

(2008) 02 DEL CK 0211

In the Delhi High Court

Case No : Writ Petition (Criminal) No's. 35/07, 36/07, 37/07, 38/07, 39/07, 56/07, 438/07 and 634/07

Harish Sharma

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Antiquities and Art Treasures Act, 1972 — Section 25(1)
Constitution of India, 1950 — Article 20(3), 21
Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 155(2), 156, 156(3)
Evidence Act, 1872 — Section 5
Income Tax Act, 1961 — Section 132
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 19, 21, 25, 27, 27A
Penal Code, 1860 (IPC) — Section 109, 114, 120B, 161, 165
Prevention of Corruption Act, 1988 — Section 3, 5(4)

Citation : (2008) 2 ILR Delhi 409

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : Harish Salve, with Mr. Ashish Jha and Ms. Meenakshi Chatterjee, Mr. Siddharth Luthra, with Mr. Rajan Karanjawala, Mr. Jai Singh Brar, Mr. Dyanesh Sabins and Mr. Madhav Khurana, Mr. S.K. Saxena and Mr. Ramesh Gupta with Mr. Bharat Sharma, for the Appellant; Mukta Gupta for State with Mr. Rajat Katyal and Ms. Rajdipa Behura, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The petitioners seek issuance of an appropriate writ/order/direction in the nature of prohibition quashing the orders dated 8th June, 2006 and 4th November, 2006 passed by the learned ACMM, New Delhi in case FIR No. 305/ 2006, Police Station Sarita Vihar, New Delhi. The facts leading to the filing of the present writ petition are as follows: On 01.02.2006, FIR No. 104/2006 was registered under Sections 19, 21A, 25, 27 and 29 NDPS Act against Rahul Mahajan and others by Police Station Tughlaq Road, New Delhi. On 08.06.2006, an application was filed by the SHO, Inspector Madanjit Singh, Police Station

Tughlaq Road in the Court of the learned ACMM for the registration of a case u/s 182 IPC against the doctors and management of Apollo Hospital, wherein it was stated that since the offence u/s 182 IPC was a non-cognizable offence and the police cannot enter into investigation of such an offence suo moto, permission for investigation of the case u/s 182 IPC may be given.

2. On the above application, Dr. Kamini Lau, ACMM, New Delhi passed the following order:

IN THE COURT OF DR. KAMINI LAU: ACMM:

NEW DELHI,

State v. Doctors & Management of Indraprastha Apollo Hospital

8.6.06

Fresh complaint has been placed before me by SHO Police Station, Tuglak Road. The same is directed to be checked and registered.

Present: Insp. Madanjit Singh, SHO, PS Tuglak Road, alongwith Ms. Suman Nalwa, ACP, PS Chankya Puri.

An application has been filed by SHO Police Station Tuglak Road, Inspector Madanjit Singh the complainant seeking appropriate orders from this court for the purpose of registration of case u/s. 182 IPC against the Doctors and Management of Indraprastha Apollo Hospital, New Delhi. According to the complainant during the investigation in case FIR No. 104/06 dated 3.6.06 u/s 21/25/27/29 of Narcotics Drugs and Psychotropic Substances Act read with 201/34 Indian Penal Code it was revealed that the doctors and management of the Apollo Hospital has mislead the investigating agency by fabricating and manipulating their records with an intent to harbour and help accused involved in the case to escape from law.

The complainant has submitted that information to the local police had been delayed and there is tempering and overwriting in the entries of admission in respect of time and sequence of accused as observed from the casualty register of the hospital. He has also submitted that the doctors and management of the Apollo Hospital has deliberately given false information regarding the toxicity suffered by accused which has been done with an intent to mislead the investigating agency so as to prevent the investigating officer from taking recourse in law vis-a-vis the accused persons involved in the case.

The complainant Insp. Madanjit Singh, has also submitted that he apprehends that the relevant records i.e. the Casualty Register, MLC Register and Pathological report of the hospital may be further tampered due to which reasons he also requests for directions to the Investigating Officer for seizure of the above records.

I have gone through the investigation file and the copy of the medico legal report

of Rahul Mahajan. The said report shows that at the time when he was admitted in the hospital he was unconscious and gasping whereas during the shifting his vitals have been found to be stable and conscious. I have also gone through the forensic Science Laboratory Report and the Discharge Summary. The complainant has pointed out that the timings mentioned on the FSL report and on the MLC/Discharge Summary are not matching with the Casualty Register and the other relevant records maintained in the hospital and he apprehends further tampering.

As per the Provision of Section 155 Code of Criminal Procedure provides that....."when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the information to the Magistrate. No Police Officer shall investigate a non cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer incharge of a police station may exercise in a cognizable case. Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non cognizable.

The underlying policy of the Legislature in making certain offences non-cognizable is to ensure that persons are not put to harassment of the investigations against them.

The object of Legislature is of caution against the indiscriminate use of the police agency for ascertaining the facts regarding which the Magistrate is bound to form his own conclusions on the basis of material before him. In case on the basis of the information received, the Magistrate is of the view that the information does not make out an offence, then no order under Sub-Section 2 of Section 155 can be passed.

The offence alleged is u/s 182 IPC is non-cognizable and no investigations can commence suo-moto without a specific order from this court u/s 155 of the Code of Criminal Procedure.

I have gone through the information placed before me by the complainant Insp. Madanjit Singh are also the material on the Investigation file of case FIR No. 104/06 of Police Station Tuglak Road. The allegations made by the complainant prima facie disclose the commission of offence and in order to ascertain if the same are correct or not, investigations are required to be conducted. The copy of the complaint of the SHO Police Station Tuglak Road is being sent to the concerned SHO Police Station Sarita Vihar for investigations.

In so far the request of the complainant for allowing the search and seizure is concerned, I am of the view that the same would be the prerogative of the

Investigating Officer who would be at liberty to proceed as per the procedure prescribed under Chapter VII of the Code of Criminal Procedure.

A copy of this order be sent to the SHO PS Sarita Vihar alongwith the copy of the complaint and relevant documents for necessary action under intimation to this court.

Announced in the open court

8.6.06

sd/-

(D.Kamini Lau)

ACMM: New Delhi.

3. Pursuant to the above order, a First Information Report bearing No. 305/2006 u/s 182 IPC was registered by the police of Police Station Sarita Vihar and investigation commenced against the doctors and management of the Apollo Hospital. On 30th October, 2006, a charge-sheet in FIR No.305/2006 under Sections 182/201/109/114/120-B IPC, Police Station Sarita Vihar was filed in the Court of the learned ACMM, New Delhi. The said charge-sheet was accompanied by a copy of the FIR alongwith the complaint submitted by the complainant on 8th June, 2006 and was also accompanied by a formal complaint dated 30th October, 2006 u/s 195 Cr.P.C. by the same complainant, i.e., Inspector Madanjit Singh of Police Station Tughlaq Road.

4. On consideration of the charge-sheet, the complaint of Inspector Madanjit Singh and the documentary evidence gathered in the course of investigation, the ACMM passed the order dated 04.11.2006, taking cognizance of the offences under Sections 182/201/109/114/120-B IPC and also suo moto cognizance of the offences under Sections 177 and 193 IPC. The order dated 4th November, 2006, the quashing of which is sought in the present writ petition, reads as follows:

IN THE COURT OF SMT. KAMINI LAU, ACMM, PATIALA HOUSE COURTS, NEW DELHI

State v. Harish Sharma etc.

FIR No.305/2006

P.S. Sarita Vihar

4.11.2006

Fresh charge sheet has been filed on 1.11.2006. It be checked and registered as per rules.

