Babita Lila & Anr vs Union Of India on 31 August, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4061, 2016 (9) SCC 647, AIR 2016 SC (CRIMINAL) 1300, (2016) 3 KER LT 1006, (2017) 1 MAD LJ(CRI) 456, (2016) 2 ORISSA LR 968, (2016) 4 PAT LJR 208, (2016) 3 CRILR(RAJ) 906, (2016) 3 CURCRIR 521, (2016) 4 DLT(CRL) 46, (2017) 1 ALLCRILR 625, 2016 CRILR(SC&MP) 906, (2016) 166 ALLINDCAS 66 (SC), (2016) 4 JLJR 93, (2016) 4 RECCRIR 246, 2016 CRILR(SC MAH GUJ) 906, (2016) 8 SCALE 453, 2017 CALCRILR 1 225, (2016) 96 ALLCRIC 944, (2016) 3 ALLCRIR 3265, 2016 (3) SCC (CRI) 733, 2016 (4) KCCR SN 521 (SC)

Author: Amitava Roy

Bench: Amitava Roy, Pinaki Chandra Ghose

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.824 OF 2016
[ARISING OUT OF S.L.P. (CRL) NO. 1474 OF 2012]

BABITA LILA & ANOTHER ....APPELLANTS
VERSUS
UNION OF INDIA …..RESPONDENT

JUDGMENT

AMITAVA ROY, J.

Leave granted

2. Being aggrieved by the rejection of their challenge to the initiation of their prosecution under Sections 109/191/193/196/200/420/120B/34 IPC on the basis of a complaint made by the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.), both on the ground of lack of competence of the complainant and of jurisdiction of the Trial Court at Bhopal, the appellants seek the remedial intervention of this Court under Article 136 of the Constitution of India.

3. The appellants, who are husband and wife, are residents of both Bhopal and Aurangabad. A search operation was conducted by the authorities under the Income Tax Act, 1961 (for short, hereinafter referred to as “the Act”) on 28.10.2010 at both the residences of the appellants, in course whereof their statements were recorded on oath under Section 131 of the Act. On a query made by the authorities, it is alleged that they made false statements denying of having any locker either in individual names or jointly in any bank. It later transpired that they did have a safe deposit locker with the Axis Bank (formerly known as UTI Bank) at Aurangabad which they had also operated on

30.10.2010. The search at Aurangabad was conducted by the Income Tax Officer, Nashik and Income Tax Officer, Dhule and the statements of the appellants were also recorded at Aurangabad.

4. Based on the revelation that the appellants, on the date of the search, did have one locker as aforementioned and that their statements to the contrary were false and misleading, a complaint was filed as afore- stated under the above-mentioned sections of the Indian Penal Code by the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.) on 30.5.2011 in the court of the Chief Judicial Magistrate, Bhopal, (M.P.) and the same was registered as R.T. No. 5171 of 2011.

5. The Trial Court on 9.6.2011, took note of the offences imputed and issued process against the appellants. In doing so, the Trial Court, amongst others, noted that the search proceedings undertaken by the authorities under Section 132 of the Act were deemed to be judicial proceedings in terms of Section 136 and in course whereof, as alleged, the appellants had made false statements with regard to their locker and that on the basis of the documents and evidence produced on behalf of the complainant, sufficient grounds had been made out against them to proceed under Sections 191,193, 200 IPC.

6. The appellants impugned this order of the Trial Court before the High Court under Section 482 Cr.P.C. (for short hereinafter to be referred to as "the Code") and sought annulment thereof primarily on the ground that the search operations having been undertaken by the I.T.Os. of Nashik and Dhule, the complaint could not have been lodged by the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.) who was not the appellate authority in terms of Section 195(4) of the Code and further no part of the alleged offence having been committed within the territorial limits of the Court of the Chief Judicial Magistrate, Bhopal, it had no jurisdiction to either entertain the complaint or take cognizance of the accusations. By the order impeached herein, the High Court has declined to interfere on either of these contentions.

