of SWIFT-related operational controls. In the said circular, all scheduled commercial banks, including Petitioner Bank were, *inter alia*, directed to ensure the following:

- (i) No SWIFT message, creating funded or non-funded exposure of banks, is sent without first ensuring that the underlying transaction has been duly reflected in the CBS/accounting system, with immediate effect; and
- (ii) Straight – Through Processing (STP) between CBS/accounting system and SWIFT messaging system is put in place, expeditiously but in any case no later than 30.04.2018.

Thus, it is quite evident that it was only on 20.02.2018 (subsequent to commission of fraud) that integration of



SWIFT with CBS was made mandatory and the exercise of creation of STP between CBS/accounting system and SWIFT messaging system was directed by Respondent No. 2 to be completed not later than 30.04.2018.

- s. Soon thereafter, between 13.03.2018 and 15.03.2018, Respondent No. 2 deputed one of its officials at the head office of Petitioner Bank to assess the process put in place in submitting compliance/response to Respondent.
- t. On 12.04.2018, Respondent No. 2 issued a confidential letter bearing number DBS.CO/CSITE/No.5821/31.01.0152017-18, in furtherance of the previous circular dated 20.02.2018 whereby Respondent No. 2 directed all scheduled commercial banks, including Petitioner Bank to undertake an audit of SWIFT systems covering, at the minimum, the directions given in circular dated 20.02.2018. Respondent No. 2 further stated that non-compliance to the circular may attract appropriate enforcement action under the provisions of the Banking Regulation Act, 1949. A copy of the confidential letter dated 12.04.2018 bearing number DBS.CO/CSITE/No.5821/31.01.015/2017-18 issued by Respondent No. 2 is annexed hereto and marked as **Annexure-P/18.**



- u. Later, on 05.07.2018, Petitioner Bank issued a response to confidential letter dated 20.02.2018 that was issued by Respondent No. 2. Again, in the response dated 05.07.2018, Petitioner Bank had informed Respondent No. 2, without mincing words, that the process of integration of SWIFT with ITMS through STP is in process and sought time till 30.09.2018 for developing STP between Treasury Accounting Software and SWIFT. Later, Petitioner Bank did develop STP between SWIFT and CBS by 10.09.2018. Additionally, Petitioner Bank, for the first time, had stated that, depending on its business requirement, it has identified 43 outward SWIFT messages to be integrated with CBS and these 43 outward messages has been integrated. Further, by said letter, Petitioner Bank has also informed to Respondent No. 2 that Manual creation of all- SWIFT messages were blocked at SWIFT level by 30.04.2018 A copy of the response dated 05.07.2018 issued by Petitioner Bank to Respondent No.2 is annexed hereto and marked as Annexure-P/19.
- v. On 23.08.2018, a show cause notice was issued by Respondent No. 2 to Petitioner Bank calling upon Petitioner Bank to show cause in writing as to why penalty under section 47A(1)(c) read with section 46(4) of the Banking Regulation Act, 1949 be not imposed upon the Petitioner Bank. The



primary allegations contained in show cause notice dated 23.08.2018 were similar to the allegations contained in the criminal complaint filed by Respondent No. 2 with the Court of Learned MM. A copy of the Show Cause Notice dated 23.08.2018 issued by Respondent No. 2 to Petitioner Bank is annexed hereto and marked as Annexure-P/20.

- w. In response to the show cause notice dated 23.08.2018, on 10.09.2018, Petitioner Bank submitted a point-wise reply to the show cause notice dated 23.08.2018 issued by Respondent No. 2. A copy of the point-wise reply to the show cause notice dated 10.09.2018 issued by Petitioner Bank to Respondent No. 2 is annexed hereto and marked as Annexure-P/21.
- x. In the month of November 2018, Respondent No. 2 approached the Court of Learned MM with unclean hands and filed the Impugned Complaint (Ct. Case No. 16711/2018) under section 200 of the CrPC read with section 47 of the Banking Regulation Act, 1949 seeking prosecution against Petitioner Bank and its then and current officials for alleged commission of offences under section 46 of the Banking Regulation Act, 1949 read with section 120B of the Indian Penal Code, 1860. Respondent No. 2 did not bring to notice of the Court of Learned MM that Respondent No. 2 had already issued a show cause notice dated 23.08.2018 in terms