Present: APP for the State alongwith I.O. Inspector Sushil Chandra Sharma and Supervisory Officer ACP Dr. B.B. Choudhary.

After having considered the material on record and having heard the Investigating Officer, this Court is of the opinion that not only the provisions which have been invoked by the Investigating Officer i.e. u/s 182/201/109/114/120-B IPC but also the provisions u/s 177 and 193 IPC should have been invoked since there is sufficient material on record to show that all the accused persons were under legal obligation to furnish correct information with regard to the accused persons. Further as per the material on record not only have the accused conspired to destroy the evidence but they have tried to fabricate false evidence for the purpose of being used in the judicial proceedings.

Vide my separate detailed order dictated and announced in the open Court I take cognizance for the offence u/s 177/182/193/201/109/114/120-B IPC as against all the accused persons including the accused kept in column no.2 i.e. Harish Sharma and accused mentioned in column no. 4 i.e. Mrs. Raji Chandru, Dr. Mukund Pandey, Dr. Ali Mohmd. Ganani, Mohmd. Akram, Ms. Nisha Anna Chacko, Ms. Shyni Verghese, Dr. Prasad Rao, Dr. Awdesb Bansal, Dr. Abha Gupta, Ms. Dilna John, Ms. Sheerin Sara Chacko, Dr. Anupam Sibal and Mr. Sidhanshu Mittal.

Issue summons against all the accused persons to the Investigating Officer for 12.1.2007.

sd/-

ACMM

4.11.2006

IN THE COURT OF SMT. KAMINI LAU, ACMM, NEW DELHI

State vs. Harish Sharma etc.

FIR No. 305/2006

P.S. Sarita Vihar

ORDER

On the complaint of Inspector Madanjeet Singh, the Investigating Officer Inspector Sushil Chandra Sharma has filed the fresh charge sheet today against the 14 accused of which the accused Harish Sharma has been kept in column no. 2 and accused Mrs. Raji Chandru, Dr. Mukund Pandey, Dr. Ali Mohmd. Ganani, Mohmd. Akram, Ms. Nisha Anna Chacko, Ms. Shyni Verghese, Dr. Prasad Rao, Dr. Awdesb Bansal, Dr. Abha Gupta, Ms. Dilna John, Ms. Sheerin Sara Chacko, Dr. Anupam Sibal and Mr. Sidhanshu Mittal who had been kept in column no. 4 for the offence u/s 182/201/109/114/120-B IPC.

I have gone through the material on record. It is a settled proposition of law as laid down by the Hon"ble Supreme Court in the case of M/s. SWIL Ltd. Vs. State of Delhi and Another, and in the case of Raghubans Dubey Vs. State of Bihar, that:

It is the duty of the Magistrate to find out who the offenders really are and once it comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against these persons. The summoning of the additional accused is part of the proceeding initiated by his taking the cognizance of an offence".

In the present case the Investigating Officer has only invoked the provisions of Section 182/201/109/114/120-B IPC. As per the allegations, on the intervening night of 1.6.2006 and 2.6.2006 Rahul Mahajan and Bibek Moitra had a champagne party and consumed alcohol. Later they had taken drugs which they had procured with the help of one Sahil Zaroo. They were seen lying in an unconscious state on the sofa and froth was coming out of the mouth of Bibek Moitra. Servant Ganesh Kumar Sinha brought the matter to the notice of Harish Sharma who in turn directed Ganesh to take both Bibek Moitra and Rahul Mahajan to Apollo Hospital. At 2.39 A.M. on 2.6.2006 Harish Sharma telephoned the accused no. 1 mentioned at column no. 2 directing Mrs. Raji Chandru, DGM, Apollo Hospital narrating the incident and asked for legal favour in respect of Bibek Moitra and Rahul Mahaja which fact is apparent from the statement of accused Raji Chandru. Thereafter the accused Harish Sharma telephoned Sidhanshu Mittal regarding the incident and asked him to reach Apollo Hospital as soon as possible and informed him that Mrs. Raji Chandru had been told to extend all help. It was thereafter that the accused had in turn spoke to accused no.2 Dr. Mutkund Pandey, CMO on duty and gave details of Rahul Mahajan and Bibek Moitra and asked him to take extra care. According to the statement of the drivers and the servants as recorded by the Investigating Officer the accused no. 3 and 4 were waiting at the out gate to receive the patients being asked to do so by the accused no. 1.

The accused no. 2 had attended Rahul Mahajan in the casualty cabin where he was brought by Ganesh and Anil with alleged history of poisoning with alcohol mixed with unknown substance in a conscious state and other complication and shifted him to ICU. Meanwhile the accused no. 2 asked the servant to bring the substance which they had consumed and the servant Ganesh Sinha brought two polythene pouches containing white powder and handed over to Dr. Mukund Pandey, accused no. 3 through accused no. 13 Sidhanshu Mittal which sample had been sealed and in turn handed over to the police on their arrival. The accused no. 3 had attended to Bibek Moitra in the casualty where he was brought by Ganesh and Anil with alleged history of alcohol ingestion and unknown poisoning. He was in a state of unconsciousness and after about half an hour of initial treatment for his survival, he was declared "brought dead" at about 3.15 A.M. During this period the accused no. 1 had supervised the documentation of admission and treatment of the two patients and she telephoned and sent SMSs to many consultant doctors and official related to Apollo hospital. She herself filled up the admission forms for both the patients and got it signed by the accused no. 13 at relatives column. As directed by the accused no. 1 the MLC was not prepared by the casualty doctors i.e. accused no.2 and 3 at the first

instance and the police was not informed. All the entries regarding admission of the patients were kept pending till such time when Bibek Moitra was declared dead and it became evident that the matter cannot be hushed up. The details of the mobile phone shows that the accused Harish Sharma and accused no. 1 and 13 namely Raji Chandru and Sidhanshu Mittal had been talking with each other and both of them failed to inform the police at the earliest opportunity despite the fact that there were under a legal obligation to do so. The accused no. 6 had made the first entry in admission and discharge register in respect of Bibek Moitra and Rahul Mahajan at 3.55 A.M. and 3.57 A.M. respectively though Rahul Mahajan was brought into the casualty earlier than Bibek Moitra. Instead of informing the PCR at the earliest it was only at 4.20 A.M. that the Hassanain Raza was called out and accused no. 3 was asked to prepare information sheet to be given to the police and he prepared the information sheet and handed over the same to the Security Office at 4.35 A.M. and instead of giving the information to the PCR at 100 number the telephone number of PS Tuglak Road was taken and it was only at 5.00 A.M. that the entire episode was informed to the police where it was recorded as DD No. 34A dated 2.6.2006. Hence a considerable delay was caused deliberately in intimating the police.