7. We have heard Ms. Sangeeta Kumar, learned counsel for the appellants and Mr Ranjit Kumar, learned Solicitor General for the respondent.

8. Profusely referring to Section 195 of the Code as a whole, it has been urged on behalf of the appellants that the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.), in the facts of the case was not competent to lodge the complaint, he being not the authority to whom appeals would ordinarily lie from the orders or actions of the I.T.Os., Nashik and Dhule. As the statements of the appellants were recorded in the course of a search under Section 132 of the Act which was a judicial proceeding and for that matter, the concerned I.T.Os., Dhule and Nashik were deemed to be civil courts, it has been argued that in observance of the mandate of Section 195 (4) of the Code, the complaint could be lodged either by the authorities conducting the search or by the authority to whom ordinarily an appeal would lie from the orders/decisions and actions of the income tax authorities undertaking the search. It has been asserted with reference to Sections 246 and 246A of the Act in particular, that the complainant, the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.) is not the authority/forum to whom appeal lies from the orders of the I.T.Os. involved and thus was not a Court as contemplated in Section 195(1)(b) or the appellate forum under Section 195(4) of the Code.

9. It has been emphatically maintained on behalf of the appellants that having regard to the place of search, the recording of their statements as well as of the location of the locker, no cause of action for initiation of the criminal proceedings had arisen within the jurisdiction of the court of the Chief Judicial Magistrate, Bhopal in terms of Sections 177 and 178 of the Code and thus the High Court had grossly erred in deciding contrary thereto. It has been argued that the rejection of their plea by the High Court on the ground that the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.) was an officer superior in rank to the I.T.Os. conducting the search is patently flawed and unsustainable in law and on facts, having regard to the peremptory perquisites of a valid complaint under Section 195 of the Code.

10. Reliance on the decisions of this Court in Kuldip Singh vs. The State of Punjab and Another 1956 SCR 125, Lalji Haridas vs. State of Maharashtra and Another 1964 (6) SCR 700, Rajesh Kumar and Others vs. Deputy C.I.T. and Others (2007) 2 SCC 181, Y. Abraham Ajith and Others vs. Inspector of Police, Chennai and Another (2004) 8 SCC 100 and Bhura Ram and others vs. State of Rajasthan and Another (2008) 11 SCC 103 has been made in buttressal of the above assertions.

11. In refutation of the arguments advanced on behalf of the appellants, the learned Solicitor General has assertively endorsed the impugned findings, contending that the decision assailed is based on a detailed reference to the provisions of the Act enumerated in Chapters XIII and XX and a correct analysis thereof. He has maintained that having regard to the scheme of these chapters in particular and the underlying legislative intent ascertainable therefrom, the Deputy Director of Income Tax (Investigation)-I, Bhopal (M.P.) had the competence and jurisdiction to lodge the complaint at Bhopal. This authority being admittedly and as patent from the hierarchy enumerated by the Act, higher in rank than the I.T.Os. who had conducted the search and investigation, did have the authority to file the complaint and that thereby the prescriptions of Sections 195(1)(b) and 195(g) of the Code had not, in any way, been contravened. This is more so as the powers of any income tax authority under the Act and his/her jurisdiction to perform any function is not limited or restricted but has been consciously enlarged to deal with any contingency so as to advance the objectives of the legislation, he urged.

12. Vis-a-vis the competence of the court of the Chief Judicial Magistrate, Bhopal, the learned Solicitor General insisted that as the appellants were the residents, both of Bhopal and Aurangabad and search operations were conducted simultaneously at both the places, and further as they had been filing their income tax returns at Bhopal, the Trial Court before which the complaint had been filed, was competent to take cognizance of the offences alleged in terms of Section 178 (b) and (d) of the Code. To reinforce the above, the decision of the Constitution Bench of this Court in Lalji Haridas (supra) has been pressed into service.