of section 35, 35A, 46 and 47A of the Banking Regulation Act, 1949 whereby Petitioner Bank was called upon to show cause in writing as to why penalty under section 47A(1)(c) read with section 46(4) of the Banking Regulation Act, 1949 be not imposed upon the Petitioner Bank. There is a clear bar contained in section 47A(4) of the Banking Regulation Act, 1949 in launching such proceedings against banking companies such as Petitioner Bank in cases where penalty has already been imposed by Respondent No. 2.

- y. Thereafter, on 21.12.2018, a personal hearing was given to Petitioner Bank by Respondent No. 2 in relation to show cause notice dated 23.08.2018 and thereafter, on 24.12.2018, additional submissions were submitted by Petitioner Bank whereby certain clarifications and confirmations were given by Petitioner Bank to Respondent No. 2. A copy of the additional submissions dated 24.12.2018 submitted by Petitioner Bank to Respondent No. 2 in response to show cause notice is annexed hereto and marked as Annexure-P/22.
- z. On 25.02.2019, an order was passed by the Committee of Executive Directors of Respondent No. 2, in exercise of powers conferred under section 47A of the Banking Regulation Act, 1949 whereby an aggregate penalty of INR





20 million (Rupees Two Crores only) was imposed on Petitioner Bank by Respondent No. 2. It is respectfully submitted that all of the above crucial and vital facts about issuance of show cause notice and proceedings stemming therefrom, were not informed by Respondent No. 2 to the Court of Learned MM for the reasons best known to Respondent No. 2. The order dated 25.02.2019 passed by Respondent No. 2 was communicated to Petitioner Bank on 25.03.2019. Petitioner Bank was directed to pay the said penalty within fourteen (14) days from the date of receipt of order passed by Respondent No. 2. A copy of the order dated 25.02.2019 passed by the Committee of Executive Directors of Respondent No. 2 is annexed hereto and marked as Annexure-P/23.

- aa. On 11.03.2019, the Court of Learned MM passed the Impugned Order in Ct. Case No. 16711/2018 (the Impugned Complaint) whereby Petitioner Bank and other persons, as were named in the Impugned Complaint by Respondent No. 2 were summoned to appear before the Court of Learned MM on 24.05.2019, without specifying as to what weighed in the mind of the Learned MM and what were the reasons to issue the process against the Petitioner Bank.



9. Petitioner Bank is thus constrained to file the present quashing petition under section 482 of the CrPC exercising inherent powers of this Hon'ble Court as the Impugned Complaint filed by Respondent No. 2 and the Impugned Order has caused grave injustice and serious prejudice to Petitioner Bank. There was not even remote violation of any of the provisions of the Banking Regulation Act, 1949 by Petitioner Bank. Accordingly, the present quashing petition has been filed by Petitioner Bank before this Hon'ble Court on the following grounds, each of which are without prejudice to one-another:

#### GROUNDS

- (i) FOR THAT Respondent No. 2 filed Impugned Complaint against Petitioner Bank with unclean hands as Respondent No. 2 did not inform the Court of Learned Metropolitan Magistrate about the proceedings under section 46(4)(i) read with section 47A(1)(c) of the Banking Regulation Act, 1946 which Respondent No. 2 had initiated against Petitioner Bank by way of issuing a show cause notice dated 23.08.2018, which later culminated by way of an order dated 25.02.2019 passed by Respondent No. 2 whereby Respondent No. 2 imposed a penalty of INR 20 million (Rupees Two Crores only) on Petitioner Bank.
- (ii) FOR THAT the Impugned Complaint filed by Respondent No. 2 and the Impugned Order do not make any reference to the different sub-sections under Section 46 of the Banking



Regulation Act, 1949 for which Petitioner Bank is proposed to be punished. On a plain reading of the Impugned Complaint, it is submitted that Petitioner Bank is not in a position to understand under which sub-section of section 46 of the Banking Regulation Act, 1949, it is called upon to answer. Keeping in mind the differing elements of each of the sub-sections of section 46, the defence of Petitioner Bank would vary vastly and to that extent, the fact that the exact sub-section has not been identified prejudices the accused (Petitioner Bank) greatly. Thus, the Impugned Complaint filed by Respondent No. 2 is *ex-facie* illegal and ought to be set aside.