Further perusal of the record reveals that later on 9.15 A.M. Rahul Mahajan had been visited by the accused no. 7 and accused no.8 and though they found him trying to open eyes and vitals for stable yet they advised for additional medicines and pathological test which did not include urine for toxicology screen. It was only at about 5.20 A.M. Dr. V. Suri visited Rahul Mahajan and advised for urine toxic screen for which sample was taken at 7.30 P.M. which fact is apparent from the statement of the various witnesses. On 3.6.2006 at 9.30 A.M. the ventilators were removed from Rahul Mahajan however he was kept on Bipap ventilation and at about 3.00 P.M. the accused no. 12 alongwith accused no. 7 gave a press briefing before the media stating therein that the toxic screen of Rahul Mahajan was negative meaning thereby that they had not found evidence of opiate or cocaine consumption by Rahul Mahajan. The various documents consisting of Rahul Mahajan's treatment file, bills, pathological reports, CFSL reports etc. revealed that the cloths of Bibek Moitra gave positive test for the presence of 6-monoacetylmorphine, acetylcodeine, codeine, cocaine and caffeine and the stomach wash of Bibek Moitra gave positive test for the presence of Ethyl Alcohol, 6-monoacetylmorphine, acetylcodeine, codeine and cocaine. Even the cloths of Rahul Mahajan gave positive test for the presence of Ethyl Alcohol, monoacetylmorphine , acetylcodeine and cocaine and the white powder substance handed over by accused no. 13 to the casualty doctor tested and opined as heroine and cocaine. The various entries made in the registers are allegedly showing different time rather than the right time of admission and all the entries were reported to be stopped till such time Bibek Moitra was not declared dead which fact is evident from the fact that in between another patient Rakesh Malhotra had also come to the hospital for casualty treatment and his entry time has been wrongly mentioned and later on cut and over written. The

entries also do not match with the actual sequence of arrival of the patient. There are separate interpolation in the MLC. As per the MLC No. 236/2006 the police had been informed at 4.00 A.M. which fact is incorrect since as per the record under version of Dr. Hussnain Raza the information to the police was prepared at 4.35 A.M. which was handed over to the Security Officer who had informed that PS Tuglak Road only at 5.00 A.M. which fact is apparent from the DD of PS Tuglak Road. It is also alleged that the treatment file has been manipulated.

Under these circumstances it was necessary for the Investigating Officer to invoke the provisions of Section 177 and also Section 193 of IPC which has not been done. The Investigating Officer Sushil Chandra Sharma and the Supervisory Officer ACP Dr. B.B. Choudhary who are present in the Court have requested the Court to invoke the said provisions. Though in my considered opinion since the alleged violation i.e. fabricating the false evidence for the purpose of being used in any stage of judicial proceeding does not require sanction u/s 195 Cr.P.C. not being covered under Clause B of Section 195 IPC yet the Investigating Officer submits that in case if the same is required at any stage he would file the same after obtaining it from the competent authority.

Hence in my view the aforesaid material on record, I take cognizance of the offence u/s 177/182/193/201/109/114/120-B IPC as against the accused persons including Harish Sharma who has been wrongly kept in column no. 2 since there is material on record to show a prior meeting of minds between Harish Sharma, Mrs. Raji Chandru and Sidhanshu Mittal. Issue summons against Harish Sharma, Mrs. Raji Chandru, Dr. Mukund Pandey, Dr. Ali Mohmd. Ganani, Mohmd. Akram, Ms. Nisha Anna Chacko, Ms. Shyni Verghese, Dr. Prasad Rao, Dr. Awadesh Bansal, Dr. Abha Gupta, Ms. Dilna John, Ms. Sheerin Sara Chacko, Dr. Anupam Sibal and Mr. Sidhanshu Mittal. Issue summons to all the accused persons through the Investigating Officer for 12.1.2007.

Announced in the open Court.

Dated 4.11.2006

sd/-

(DR. KAMINI LAU)

ACMM, NEW DELHI"

5. Mr. Harish Salve the learned senior counsel for the petitioners in Writ Petition (Crl.) Nos. 35/06, 37/06, 38/06 and 39/06 contended that the proceedings initiated against the petitioners are ex facie without jurisdiction since the said proceedings do not emanate from a complaint filed by the concerned police officer. Section 195 (1) (a) of the Code of Criminal Procedure mandates that cognizance of an offence u/s 177 to 188 IPC can only be taken upon filing a complaint by the concerned public servant, and expressly bars any Court from taking cognizance of an offence under Sections 177 to 188 of the Penal Code

except on a complaint in writing made by a public servant. In the present case, he contended that, though it is submitted by the prosecution that the complaint dated 30th October, 2006 was filed by the concerned public servant along with the charge-sheet, the proceedings have not emanated from the purported complaint filed, but have emanated out of a Report filed u/s 173 Cr.P.C., made in an investigation pursuant to the order u/s 156(3) Cr.P.C.

6. In the above context, Mr. Salve submitted that the admitted facts amply demonstrate that the entire procedure from root to fruit, i.e., from filing of the application u/s 155 to the taking of cognizance of the "charge-sheet", is patently illegal and vitiates the proceedings. According to him, the allegations of falsification of the records relate to investigation into the offences under the NDPS Act by Rahul Mahajan and others (accused in FIR No. 104/2006), which case was investigated by the S.H.O., Police Station Tughlak Road, New Delhi. Thus, Section 195 would bar cognizance being taken except upon a complaint filed by the SHO, Tughlak Road, who is the concerned public servant in the present case. Instead of filing a complaint, the SHO, Tughlak Road, Inspector Madanjit Singh (the concerned public servant) filed an application before the Additional Chief Metropolitan Magistrate for permission to investigate a non-cognizable offence u/s 155 (2) of the Cr.P.C. This clearly shows that the public servant had no knowledge of the commission of an offence on which the complaint could have been filed by him he was seeking orders from the Court for the investigation of a non-cognizable offence. The Addl. Chief Metropolitan Magistrate, treating the application as being u/s 155(2) Cr.P.C., directed another Officer, i.e., the S.H.O., Police Station Sarita Vihar to conduct the investigation. The SHO, Sarita Vihar registered the present FIR (FIR No. 305/06) and after investigating the matter filed a "charge-sheet". This shows that the impugned order of the learned ACMM purports to take cognizance not on the basis of any complaint, but on the basis of this "charge-sheet". The said "charge-sheet" filed by the SHO, Sarita Vihar cannot be treated as a complaint within the meaning of Section 195(1)(a) of the Cr.P.C., it not being a complaint by the public servant concerned.

7. According to Mr. Salve, the matter does not end here. The complaint by the concerned public servant said to be attached with the "charge-sheet" has not even been referred to by the ACMM, leave alone taken cognizance of by the ACMM. The ACMM has referred to the "charge-sheet" filed by the SHO, Police Station Sarita Vihar only and thereafter has taken cognizance of the same. In other words, proceedings have not been initiated on the complaint of a public servant, but on the charge-sheet filed by the second Investigating Officer. This runs counter to the scheme of Section 195 (1) (a) of the Cr.P.C. The subsequent formality of filing a complaint as an annexure to the charge-sheet, Mr. Salve contended, cannot result in the curing of this defect. This view was taken by the Hon'ble Supreme Court in the case of Daulat Ram Vs. State of Punjab,

8. In the above context, reference was made by the learned senior counsel for

the petitioners to the distinction laid down in the Code of Criminal Procedure between a "complaint" [defined in Section 2(d)] and "police report" [defined in Section 2(r)]. It is urged by him that a perusal of the said definitions would reveal that the term "complaint" as defined u/s 2(d) excludes the term "police report". Section 2(d) and 2(r) read as follows:

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

2(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173.

9. The first limb of Mr. Salve's contention with regard to the absence of a complaint thus hinges on the provisions of Section 195 (1) (a) which read as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. -

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence,

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(emphasis supplied)

10. The second limb of Mr. Salve's argument is that the proceedings are also contrary to the provisions of Section 195 (1) (b), inter alia, for the reason that the complaint is not only in relation to Section 182 of the IPC, but also in relation to Section 193 of the IPC, in which case the complaint should have been filed by the learned ACMM trying the Rahul Mahajan case (FIR No. 104/ 2006). The provisions of Section 195 (1) (b) Cr.P.C. which are apposite are as under:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance-

(a).....

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable u/s 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(emphasis supplied)

Section 193 of the Indian Penal Code reads as follows:

193. Punishment for a false evidence.- Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.- A trial before a Court-martial; is a judicial proceeding.