13. Before adverting to the competing contentions, it would be apt to note the conclusions of the High Court on these two counts. In addition to the admitted factual aspects narrated hereinabove, the High Court upheld the jurisdiction of the Chief Judicial Magistrate, Bhopal by taking note also of the fact that the income tax returns relatable to the undisclosed property i.e. the locker had been filed at Bhopal. The facts, to reiterate, that the appellants were residents of Bhopal and Aurangabad, and that the search operations were conducted simultaneously at both the places were noted as well.

14. Qua the competence of the Deputy Director, Income Tax (Investigations)-I Bhopal, the High Court held the view that he being admittedly an officer superior in rank to the I.T.Os. conducting the search, the institution of the complaint by him was not vitiated by any lack of authority. Reference to Section 136 of the Act, whereunder any proceeding before an income tax authority would be a judicial proceeding and that for that matter, every income tax authority is deemed to be a civil court was recorded as well. The High Court did refer to the Section 195 of the Code to enter a finding that the Deputy Director, Income Tax (Investigations)-I Bhopal being an officer superior to the I.T.Os. undertaking the search and to whom an appeal from their orders/decisions/actions ordinarily lay, was a civil court as contemplated thereunder to lodge the complaint.

15. The competing contentions have received our due consideration. The rival submissions stir up two major issues pertaining to the maintainability and adjudication of the complaint lodged before the Chief Judicial Magistrate, Bhopal, (M.P.) by the Deputy Director, Income Tax (Investigation)-I, Bhopal, (M.P) in the face of the prescription of Section 195(1)(b) of the Code, in particular read with the other cognate sub- sections thereof as well as the limits of the territorial jurisdiction of the court before which the prosecution of the appellants has been initiated in the context of Section 177 of the Code.

16. Having regard to the decisive bearing of the adjudication on the validity or otherwise of the complaint by the Deputy Director, Income Tax (Investigation)-I, Bhopal, (M.P). in the textual facts, expedient it would be to dwell on this aspect at the threshold.

17. The admitted facts reveal that the appellants have residences both at Bhopal and Aurangabad and file their returns of income tax at Bhopal. On 28.10.2010, search operations under Section 132 of the Act were simultaneously conducted at both the places. In the course of the interrogation of the appellants, more specifically on the aspect as to whether they or any of them either individually or jointly did hold any locker, the answer was in the negative. The accusation of the authorities is that further investigation revealed that they did hold a locker in the Axis Bank (formerly known as UTI Bank), Kranti Chowk, Aurangabad which had been operated by appellant No. 1 on 30.10.2010. In this factual backdrop, the complaint had been filed by the Deputy Director, Income Tax (Investigation)-I, Bhopal, (M.P) in the court of Chief Judicial Magistrate, Bhopal, (M.P.) asserting that by making such false statement in the course of search operations which were judicial proceedings in terms of Section 136 of the Act, the appellants had committed offence under Sections 109/191/193/196/200/420/120B/34 IPC. As referred to hereinabove, the Chief Judicial Magistrate, Bhopal, after necessary hearing as contemplated in law and being prima facie satisfied that sufficient grounds had been made out to proceed against the appellants under Sections 191,193 and 200 IPC, issued process against them.

18. As the documents appended to the appeal would divulge that the search operations at Aurangabad had been conducted on the strength of the warrant of authorisation dated 26.10.2010 under Section 132 of the Act, issued, signed and sealed by the Director of Income Tax (Inv.), M.P. & C.G.,Bhopal/Deputy Director of Income Tax and the statements of the appellant Nos. 1 and 2 were recorded by Mrs. Bharati Choudhary, I.T.O. and Mr. A.T. Kapase, I.T.O. (Inv.), Nashik on 28.10.2010. The materials on record also disclose that search operations did continue on subsequent

dates as well, in course whereof seizures were made.

19. Be that as it may, eventually the office of the Deputy Director of Income Tax (Investigation)-I, Bhopal on 8.2.2011 issued a show cause notice to the appellants under Section 277 of the Act alleging that they had made false statement under Section 132(4) thereof, thereby seeking a reply as to why prosecution would not follow by virtue thereof. It is in this factual premise, that the validity of the complaint filed by the Deputy Director, Income Tax (Investigation)-I, Bhopal, (M.P). has been questioned by the appellants. To reiterate, by the impugned order, the High Court has negated both the demurrals of the appellants pertaining to the complaint and territorial jurisdiction of the court of the Chief Judicial Magistrate, Bhopal.