- (iii) FOR THAT the Impugned Complaint filed by Respondent No.2 is likely to be tried as a summons trial under Chapter XX of the CrPC, thus Petitioner Bank upon entering appearance would be subjected to the framing of notice under Section 251 of the CrPC without having had the advantage of knowing the substance of the accusation against it.
- (iv) FOR THAT the only indicator of which sub- section of Section 46 of the Banking Regulation Act, 1949 Petitioner Bank is charged with is provided in the show cause notice issued by Respondent No. 2 dated 23.08.2018 under Section 47A of the Banking Regulation Act, 1949 which states that same is punishable under Section 46(4) of the Banking Regulation Act,



1949. The Impugned Complaint and the Impugned Order are barred in law in as much as section 47(A)(4) of the Banking Regulation Act, 1949 provides that no complaint shall be filed against a banking company such as Petitioner Bank in respect of any contravention or default in respect of which any penalty has been imposed by Respondent No. 2.

(v) FOR THAT in the show cause notice dated 23.08.2018 issued by Respondent No. 2, reference has only been made to section 46(4) of the Banking Regulation Act, 1949 clearly indicating that Respondent No. 2 did not believe any other provisions were attracted in the instant case. It is respectfully submitted that in the instant case, Respondent No. 2 has already imposed a penalty on the Petitioner in the amount of INR 2,00,00,000 (Rupees Two Crores Only) by way of order dated 25.02.2019 and, therefore, the provisions of Section 47(A)(4) of the Banking Regulation Act, 1949 would act as a complete legal bar to the prosecution of the Petitioner Bank by the Impugned Complaint filed by Respondent No. 2 and the Impugned Order passed by the Court of Learned MM.

(vi) FOR THAT the show cause notice was issued by Respondent No. 2 to Petitioner Bank on 23.08.2018 whilst the Impugned Complaint under section 200 of the CrPC read with section 47 of the Banking Regulation Act, 1949 was filed with the Court of



Learned MM in November, 2018. Hence, action by Respondent No. 2 under section 47A of the Banking Regulation Act, 1949 is prior in point of time and both actions on part of Respondent No. 2 could not survive in parallel in view of fetters set out under section 47A(4) of the Banking Regulation Act, 1949. Thus, the criminal complaint filed by Respondent No. 2 and the subsequent order dated 11.03.2019 vis-à-vis Petitioner Bank ought to be set aside by this Hon'ble Court.

(vii) FOR THAT main grievances that Respondent No. 2 has with Petitioner Bank are:

- (a) Petitioner Bank did not create messages in SWIFT system only after passing necessary entries in CBS, and
- (b) Petitioner Bank failed to introduce STP between SWIFT messaging and CBS.

However, in the order dated 25.02.2019 passed by the Respondent No. 2 under section 47A of the Banking Regulation Act, 1949, Respondent No. 2 has accepted the explanations given by Petitioner Bank on both the counts and has further decided not to enforce the charge. Thus, Respondent No. 2 could not be allowed to take two inconsistent views at the same time and hence, the criminal complaint filed by Respondent No. 2 against Petitioner Bank ought to be set aside.