Explanation 2- An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

(emphasis supplied)

11. It is submitted by Mr. Salve that Explanation (2) to Section 193 IPC is couched in wide language to provide that "an investigation directed by law preliminary to a proceedings before a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice". Mr. Salve contends that the language of Explanation (2) does not limit the coverage provided by the said Explanation to offences in Chapter XI of the Penal Code, but is couched in general language, and in the absence of words of limitation in the said Explanation, its language must be given full effect. Elaborating upon this contention, Mr. Salve urges that the scheme of the Code of Criminal Procedure is that all investigations into offences - whether cognizable or non-cognizable - are under the control of the Court, and once an investigation is commenced, it must necessarily result in a report being filed u/s 173 Cr.P.C. Thus, all investigations u/s 173 Cr.P.C. are ex-hypotheses "preliminary to a proceeding before a Court of Justice....". It must then follow that for the purpose of offences (whether under Chapter X or under Chapter XI) committed in the course of criminal investigation under the Cr.P.C., the offences would be deemed to be committed in the course of a judicial proceeding, and consequently a

complaint would only be competent by the concerned Magistrate (or Court of Justice) before whom the criminal proceedings are finally taken up as judicial proceedings.

12. In the alternative, Mr. Salve submits that in any event Section 195 (1) (b) bars cognizance of an offence u/s 193 when such offence is alleged to have been committed in or in relation to any proceeding in any court except on the complaint in writing of that Court. In the present case, at the time of cognizance of the offence u/s 193 IPC, the charge-sheet had already been filed and cognizance taken by the Court in FIR No. 104/2006 (the Rahul Mahajan case). The allegations in the "charge-sheet" filed in case FIR No. 305/2006 are of offences allegedly committed in the course of investigation of offences under trial in that case, i.e., in case FIR No. 104 of 2006. Therefore, cognizance could have been taken by the Court only if the complaint was filed by the concerned Judicial Officer and not by the Police Officer. It is also submitted that the learned Magistrate proceeded on the assumption that the absence of sanction is a procedural defect, which can be cured at a later stage. This assumption, it is submitted, is completely erroneous as the non-compliance of the mandatory provisions of Section 195 (1) (b) strikes at the root of the jurisdiction of the Court *M.L. Sethi Vs. R.P. Kapur and Another*,

13. The third limb of Mr. Salve's submission is that mis-carriage of justice has resulted from breach of the provisions of Section 340 Cr.P.C., which lays down the procedure for proceeding in a case affecting the administration of justice and prescribes that where the court making the complaint is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence reflected to in clause (b) of Sub-Section (1) of Section 195, such Court shall record a finding to that effect [Section 340 (1) (a)]. This is, it is submitted, a vital safeguard in favour of all those who are witnesses in a criminal investigation and insulates them from any pressure that may be brought to bear upon them by the officers investigating the offences. Thus, it is only when the Court before whom a judicial proceeding is pending is satisfied that the facts on record show that an offence has been committed by some persons under Chapter X or Chapter XI of the Code, that the Court would record a prima facie finding to that effect and then make a complaint thereof in writing. No such exercise having been undertaken in the present case and the provisions of Section 340 Cr.P.C. having been given a complete go-by, the necessary safeguards provided by the Court to the witnesses of the offence have been removed and this has resulted in the witnesses, who are in the instant case doctors and nurses, being placed in the dock.

14. Relying upon the decision of the Hon'ble Supreme Court in *T.T. Antony Vs. State of Kerala and Others*, , the fourth limb of Mr. Salve's assault on the prosecution case is that the filing of the second FIR with regard to the same incident is impermissible in law. He contends that the allegations against the petitioners leave no manner of doubt that the second FIR, being FIR No. 305/06,

is an adjunct to the first FIR filed against Rahul Mahajan, i.e., FIR 104/06. He submitted that the FIR recorded against Rahul Mahajan and others relates to the offences under the NDPS Act, but in the present case the offences allegedly committed are those under Chapter X and Chapter XI of the Penal Code, with a view to shield the detection of the offences committed by Rahul Mahajan and his co-accused. Thus, on their very face, the two FIRs are adjuncts to each other and arise out of the same set of events. The recording of two FIRs in a matter which is intrinsically one, it is submitted, has caused serious prejudice to the petitioners. Arguably, the court trying the case against Rahul Mahajan (FIR 104/06) may have viewed the alleged offences committed by the accused in the present case, who are witnesses in Rahul Mahajan's case, very differently. It is also highlighted that in the Rahul Mahajan case, there is not a single allegation, leave alone an averment in relation to tampering with the evidence qua the petitioners, hence the present prosecution is nothing but a sheer abuse of the process of the court.

15. Fifthly, it is contended by Mr. Salve that in arriving at the conclusion that the offences under Chapter X and Chapter XI have been committed, the court failed to keep in perspective the standards prescribed by the Hon''ble Supreme Court in the case of Jacob Mathew Vs. State of Punjab and Another, A reading of the status report submitted by the State, he pointed out, shows that if the Mathew standards are applied, the Magistrate seriously erred in issuing process on the charge-sheet filed against the petitioners. He submitted that the decision whether to give or not to give a certain drug to a patient is a professional decision taken by the qualified medical expert, and if any doubt is raised against the said decision, or any motive attributed or any offence alleged, there needs to be cogent evidence of an independent medical expert to justify the fact that the professional decision taken by the qualified medical expert was not as per the established medical procedure. This view was held by the Hon''ble Supreme Court in the case of Dr. Suresh Gupta Vs. Govt. of N.C.T. of Delhi and Another, and again reiterated in the Mathew case. In the Mathew case, the Hon''ble Supreme Court ruled:

Statutory rules or executive instructions incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased

opinion applying the Bolam test of the facts collected in the investigation. A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been leveled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

16. It is submitted by Mr. Salve that the present petitioners are essentially being prosecuted for decisions taken by them in the course of treatment rendered by them to a patient, who was critical when he arrived at the hospital. Learned senior counsel also submitted that the present petitioners were not even on the spot when the drug (Fentanyl) was administered, as recorded in the Nurses' note sheet, at 3 A.M., and that the present petitioners came on the spot much later, at 4:30 A.M. Then again, there is neither any evidence, nor any material to even prima facie show the existence of a conspiracy between the present petitioners and the accused in the Rahul Mahajan case.

17. On merits, it is submitted by Mr. Harish Salve, the learned senior counsel that a bare perusal of the complaint dated 8th June, 2006 and the charge-sheet dated 30th October, 2006 reveals that there is nothing on record to warrant the prosecution of the petitioners for the offences under Sections 177/182/193/201/109/114/120B IPC. The petitioners have not caused disappearance of any evidence, nor they have given false information to the Investigating Officer in case FIR No. 104/2006, nor they have made any false entry or given any false statement in a judicial proceeding or in a proceeding taken by law. The petitioners are also sought to be prosecuted u/s 120B IPC, but the Investigating Agency has failed to place on record any material or cite any instance from which it can even prima facie be inferred that the petitioners had conspired with other co-accused or any of the accused persons named in the charge-sheet in FIR No. 104/2006, under Sections 21/25/27/27A/29 NDPS Act read with Section 204/34 IPC, Police Station Tughlak Road at any point of time. The entire prosecution case against the petitioners, it is contended, is based on the opinion of the Investigating Officer, who is neither a skilled medical practitioner nor possesses the requisite knowledge to opine on the exercise of professional skill and knowledge by the petitioners in relation to the medicines administered to the patient.

18. Mr. S.K. Saxena, learned counsel for the petitioner in W.P.(CrI.) Nos. 37/2007, 38/2007 and 39/2007 and Mr. Ramesh Gupta, learned counsel for the petitioner in W.P.(CrI.) No. 634/2007 adopted the arguments of Mr. Harish Salve, Senior Advocate and relied upon the same.