20. The state of law as adumbrated by the precedents cited may now be outlined before referring to the relevant provisions involved.

21. In Kuldip Singh (supra), the question involved before a Constitution Bench of this Court was about the validity of a complaint made under Section 476-A read with Section 195(3) of the Code of Criminal Procedure Code 1898 against the appellant for perjury and for using a forged document as genuine. The contextual facts narrate that the 2nd respondent therein had filed a suit against the appellant for recovery of money on the basis of a mortgage in the Court of one Mr. E.F. Barlow, Subordinate Judge of 1st Class. The appellant in the suit filed a receipt which purported to show that Rs.35000/- had been paid towards the satisfaction of the mortgage and in the witness box he swore that he had paid the money for which the receipt was given.

22. Mr. Barlow held that the receipt did not appear to be a genuine document and that the evidence of the appellant to that effect was not true. A preliminary decree was accordingly passed against the appellant for the entire amount followed by a final decree. The appeal preferred by the appellant was also dismissed by the High Court which reiterated that the receipt was a very suspicious document and that the appellant's evidence was not reliable as well.

23. The plaintiff/respondent thereafter made an application in the Court of Mr. W. Augustine who had succeeded Mr. Barlow as Subordinate Judge of 1st Class stating that a complaint be filed against the appellant under Sections 193 and 471 I.P.C. Mr. Augustine, because of his transfer could not hear the application for filing of the complaint. In his place Mr. K.K. Gujral, subordinate Judge of the 4th Class was sent. He, however, declined to entertain the matter as he was only a subordinate judge of the 4th Class and laid a report to the District Judge pointing out his lack of jurisdiction in the matter as the offences had been allegedly committed in the Court of a subordinate Judge of the 1st Class. The District Judge thereupon transferred the matter to the Senior Subordinate Judge, Mr. Pitam Singh who made the complaint. The impeachment of the validity of the complaint has arisen in this backdrop.

24. As the sequence of events unfold, the appellant filed an appeal against the order of Mr. Pitam Singh to the Additional District Judge Mr, J.N. Kapur who held that the Senior Subordinate Judge Mr. Pitam Singh had no jurisdiction to make complaint. He also held that on merits as well there was no prima facie case. The High Court, however, in revision held that the Senior Subordinate

Judge had the jurisdiction and further the materials on record did disclose a prima facie case. Accordingly, the order of the Additional District Judge was set aside and the order of the Senior Subordinate Judge was restored.

25. Three questions fell before this Court for scrutiny. Firstly, whether the Senior Subordinate Judge Mr. Pitam Singh had jurisdiction to entertain the application and make a complaint. Secondly, whether the Additional District Judge had jurisdiction to entertain an appeal preferred against the order of Mr. Pitam Singh and thirdly, whether the High Court had the power to reverse the order of the Additional District Judge in revision.

26. While dwelling upon the first issue, this Court adverted at the threshold to Section 195(1)(b) and (c) of the Code which prohibited any Court from taking cognizance of either of the two offences alleged, except on the complaint in writing of the Court concerned or of some other Court to which such Court was subordinate. Having regard to the fact that the offences were committed in the Court of E.F. Barlow, Subordinate Judge of the 1st Class, their Lordships next referred to Section 476-A of the Code which prescribed that when the Court in which the offence is said to have been committed neither makes a complaint nor rejects an application for the making of a complaint, the Court to which such former Court is subordinate within the meaning of Section 195 (3) may take action under Section 476.