(viii) FOR THAT the purported issues that have been raised by Respondent No. 2 in the Impugned Complaint filed with the Court of Learned MM were also dealt by Respondent No. 2 separately by issuing a show cause notice dated 23.08.2018. Hence, Respondent No. 2 could not have initiated criminal proceedings in parallel for same issues/grievances against Petitioner Bank. Even if it is presumed that Respondent No. 2 was well within its rights to file a criminal complaint, Respondent No. 2 could not have taken two starkly divergent views as in the order dated 25.02.2019, Respondent No. 2 has decided to not enforce the charges against Petitioner Bank for direct creation of financial messages in SWIFT environment and for not introducing STP between SWIFT messaging and CBS whilst the Impugned Complaint filed by Respondent No. 2 is solely premised on the aforestated two issues.

(ix) FOR THAT in view of the position taken by Respondent No. 2 in the order dated 25.02.2019 with respect to creation of financial messages in SWIFT environment and introduction of STP between SWIFT messaging and CBS, Respondent No. 2 has unequivocally waived its right to prosecute Petitioner Bank.

(x) FOR THAT the Hon'ble Supreme Court in a catena of decisions such as *Sunil Bharti Mittal v. CBI*, (2015) 4 SCC 609 and *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 has held that



a summoning order must reflect the due application of mind and that the Magistrate must satisfy himself that there is sufficient basis for proceeding against the accused. The absolute absence of application of mind in the Impugned Order is reflected by the fact that the same is nothing more than a reproduction of the Impugned Complaint filed by Respondent No. 2 and in any event, there is no indication which sub-section of section 46 of the Banking Regulation Act, 1949, Petitioner Bank has been summoned under.

- (xi) FOR THAT the Impugned Order has been passed by the Court of Learned MM in a mechanical manner as the order completely fails to show what weighed in the mind of the Learned Magistrate and what were the reasons to issue the process against the Petitioner Bank. [*Volvo India Private Limited v. State of Maharashtra & Another*: 2017 SCC Online Bom 8540]
- (xii) FOR THAT the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate*, (1998) 5 SCC 749 has held that:
- “Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the*



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

Therefore, mechanical summoning of Petitioner Bank by the Court of Learned MM is illegal, erroneous and ought to be set aside.

- (xiii) FOR THAT in view of the Book of instructions on foreign exchange issued by Petitioner Bank in 2011 which were to be strictly adhered to, by all its employees, it was a genuine belief of Petitioner Bank that outward message is sent only after it is entered in CBS and without the entry in CBS, no financial swift message could be sent. The genuine belief of Petitioner Bank was *bonafidely* communicated to Respondent No. 2 *vide* letter dated





31.10.2016 and thus, there was no wilful misstatement made by Petitioner Bank.

- (xiv) FOR THAT in view of email dated 02.06.2016, response to questionnaire *vide* an email dated 02.09.2016, and letter dated 31.10.2016, Petitioner Bank has consistently and repeatedly informed Respondent No. 2 that Petitioner Bank did not have interface for using Straight Through Processing (STP) and thus, there was no wilful misstatement on part of Petitioner Bank.
- (xv) FOR THAT imposition of penalty by-Respondent No. 2 under section 47A of the Banking Regulation Act, 1949 and subsequent launching of prosecution against Petitioner Bank tantamounts to double jeopardy.
- (xvi) FOR THAT there was impropriety shown by Respondent No. 2 being a regulatory bank by filing a criminal complaint with the Court of Learned MM against Petitioner Bank which is a public sector bank on similar issues for which Respondent No. 2 had already issued a show cause notice dated 23.08.2018 to Petitioner Bank.
- (xvii) FOR THAT Petitioner Bank never willfully made any false statement to Respondent No. 2 but only stated that Petitioner Bank has been actively complying with the directions and regulations of Respondent No. 2. Hence, naming Petitioner Bank



as an accused in the criminal complaint appears to be propelled by *mala fide* intentions of Respondent No. 2 and is thus grossly illegal.

(xviii) FOR THAT even in an email dated 02.09.2016 which was sent by Petitioner Bank to Respondent No. 2 responding to a questionnaire, Petitioner Bank had specifically informed Respondent No. 2 that branches are generating SWIFT messages through Alliance Web based application and they are not using STP. Hence, Petitioner Bank had never made any false statement to Respondent No. 2.