19. Mr. Siddharth Luthra, the learned senior counsel on behalf of the petitioners in W.P.(CrI.) No. 36/2007, while adopting the arguments of Mr. Harish Salve, made the following additional submissions:

20. According to him, viewed from any angle, the procedure followed in the present case was wholly unjustified and was not in accordance with the law. Relying upon the Privy Council judgment in *Nazir Ahmad v. King-Emperor*, AIR 1936 Privy Council 253 and the well recognized doctrine that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden, Mr. Luthra contended that unmindful of the bar of Section 195 (1) (a) of the Cr.P.C., the learned A.C.M.M issued directions u/s 155(2) and took cognizance of the alleged offences at the first instance by her order dated 8th June, 2006.

21. Mr. Luthra stressed that it is well settled that the procedure to be followed pre-cognizance and post-cognizance u/s 190 (1) (a) is distinct from the procedure to be followed u/s 190 (1) (b). In the present case, the prosecution having filed the complaint before the learned ACMM, New Delhi on 8th June, 2006, on which the learned ACMM took cognizance, thereafter the learned ACMM was bound to follow the procedure laid down in Chapter XV of the Cr.P.C. as set out in Sections 200-203, i.e., to record pre-summoning evidence. The learned ACMM at the most could have carried out an inquiry herself or directed a limited investigation to be conducted by a police officer u/s 202 Cr.P.C. only. The scope of the inquiry u/s 202 Cr.P.C., it is well settled, is different and distinct from the scope of the inquiry u/s 155/156 Cr.P.C. He contended that by no stretch of imagination the police report filed pursuant to an inquiry u/s 202 Cr.P.C. can be said to be a charge sheet for the purpose of cognizance. The so-called chargesheet was thus only a report/information pursuant to an inquiry u/s 202 Cr.P.C. and not a chargesheet within the meaning of Section 2 (r) of the Code.

22. In any event, no second cognizance could have been taken on the basis of the final report/chargesheet u/s 173 Cr.P.C. (even if it be treated as a complaint). The principle of law being that cognizance can be taken only once and not time and again, the learned ACMM erred by taking cognizance again on the basis of the charge sheet filed by the prosecution in the present case. Article 21 of the Constitution provides that a person cannot be proceeded against or tried except as per the procedure established by the law. The learned A.C.M.M having failed to adhere to the relevant provisions of the Cr.P.C. and chosen instead to act on the mere ipse dixit of the Investigating Officer, grave prejudice has been caused to the petitioners in the instant case.

23. Buttressing the contentions of Mr. Salve, Mr. Luthra vehemently contended that in the light of the judgment of the Hon''ble Supreme Court in the *Jacob Mathew* case (supra), the learned ACMM seriously erred in issuing process on the chargesheet filed in FIR No. 305/2006, Police Station Sarita Vihar. He emphasized that a doctor or a medical practitioner is under a duty to treat his patients and any action taken by him in the course of his treatment, i.e., a decision whether or not to administer a certain drug or to give a certain course of treatment or not, is a professional decision taken by the doctor and for attributing motive to him, there needs to be a cogent body of evidence of

independent medical experts to justify the fact that the decision taken by him was not as per the established medical practice.

24. Countering the aforesaid contentions raised on behalf of the petitioners, Ms. Mukta Gupta, Standing Counsel for the State in the first instance argued that assuming the allegations of the petitioners to be correct, the orders dated 8th June, 2006 and 4th November, 2006 of the learned ACMM were not liable to be quashed, since the settled law is that any illegality committed in the course of investigation does not affect the competence or the jurisdiction of the court of trial, unless miscarriage of justice is shown to have been occasioned thereby. Reliance was placed by her, in this context, upon the following decisions of the Hon"ble Supreme Court.

25. The first is a three-Judge Bench decision of the Supreme Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, In the said case, the provisions of Section 5(4) and the proviso to Section 3 of the Prevention of Corruption Act, 1947 (II of 1947) and the corresponding Section 5A of Prevention of Corruption Act (Second Amendment) Act, 1952 (LIX of 1952) provided that the investigation into the offences specified therein was not to be conducted by any police officer of a rank lower than the Deputy Superintendent of Police without the specific order of a Magistrate, and the question arose as to whether trial following upon the investigation in contravention of these provisions was illegal. Holding the aforesaid provisions to be mandatory and not directory and any investigation conducted in violation thereof to be illegal, the Hon"ble Supreme Court nevertheless observed as follows: [SCR, page 1162]

The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance

therewith. But section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice.

If therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in AIR 1944 73 (Privy Council) and 77 M.I.A. 62 (Privy Council)

26. Reiterating the same principle, another three-Judge Bench of the Hon'ble Supreme Court in the case of State of Andhra Pradesh Vs. P.V. Narayana, , in paras 5 to 7, after noticing its earlier decision in the H.N. Rishi Bud and Inder Singh case (supra), and another decision rendered by it in M.C. Sulkunte Vs. State of Mysore, held that it is clear from these authorities that an illegal investigation does not vitiate the trial and that the High Court had erred in quashing the proceedings against the respondents solely on the ground of illegal investigation. In order to set aside the conviction, the High Court should have also gone into the question whether the illegal investigation had resulted in prejudice to the accused and whether there had been miscarriage of justice as a result of bad and irregular investigation.

27. A Constitution Bench of the Hon'ble Supreme Court in the case of Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, while declining to issue a writ of prohibition in restraint of the use of material gathered during search and seizure by the Income Tax Authorities in contravention of the provisions of Section 132 of the Income Tax Act, 1961, held that the Courts have consistently refused to exclude the relevant evidence merely on the ground that it was obtained by illegal search or seizure. The following observations made by the Hon'ble Supreme Court are apposite:-

24.....Now, if the Evidence Act 1872 which is a law consolidating,

defining and amending the law of evidence no provision of which is challenged as violating the Constitution permits relevancy as the only test of admissibility of evidence (See Section 5 of the Act) and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American Judges of the American Supreme Court have spelt out certain constitutional protections from the provisions of the American Constitution. In *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, , already referred to a search and seizure made under the Criminal Procedure Code was challenged as illegal on the ground of violation of the fundamental right under Article 20(3), the argument being that the evidence was no better than illegally compelled evidence. In support of that contention reference was made to the Fourth and Fifth amendments of the American Constitution and also to some American cases which seemed to hold that the obtaining of incriminating evidence by illegal seizure and search tantamounts to the violation of the Fifth amendment.....

A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy analogous to the American Fourth Amendment we have no justification to import it into a totally different fundamental right by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Art. 20(3) would be defeated by the statutory provisions for searches.

It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search.

25. So far as India is concerned its law of evidence is modeled on the rules of evidence which prevailed in English law, and courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.....

28. Next reliance was placed by Ms. Gupta on the case of *State of M.P. Vs. Ramesh C. Sharma*, wherein dealing with the case of investigation by an incompetent police officer and the prayer for quashing of investigation and charge solely on that ground, the Hon'ble Supreme Court in para-5 held as follows:

5. Learned counsel for the State contended that the impugned order of the High Court is contrary to the settled principle of law enunciated by this Court in a catena of decisions and it is liable to be set aside. Avoiding multiplicity, we may

refer to a decision of this Court rendered in the case of State of Madhya Pradesh and Others Vs. Shri Ram Singh, This Court in Ram Singh after noticing the various decisions of this Court, inter alia, held that a defect or illegality in the investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. In a recent decision in the case of Union of India (UOI) Vs. Prakash P. Hinduja and Another, in which one of us (G.P. Mathur, J.) is the author of the judgment after noticing the various decisions of this Court pointed out in paras 20 and 21 of the judgment as under: (SCC pp. 209-10)

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court u/s 173(2) CrP.C., this field being exclusively reserved for the investigating agency.