27. Their Lordships noted that Section 476 authorised the appropriate Court, after recording a finding to the effect that it was expedient to do so in the interest of justice to make a complaint in writing and forward it to a Magistrate of 1st Class having jurisdiction. While examining in the scheme of prevalent hierarchy of posts as to whether the court of Senior Subordinate Judge presided over by Mr. Pitam Singh was a Court to which the Court of Mr. Barlow was subordinate within the meaning of Section 195(3) of the Code, their Lordships marked that in terms of Section 195(3), a Court for the purposes thereof, would be deemed to be subordinate to the Court to which appeals ordinarily lay from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lay, to the principal court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court was situated. The proviso to Section 195(3) was also noted which ordained that where appeals lie to more than one court, the appellate court of the inferior jurisdiction would be the court to which such court would be deemed to be subordinate. Further when appeals lay to a Civil and also to a Revenue Court, such Courts would be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case or the proceedings in connection with which the offence was alleged to have been committed.

28. In this conspectus, this Court laid a decisive emphasis on the word “ordinarily” and to disinter the legislative intent, alluded to the relevant provisions of the Punjab Courts Act, 1918 dealing in particular with the classes and hierarchy of Civil Courts. Apart from the Courts of Small Causes, it was noticed that under the said Act following three classes of Civil Courts were provided:

(i) The Court of District Judge

(ii) The Court of Additional Judge

(iii) The Court of the Subordinate Judge

29. Vis-a-vis the provisions for appeal under Section 39 of the Act, it was noted that in the absence of any other enactment for the time being in force, appeals lay to the Court of the District Judge when the value of the suit did not exceed Rs.5,000/- and in every other case to the High Court. Section 39(3), however, empowered the High Court by notification to direct that appeals lying to the District Court from all or any of the decrees or orders passed in its original jurisdiction by a Subordinate Judge, would be preferred to such other Subordinate Judge as mentioned in such notification. The facts revealed that as a matter of fact such power had been invoked and appeals lying to the District Courts from the decrees or orders passed by a Subordinate Judge in two classes of cases as specified could be preferred before the Senior Subordinate Judge of the 1st Class exercising jurisdiction within such Civil District.

30. In this factual setting their Lordships expounded that filing of the appeal to the Senior Subordinate Judge as notified qua the two selected categories of cases, could not be termed as "ordinary" because the special appellate jurisdiction had been conferred by the notification, by way of an additional assignment so much so that the power pertaining thereto could be exercised in a certain limited categories of cases. It was not an ordinary appellate jurisdiction of the Senior Subordinate Judge and for that matter for all Senior Subordinate Judges generally, it could not be said that appeals from the Courts of Subordinate Judges ordinarily lay to that of a Senior Subordinate Judge.

31. Their Lordships thus concluded that in the paradigm of the Civil Courts as codified by the Punjab Court's Act, 1918, appeals ordinarily lay either to the District Court or to the High Court and as the District Court was of the lower tier of these two forums, it was to be regarded as the appellate authority for the purposes of Section 476 B of the Code. With reference to Proviso (b) to Section 195(3) of the Code, it was held that where in the facts of the case, appeals would lie to a Civil as well as Revenue Court, the nature of the case or proceeding would determine the court to which appeal would lie and that to that limited extent the nature of the proceeding ought to be taken into account, but once the genus of the proceeding is determined namely, Civil, Criminal or Revenue, the hierarchy of the superior Courts would be determined first by the rules that apply in their special cases, if any and next by the rule in Section 195(3).

32. While dealing with the aspect as to whether the Court of the senior Subordinate Judge was the Court to which the Court of Subordinate Judge of the 1st Class was Subordinate or both the courts were at par, their Lordships confined the adjudication to the provisions of the Punjab Court's Act, Section (18) whereof did authorise the State Government to fix the number of subordinate judges to be appointed. Section 27 which vested the power in the High Court to post a subordinate judge and also prescribe the limits of his/her jurisdiction was also referred to. Their Lordships noted in terms of the Notification dated 03.01.1923 that four classes of Subordinate Judges had been contemplated based on the pecuniary jurisdiction conferred.