(xix) FOR THAT in response to questionnaire dated 31.10.2016 submitted by Petitioner Bank, Petitioner Bank had itself informed Respondent No. 2 that Petitioner Bank then did not have any interface for undertaking STP.

(xx) FOR THAT STP was progressively implemented by Petitioner Bank and 43 outward SWIFT messages, identified as per business need, were integrated with CBS. Additionally, Petitioner Bank had blocked manual creation of any outward SWIFT message on SWIFT application by 30.04.2018 and had itself sought extension of time for complete implementation till 30.09.2018 (which Petitioner Bank later complied with and the same is one of the grounds why Respondent No. 2 did not enforce that charge against Petitioner Bank in the order passed on



25.02.2019).Hence, Petitioner Bank could not be made liable especially when Petitioner Bank kept Respondent No. 2 abreast of all developments and had made all efforts to ensure smooth implementation of directions received from Respondent No. 2.

(xxi) FOR THAT developing STP between CBS/accounting system and SWIFT messaging system and ensuring reflecting of underlying transaction in CBS/accounting system before financial message is sent through SWIFT message, was mandated by Respondent No. 2 *vide* communication dated 20.02.2018 and not before. There were no guidelines or timelines specified for integration of SWIFT with CBS, as on 06.06.2016 i.e., the date of Report. Further, Chapter 13 of the Report which indicates compliance status of GGK Working Group Recommendations did not contain any reference to the status of integration of critical applications with CBS or online integration of SWIFT with CBS. There were no instructions given by Respondent No. 2 during IT Examination for integration of CBS with SWIFT and even in the Report, the status was, as was conveyed by Petitioner Bank i.e., CBS and SWIFT are not integrated. Hence, Petitioner Bank did not submit any deliberate misleading information to Respondent No. 2 and the premise of the Impugned Complaint is baseless.

(xxii) FOR THAT between 29.01.2018-14.03.2018, post surfacing of fraud committed upon Petitioner Bank by perpetrators of fraud



and their affiliates, Petitioner Bank itself had filed Fraud Monitoring Reports (FMR)/FMR Update Applications with Respondent No. 2, which clearly shows that Petitioner Bank always acted *bona fide*.

(xxiii) FOR THAT no case of misrepresentation is made out against Petitioner Bank by any stretch of imagination and the proceedings before the Court of Learned MM appear to have been precipitated with the sole intent of harassing Petitioner Bank.

(xxiv) FOR THAT there was no agreement on deliberate preparation or *mens rea* by board of Petitioner Bank to commit any illegal act and thus, Petitioner Bank is not liable for commission of offence under section 120B of the Indian Penal Code, 1860.

(xxv) FOR THAT Respondent No. 2 in the Report dated 06.06.2016 has itself stated that Petitioner Bank is a leader in initiating IT in banking sector and with many pioneering firsts to its credit, Petitioner Bank led the way in providing services in banking domain. Respondent No. 2 has also noted in the Report dated 06.06.2016 that Petitioner Bank had taken early initiatives, made substantial investments in IT related banking businesses/delivery channels and products and therefore, imputing criminal conspiracy to Petitioner Bank is erroneous.

(xxvi) FOR THAT the circular dated 03.08.2016 issued by Respondent No. 2 was a mere advisory issued to all scheduled commercial



banks to strengthen controls around operating environment for funds transfer through SWIFT and had no linkage to IT examination conducted by Respondent No. 2 at Petitioner Bank in February, 2016.

(xxvii) FOR THAT in the response dated 19.08.2016 issued by Petitioner Bank to Respondent No. 2 pursuant to a meeting dated 19.08.2016, Petitioner Bank had only confirmed that SWIFT best practices are being adopted in Petitioner Bank by putting in place a control mechanism at source level to carry out additional checks and balances before transmission of financial messages takes place.