21. An incidental question as to what will be the result of any error or illegality in investigation on trial of the accused before the court may also be examined. Section 5A of the Prevention of Corruption Act, 1947 provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable u/s 161, Section 165 and Section 165A IPC or u/s 5 of the said Act without the order of a Magistrate of the First Class. In H.N. Rishbud and Inder Singh Vs. The State of Delhi, the investigation was entirely completed by an officer of the rank lower than the Deputy Superintendent of Police and after permission was accorded a little or no further investigation was made. The Special Judge quashed the proceedings on the ground that the investigation on the basis of which the accused were being prosecuted was in contravention of the provisions of the Act, but the said order was set aside by the High Court. The appeal preferred by the accused to this Court assailing the judgment of the High Court was dismissed and the following principle was laid down: (AIR pp.203-04, para 9)

9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it

cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190. of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199.

These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1). (Whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial.

The Court after referring to *Parbhu v. Emperor* and *Lumbhardar Zutshi v. R.* held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial, This being the legal position, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. The High Court has clearly erred in setting aside the order of the learned Special Judge taking cognizance of the offence and in quashing further proceedings of the case.

29. In *State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru*, , while discussing the admissibility of illegally obtained evidence, the Apex Court held that the question was no longer *res integra*. Referring to its earlier decision in *R.M. Malkani Vs. State of Maharashtra*, the Court approved of the law laid down in the said case as follows: (SCC p.477, para 24)

There is warrant for the proposition that even if evidence is illegally obtained it is admissible. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See *Jones v. Owens*. The Judicial Committee in *Kuruma v. R.* dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were

permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. The reason given was that if evidence was admissible it matters not how it was obtained. There is of course always a word of caution. It is that the judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence.

30. Referring next to the scheme of Sections 154, 155 and 156 as contained in Chapter- XII of the Cr.P.C., Ms. Mukta Gupta contended that while the provisions of Section 156(3) provide for investigation into cognizable offences upon orders of a Magistrate empowered u/s 190 to order such investigation, in clear contrast the provisions of 155(2) provide for investigation of non-cognizable cases, laying down that no police officer shall investigate a non-cognizable case without the orders of a Magistrate having power to try such case or commit such case for trial. The application submitted by the SHO, Police Station Tughlak Road, for the registration of the case u/s 182 IPC and the investigation thereon was in accordance with the legislative mandate as set down in Section 155(2). The order of the learned ACMM dated 8th June, 2006 was, therefore, an order passed in exercise of the powers vested in the ACMM by virtue of sub-Section (2) of Section 155. No cognizance, as contended by Mr. Luthra, was taken by learned ACMM by order dated 8th June, 2006. Applying the same analogy, Ms. Gupta contended that the further contention of Mr. Luthra that, the learned ACMM had gravely erred by taking cognizance in the present case time and again, i.e., on 8th June, 2006 and again on 4th November, 2006, does not hold water.

31. Adverting to the contention raised by Mr. Harish Salve, the learned senior counsel that the act of the SHO, Police Station Tughlak Road in filing an application before the Magistrate for permission to investigate a non-cognizable offence u/s 155(2) Cr.P.C. instead of filing a complaint clearly shows that he as a public servant had no knowledge of the commission of the offence on which the complaint could have been filed by him, he was seeking orders from the Court for investigation of a non-cognizable offence, Ms. Mukta Gupta contends that the SHO, Police Station Tughlak Road, as is evident from his application, had the knowledge about the commission of the offence. He merely sought permission to collect material in proof thereof as envisaged by Sub Section (2) of Section 155 Cr.P.C.

32. The question which arises is: What is the meaning of taking cognizance for the initiation of proceedings? The term cognizance is not defined anywhere in the Code of Criminal Procedure. Section 190 of the Code, however, deals with cognizance by the Magistrate while Section 193 refers to cognizance of offences by the Court of Sessions. Section 190, which is apposite, reads as follows:

190. Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

33. What amounts to the taking of cognizance was considered by a three-Judge Bench of the Hon"ble Supreme Court in the case of R.R. Chari Vs. The State of Uttar Pradesh, wherein Kania, CJ (as His Lordship then was), after noticing the provisions of Section 190 of the Code adverted to the case of Gopal Marwari v. Emperor AIR 1943 Patna 245, wherein it was observed that the word "cognizance" is used in the Code to indicate the point when the Magistrate or a Judge first takes judicial notice of an offence. It is a different thing from the initiation of proceedings. It is the condition precedent to the initiation of proceedings by the Magistrate. The Court noticed that the word "cognizance" is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense. In paragraph 9 of the judgment, Their Lordships referred to and approved of the law laid down by Das Gupta, J. in Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, as follows:

What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the various sections of the Chapter but for taking action of some other kind, e.g., ordering investigation under S. 156(3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence.

34. Another three-Judge Bench of the Hon"ble Supreme Court in the case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, dealing with the same question held as follows:

14. This raises the incidental question. What is meant by "taking cognizance of an offence" by the Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged

therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190 (1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding u/s 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizances of the offence within the meaning of Section 190(1)(a). If instead of proceeding under Chapter XV, he, has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police u/s 156(3), he cannot be said to have taken cognizance of any offence.

35. Clearly, therefore, in the present case, in my view, the learned ACMM having passed order dated 08.06.2006 for investigating non-cognizable offences under Sections 182/201/109/114/120-B IPC by virtue of the powers vested in the ACMM u/s 155(2) contained in Chapter XII of the Code, it cannot be said that the Magistrate took cognizance of the said offences within the meaning of Section 190 of the Code. This is even otherwise apparent from the fact that cognizance was specifically taken by the ACMM after the filing of the charge-sheet to which the complaint of the SHO Inspector Madanjit Singh of Police Station Tughlaq Road dated 30.10.2006 was appended. The question which arises is: Was the ACMM entitled to take cognizance by her order dated 04.11.2006 or was the ACMM debarred from taking cognizance by virtue of the provisions of Section 195(1)(a) and (1)(b) as contended by the learned counsel for the petitioners.

36. In the above backdrop, it is proposed to deal first with Mr. Salve's contention with regard to the absence of a complaint. According to Mr. Salve, as noticed above, the impugned order of the learned ACMM dated 4th November, 2006 purports to take cognizance not on the basis of any complaint, but on the basis of the charge-sheet filed by the SHO, Police Station Sarita Vihar, which cannot be treated as a complaint within the meaning of Section 195(1)(a) of the Cr.P.C. First, a look at the definition of complaint as set out in Section 2(d) and the explanation thereto, which are reproduced hereunder:

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

Explanation - A report made by a police officer in a case which disclosed, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

37. It will be pertinent to note at this juncture that the explanation to Section

2(d), inserted by way of amendment by Act 45 of 1978, is really in the nature of a proviso to Section 2(d) though captioned as an "Explanation". While clause (d) provides that a complaint does not include a police report, the explanation clarifies that in the case of a non-cognizable offence, a report made by a police officer shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant. Thus, quite clearly, the legislature in its wisdom by way of amendment provided that in the case of a non-cognizable offence, the report made by a police officer shall be deemed to be a complaint.

38. On facts, a bare glance at the report made by the police officer in the instant case shows that a complaint was filed in the instant case in the Court of the learned ACMM by the SHO, Inspector Madanjit Singh, Police Station Tughlaq Road. The list of documents enclosed with the charge-sheet at serial No. 2 reads: "Copy of FIR alongwith complaint submitted by the complainant and order of Hon"ble Court passed on 08.06.2006 - 11 PPs". It appears that by way of abundant precaution, another complaint was also filed by the same complainant, which is shown at serial No. 21 of the list of documents as follows: "Complaint u/s 195 Cr.P.C. - 3 PPs". There is, therefore, no manner of doubt that a complaint was filed by the concerned police officer in the instant case before the learned ACMM, whose permission was also sought for investigating the non-cognizable offence. The contention of Mr. Harish Salve and Mr. Siddharth Luthra, the learned senior counsel for the petitioners, that the provisions of Section 195(1)(a) would operate as a bar to the present proceedings is, therefore, wholly unsustainable.

39. Adverting next to the second limb of Mr. Salve's argument that the proceedings are contrary to the provisions of Section 195(1)(b), inter alia, for the reason that the complaint u/s 193 IPC should have been filed by the learned ACMM trying the Rahul Mahajan case, it deserves to be noticed again that in respect of Section 193 IPC the learned ACMM had taken suo moto cognizance of the offence u/s 193 IPC as the said offences were committed much prior to the commencement of the trial in the Rahul Mahajan case as is clear from the order dated 04.11.2006. There is, therefore, no substance in the contention of the learned senior counsel for the petitioners that in the absence of a complaint in writing, the learned ACMM could not have taken cognizance of the offence u/s 193 of the IPC.

40. Mr. Salve's further contention that the language of Explanation 2 to Section 193 IPC does not limit the coverage provided by the said Explanation to offences in Chapter XI of the Penal Code, but the said Explanation is couched in general language, and in the absence of words of limitation in the said Explanation, its language must be given full effect to, in my view, also has no substance for the reason that a bare glance at Section 195 (b) (i) makes it clear that the bar of the said sub-section will apply only "when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court". Any other interpretation would render the words "when such offence is alleged to have

been committed in, or in relation to, any proceeding in any Court" otiose. It also cannot be lost sight of that the provisions of Section 195 have to be strictly construed as they create a bar on the power of the Court to take cognizance of an offence and any provision which ousts the jurisdiction of the Court, which it otherwise possesses, cannot be given an enlarged meaning. In case such a provision is not given a restricted meaning, serious consequences may follow and the result may be even to facilitate the escape of a guilty person and lack of redressal to an aggrieved complainant.

41. Coming next to the contention of Mr. Salve that miscarriage of justice has resulted from the breach of the provisions of Section 340 Cr.P.C., first a look at the provisions of Section 340 of the Code, which reads as follows:

340. Procedure in cases mentioned in section 195.- (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary-

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
 - (e) bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.
- (3) A complaint made under this section shall be signed,-
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
 - (b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf;
- (4) In this section, "Court" has the same meaning as in section 195.
- (emphasis supplied)

42. Clause (b) (i) of Section 195 refers to offences mentioned in Chapter XI of the IPC, which is headed as - "Of False Evidence And Offences Against Public Justice". The offences mentioned in this clause relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a Court of Justice or before a public servant, who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with proceedings in the Court of Justice.

43. Indubitably, Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clause (b) (i) and (b)(ii) thereof and Section 340 which occurs in Chapter XXVI sets out the procedure for filing of such a complaint and other matters connected therewith and mandates that where the Court is of the opinion that an offence referred to in clause (b) of sub-section (1) of Section 195 has been committed "in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court", such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing. Indubitably also, the said procedure provides a vital safeguard in favour of the accused persons or the witnesses as the case may be, but as the heading of Chapter XXVI, which reads: "Provisions As To Offences Affecting The Administration Of Justice" clearly shows, the intention of the legislature is manifest that the offences committed should be of such type which directly affect the administration of justice, viz., which are committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court. In the instant case, there is no allegation that any offence affecting the administration of justice was committed while the proceedings were pending in any Court of law and, therefore, clearly neither Section 195(1)(b)(i) will be attracted nor Section 340 will be applicable.

44. A Constitution Bench of the Hon'ble Supreme Court comprising of seven Judges in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, , in view of the conflict of opinion between two decisions of the Supreme Court each rendered by a bench of three learned Judges in Surjit Singh and others Vs. Balbir Singh, and Sachida Nand Singh and Another Vs. State of Bihar and Another, regarding the interpretation of Section 195(1)(b)(ii) of the Code of Criminal Procedure 1973, while holding that Section 195 Cr.P.C. is a sort of exception to Section 190 Cr.P.C. which provides for taking of cognizance by a Magistrate and creates an embargo on the power of the Court to take cognizance in certain types of offences enumerated therein, in paragraphs 25 and 26 of its judgment held as follows:

25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a

document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

26. In the present case, the Will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

45. Applying the law as laid down by the Constitution Bench, I am of the opinion that Section 195(1)(b)(i) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed "in or in relation a proceeding in that Court". The fact that the procedure for filing a complaint by the Court has been provided in Chapter XXVI clearly shows that the legislative intent was that the offence committed should be of such type which directly affects the administration of justice. Any offence committed in relation to Sections 193 to 196, 199, 200, 205 to 211 and 228, which is not alleged to have been committed in, or in relation to, any proceeding in any Court, cannot be said to be an offence affecting the administration of justice.

46. The reliance placed by Mr. Salve on the case of T.T. Antony to urge that the filing of the second FIR with regard to the same incident is impermissible in law, to my mind, is also misplaced in the facts of the instant case. A bare glance at the decision of the Supreme Court in T.T. Antony's case shows that the question of the legality of the second FIR registered as Crime No. 268/1997, in respect of the cognizable offence mentioned therein after about three years of the occurrence, when in that regard two FIRs pertaining to two different places were already filed and registered as Crime Nos. 353 and 354/1994, was being examined by the Hon'ble Supreme Court. The Court after examining the entire facts came to the conclusion that the registration of the information in Crime No. 268/1997 by registration of a second FIR in regard to the same incident was not permissible in view of the fact that a comparison and critical examination of the FIRs in Crime Nos. 353 and 354/1994 on the one hand and FIR in Crime No. 268/1997 on the other, disclosed that the date and place of occurrence were the same and the narration of events was also the same. In this view of the matter and after recording that in truth and substance the essence of the offence in Crime Nos. 353 and 354/1994 was the same as in Crime No. 268/1997, the Supreme Court held that the registration of the second FIR was irregular on the facts of the case, and also in view of the fact that a fresh investigation after a lapse of three years of the occurrence was unwarranted and illegal, more so, as the investigation in the earlier cases (Crime Nos. 353 and 354/1994) was pending.

47. Significantly, however, in the case of T.T. Antony, the Supreme Court

specifically approved of the test laid down in its earlier decision rendered in *Ram Lal Narang Vs. State (Delhi Administration)*, relied upon by the Solicitor General in T.T. Antony's case to contend that there can be a second FIR in respect of the same subject matter. Repelling the contention of the learned Solicitor General on facts of the case, the Supreme Court noticed that the facts in *Ram Lal Narang's* case were entirely different and justified the registration of a second FIR in the facts and circumstances of the said case.