(xxviii) FOR THAT in an email dated 02.06.2016 issued by an employee of Petitioner Bank to Respondent No. 2, Petitioner Bank had categorically stated that there is no online integration with CBS and Straight Through Processing (STP) has also not been developed.

(xxix) FOR THAT a mere fact that Respondent No. 2 (being a regulator) takes a different or a divergent view from that of Petitioner Bank could not impute criminal liability on Petitioner Bank especially when Petitioner Bank had always only maintained the stand that checks and balances are in place.



(xxx) FOR THAT it was only on 05.07.2018 that Petitioner Bank for the first time admitted that SWIFT messages have been integrated with CBS and sought extension for developing STP between SWIFT and Treasury Accounting Software. Thus, there was no willful misstatement or willful omission on part of Petitioner Bank and hence, Impugned Complaint filed by Respondent No. 2 against Petitioner Bank ought to be set aside.

(xxxii) FOR THAT *vide* email dated 06.06.2016 whereby the Report was shared by Respondent No. 2 with Petitioner Bank, it did not have any reference to any provision of law, let alone the Banking Regulation Act, 1949 and hence, invoking of provisions of the Banking Regulation Act, 1949, solely as an afterthought, to file a complaint against Petitioner Bank is unfathomable and inexplicable.

(xxxiii) FOR THAT Respondent No. 2 in its communication to various bank on 25.11.2016 itself commented that most of the banks have not integrated SWIFT with CBS. Respondent No. 2 in its communication advised all banks to 'explore' integration of SWIFT operations with CBS without any specific timelines. It was first such advisory by Respondent No. 2 on integration. There was no other communication on SWIFT integration from Respondent No. 2 thereafter till 20.02.2018. Thus, filing the Impugned Complaint against Petitioner Bank on the ground that



Petitioner Bank did not integrate SWIFT with CBS when Respondent No. 2 itself had merely directed Petitioner Bank to merely explore possibility of integration is erroneous and thus, not sustainable.

(xxxiii) FOR THAT Respondent No. 2 has not produced any cogent evidence to establish connivance and/or *malafide* intentions and illicit objective.

(xxxiv) FOR THAT *vide* email dated 02.06.2016, Petitioner Bank had clearly informed Respondent No. 2 that the processing is Non Straight Through Processing and there is no online integration with CBS, Treasury, EDMS or overseas system. Same was also quoted in Para 10.7 of the Report which makes it abundantly clear that Petitioner Bank's email dated 02.06.2016 was taken note of, by Respondent No. 2.

(xxxv) FOR THAT Petitioner Bank had reported to Respondent No. 2 that SWIFT is not integrated with CBS *vide* emails/communications dated 02.06.2016, and 31.10.2016 and hence, there was no false statement ever made by Petitioner Bank to Respondent No. 2.

(xxxvi) FOR THAT, even otherwise, improper or non-implementation of circulars issued by Respondent No. 2 is not in itself a criminal offence. Petitioner Bank could, at best, be imposed penalty for the



same which Respondent No. 2 has already done so *vide* order dated 25.02.2019.

10. This Hon'ble Court has the requisite territorial jurisdiction to entertain the present quashing petition filed by Petitioner Bank.
11. Petitioner Bank further submits that no similar petition has been preferred by Petitioner Bank before this Hon'ble Court or the Hon'ble Supreme Court of India.
12. Petitioner Bank craves leave to amend, add to, vary or modify the present quashing petition if required, in accordance with law.

#### PRAYER

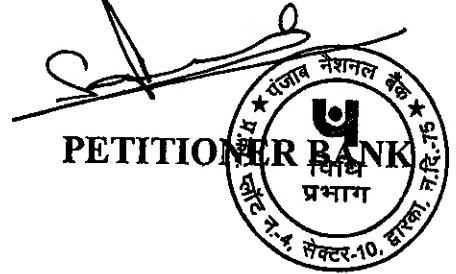
In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Quash the impugned order dated 11.03.2019 passed by the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi in CC No. 16711/2018;
- (b) Quash the impugned criminal complaint (Ct. Case No. 16711/2018) filed by Respondent No. 2 against Petitioner Bank and others before the Court of Learned Metropolitan Magistrate, Patiala House Courts, New Delhi;





- (c) Pass any other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.