48. In *Narang's* case, the facts were somewhat interesting. Two precious antique pillars of sandstone were deposited in the Court of Ilaha Magistrate, Karnal, as stolen property. One N.N. Malik filed an application before the Magistrate seeking custody of the pillars to make in-detail study on the pretext that he was a research scholar. It appears that the then Chief Judicial Magistrate of (Carnal (H.L. Mehra), was a friend of Malik. At the instance of Mehra the said Ilaha Magistrate ordered that the custody of the pillars be given to Malik on his executing a bond. About three months thereafter Malik deposited two pillars in the Court of Ilaha Magistrate, Karnal. After some time it came to light that the pillars returned by Malik were not the original genuine pillars but were fake pillars. An FIR was lodged against both Malik and Mehra u/s 120B read with Sections 406 and 420 IPC alleging conspiracy to commit criminal breach of trust and cheating. CBI after necessary investigation filed charge-sheet in the Court of Special Magistrate, Ambala, against both of them. Ultimately on the application of the Public Prosecutor the case was permitted to be withdrawn and the accused were discharged. Sometime later the original genuine pillars were found in London which led to registering an FIR in Delhi u/s 120B read with Section 411 IPC, and Section 25(1) of the Antiquities and Art Treasures Act, 1972 against three persons who were brothers (referred to as "the Narangs"). The gravamen of the charge against them was that they, Malik and Mehra, conspired together to obtain custody of the genuine pillars, got duplicate pillars made by experienced sculptors and had them substituted with a view to smuggle out the original genuine pillars to London. After issuing process for appearance of the Narangs by the Magistrate at Delhi, an application was filed for dropping the proceedings against them on the ground that the entire second investigation was illegal as the case on the same facts was already pending before the Ambala Court, therefore, the Delhi Court acted without jurisdiction in taking cognizance of the case on the basis of illegal investigation and the report forwarded by the police. The Magistrate referred the case to the High Court and the Narangs also filed an application u/s 482 CrPC to quash the proceedings. The High Court declined to quash the proceedings, dismissed the application of the Narangs and thus answered the reference. On appeal to the Supreme Court, it was found by the Court that the two FIRs in truth and substance were different.

49. The observations made by the Hon'ble Supreme Court in *Ram Lal Narang's* case are apposite:

20. Anyone acquainted with the day-to-day working of the criminal courts will be

alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

50. From the above, I have no hesitation in coming to the conclusion that the facts of the instant case clearly merit the recording of two separate FIRs. The scope and ambit of the two FIRs is entirely different as also the names of the accused, the time and the place of the occurrence. While in the first FIR, being FIR No. 104/2006, which was under the NDPS Act, the accused were Rahul Mahajan and Others, who had consumed heroine and cocaine at 7, Safdarjung Enclave, in the second FIR, being FIR No. 305/2006, the accused are the doctors

and nurses of the Apollo Hospital, who have committed offences in the Apollo Hospital itself by tampering with the records of the hospital. As is evident from a perusal of the charge-sheet, the names of all the accused persons (14 in number) have been kept in column No. 4 of the charge-sheet, except accused Harish Sharma. Accused Harish Sharma had been arrested in FIR No. 104/2006 under Sections 201/34 IPC, Police Station Tughlaq Road, New Delhi and accordingly his name has been kept in column No. 2 of the charge-sheet in FIR No. 305/2006, that is, in the instant case. The said accused apparently played a multiple role having committed the offence punishable u/s 201 in case FIR No. 104/2006 as well.

51. Adverting next to the submission of Mr. Salve that in arriving at the conclusion that offences under Chapter X and Chapter XI have been committed, the learned ACMM failed to keep in mind the Bolam test and the standards prescribed by the Hon'ble Supreme Court in the case of Dr. Suresh Gupta (supra) and in the case of Dr. Mathew Jacob. It may be noticed that in the said cases, the appellants were tried for rash and negligent acts resulting in death, the acts being committed in discharge of their professional duties. In the instant case, the petitioners are not being tried for medical negligence and are being accused of offences relating to the administration of justice, e.g., showing the administration of a drug by the name of "Fentanyl" to hide the evidence of opiate poisoning of Rahul Mahajan. The allegation of the prosecution is that the said drug was not in fact administered as the patient had been intubated immediately and the said drug is a pre-procedural analgesic and used for the purpose of intubation. Post-intubation, there was no requirement of "Fentanyl", which could also prove contra-indicative. However, as per the records of Apollo Hospital itself, both the patients were intubated in the Casualty itself, whereas "Fentanyl" was prescribed later on in the ICU, when it was no more required. It is further the allegation of the prosecution that as per the records of the Apollo Hospital, no bill was raised for the administration of "Fentanyl" and this shows that the drug was not administered, though shown to be administered with a view to hide the toxicity screen of accused Rahul Mahajan.

52. The contention of the petitioners that there is nothing on record to warrant the prosecution of the petitioners under Sections 182/201/177 is also not borne out from the record as also their contention that Section 120B IPC is not attracted. With regard to the offences under Sections 182/201/177 and 193 IPC, there is ample material on record in respect of the said offences. The very fact that the petitioners took part in the press conference and gave incorrect facts to the media prima facie shows that they were a part of the conspiracy to conceal the offence and screen the offenders. As observed by the Hon'ble Supreme Court in State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, the existence of a conspiracy has to be inferred from proved circumstances, as in an offence which is shrouded with secrecy no direct evidence of common intention of the conspirators can normally be produced before the Court nor had the stage for production of such evidence if any, arisen.

53. The contention of Mr. Siddarth Luthra, the learned senior counsel for Dr. Prasad Rao that cognizance was taken by the learned ACMM on two different occasions, that is, on 8th June, 2006 and 4th November, 2006 and his further contention that the learned ACMM was bound to follow the procedure laid down in Chapter XV of the Cr.P.C. as set out in Sections 200-203, i.e., to record pre-summoning evidence, is again not borne out by the records. Clearly, no cognizance was taken by the learned ACMM by her order dated 8th June, 2006. The complainant/Inspector Madanjit Singh had moved an application for investigation of a non-cognizable offence and registration of an FIR in respect of the offence u/s 182 IPC on 8th June, 2006 and on the same date, that is, on 8th June, 2006, an order was passed by the learned ACMM directing registration of the FIR and investigation into the offence u/s 182 IPC. It was only after the submission of the Report by the SHO, Police Station Sarita Vihar that cognizance was eventually taken by the learned ACMM by her order dated 04.11.2006. The contention of Mr. Luthra that the so called charge-sheet was only a Report pursuant to an enquiry u/s 202 Cr.P.C. is also without merit. In the instant case clearly no orders were passed by the learned ACMM u/s 202 of the Code. It is trite law that the investigation envisaged by Section 202 contained in Chapter XV is different and distinct from the investigation contemplated under Sections 155 and 156 of the Code, contained in Chapter XII, which deals with "Information To The Police And Their Powers To Investigate".

54. The scope and ambit of Section 202(1) of the Code was recently examined by the Supreme Court in the case of Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, Holding that the Magistrate need not order any investigation under Chapter XII if he proposes to take cognizance of the offence, the Hon'ble Supreme Court held that once the Magistrate takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. It was also held that a reading of Section 202 of the Code makes the position clear that the investigation referred to therein is of a limited nature as it is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further.

55. To sum up, even assuming that any illegality has been committed in the course of investigation (though in my view no illegality is shown to have been committed), the orders dated 8th June, 2006 and 4th November, 2006 passed by the learned ACMM are, in my considered opinion, not liable to be quashed as no miscarriage of justice is shown to have been occasioned thereby. (Se State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, H.N. Rishbud and Inder Singh Vs. The State of Delhi, State of Andhra Pradesh Vs. P.V. Narayana, Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, and State of M.P. Vs. Ramesh C. Sharma, . I, therefore, see no reason to grant; the prayer of the petitioners for issuance of a writ of prohibition restraining the learned ACMM from proceeding with case FIR No.305/2006 and for quashing of the orders dated 8th June, 2006 and 4th November, 2006 passed by the learned ACMM. The learned ACMM shall accordingly be at liberty to proceed with the case in

accordance with law. The prayers in the above writ petitions are accordingly declined. Writ petitions stand dismissed.

Copy of this order be sent to the learned ACMM for proceeding further with the case.