Place: New Delhi

Dated: 15.05.2019

**FILED THROUGH:**

*Nishant Joshi*

SHARDUL AMARCHAND MANGALDAS AND CO.,  
Amarchand Towers, 216, Okhla Industrial Estate,  
Phase - III, New Delhi - 110020  
Ph: 26920500, 41590700 Fax: 26922900, 26924900  
Contact No.: +91 98107 98564  
Email: [nishant.joshi@AMSShardul.com](mailto:nishant.joshi@AMSShardul.com)  
(Advocates for Petitioner Bank)

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
[EXTRA ORDINARY ORIGINAL CRIMINAL JURISDICTION]**

CRL.M.C. \_\_\_\_\_ of 2019

**In the matter of:**

**Punjab National Bank**

...Petitioner

**Versus**

**NCT of Delhi & Another**

...Respondents

**AFFIDAVIT**

Affidavit of Mr. Sudhir Sharma, S/o Shri Trilok Chand Sharma, aged about 58 years, R/o Punjab National Bank, Plot No. 4, Sector-10, Dwarka, New Delhi, presently in New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the authorized representative of Punjab National Bank, Petitioner Bank in the above proceedings and I am well-acquainted with the facts of the case.
2. That I have read and understood the contents of the accompanying revision petition and state that statements made therein are true and correct to my knowledge and belief.
3. That the accompanying revision petition has been drafted by my counsel on my instructions and the contents of the same have been read over and explained to me.
4. That the contents of revision petition may be read as a part of this affidavit.

*[Signature]*

**DEPONENT**

**VERIFICATION:**

The above named deponent do hereby solemnly verify that the contents of Para 1 to 4 of my above affidavit are true and correct to the best of my knowledge. No part of it is false and nothing material has been kept concealed therefrom.

15 MAY 2019 *Delhi*

RAJENDRA KUMAR, NOTARY, Reg. No. 5780  
F No.-5(486)  
EMPOWERED TO ADMINISTER THE OATH  
SECTION 139 OF CPC 1908  
SECTION 297 OF CRPC 1973  
DELHI HIGH COURT RULES 1967  
PART-6, CHAPTER XVIII-227  
EVIDENCE BY AFFIDAVIT BEFORE NOTARY  
SUPREME COURT RULES, 2013  
ORDER IX-7

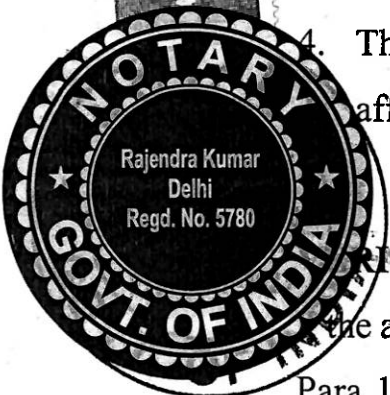
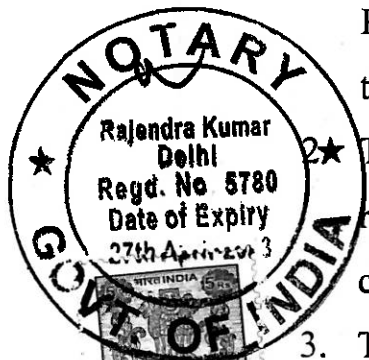
CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTIVE WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 15 MAY 2019 IDENTIFIED BY \_\_\_\_\_ IDENTIFY THE EXECUTIVE DEPONENT WHO HAS SIGNED IN MY PRESENCE

BEFORE ME  
*[Signature]*  
**DEPONENT**  
RAJENDRA KUMAR  
NOTARY DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No. \_\_\_\_\_  
Ph.: 9899446209

**IDENTIFIED**

15 MAY 2019

*A*  
**IDENTIFIED**



*0515715*