33. In the above factual as well as legal premise it was thus propounded that the Senior Subordinate Judge Pitam Singh had no jurisdiction to lodge the complaint and instead it was the District Judge who was competent to do so, being the Court to which appeals ordinarily lay from the court of the subordinate judge and was lower in rank to the High Court in the hierarchy. It was held in this context, that the Court of the Additional District Judge could not be construed to be a District Judge and that the jurisdiction of the former was limited to the discharge of such functions as were to be entrusted by the District Judge. It was thus concluded that neither the Senior Subordinate Judge Mr. Pitam Singh nor the Additional Judge Mr. J.N. Kapur who construed himself as an Additional District Judge, had the jurisdiction in the matter and in view of the provisions of the Punjab Courts Act, it was the District Judge who was competent to lodge the complaint in terms of Section 195(3) of the Code. Having regard to the gravity of the allegations, this Court remitted the matter to the District Court to do the needful in the exercise of his discretion in the facts and circumstances of the case.

34. In Lalji Haridas (supra), a Constitution Bench of this Court was seized with the question as to whether the proceeding before the I.T.O. under Section 37 of the Indian Income Tax Act, 1922 (as it was then) could be construed to be a proceeding in any court within the meaning of Section 195(1)(b) of the Code. The factual backdrop as outlined discloses that the appellant and the respondent No. 2 therein were businessmen and used to carry on their business at two different places and were known to each other for several years. In the income tax assessment proceedings of the appellant for the assessment years 1949-50 and 1950-51, the respondent No. 2 adduced evidence on oath before the I.T.O. of the concerned ward, wherein he denied that he had a son named Nihal Chand and that he had done any business in the name of M/s. Nihal Chand & Co. at Jamnagar. The appellant alleged that the said statement was false to the knowledge of the respondent No. 2 and was made to mislead the enquiring I.T.O. and to avoid the incidence of income tax on himself and consequently the appellant was heavily taxed.

35. The appellant thereafter filed a criminal complaint against respondent No. 2 under Section 193 IPC. At the hearing of the complaint, the respondent No. 2 raised a preliminary objection that the learned Magistrate before whom the complaint had been filed, could not have taken cognizance thereof as the allegation was making of a false statement by him on oath in a proceeding before the court within the meaning of Section 195(1)(b) of the Code and in such an eventuality, the complaint was to be filed by the court concerned as required under the said provision of the Code and thus the appellant was not competent to lodge the prosecution.

36. Though the learned Magistrate held that the I.T.O. was not a court within the meaning of Section 195(1)(b) of the Code, the High Court, on a revision being filed by the respondent No. 2, sustained his challenge to the maintainability of the complaint. The High Court held that the I.T.O. was a court within the meaning of Section 195(1)(b) of the Code and resultantly dismissed the complaint filed by the appellant, who eventually approached this Court.

37. Adverting to Section 37 of the Income Tax Act, 1922 and sub- section (4) thereof in particular, it was held that as apparent therefrom, any proceeding before the I.T.O. in which powers under sub-sections (1), (2) and (3) are exercised by him, would be judicial proceeding for the purposes of

the three sections of the Indian Penal Code as enumerated in sub-section (4). Consequently, the question as to whether the false statement alleged to have been made by the respondent No. 2 was rendered in a judicial proceeding within the meaning of Section 193 IPC was answered in the affirmative.

38. This Court also dwelt upon the aspect whether "judicial proceeding" as referred to in Section 193 IPC was synonymous with the expression "any proceeding in any court" used in Section 195(1)(b) of the Code. This issue surfaced primarily in view of the two classes of proceedings contemplated in Section 193 IPC attracting two varying punishments. This provision, it was noted, envisaged a punishable offence for giving false evidence in any stage of a judicial proceeding or fabricating false evidence for the purpose of being used in any stage of a 'judicial proceeding' and also for giving or fabricating false evidence in 'any other' case. This Court in the ultimate analysis propounded on a conjoint reading of Section 193 IPC and Section 195(1)(b) of the Code that the proceedings which are judicial under the former ought to be taken to be proceedings in any court under the latter. In this context, it was ruled that having regard to the higher sentence for the offence under Section 193 IPC qua a judicial proceeding compared to 'any other case; the legislature thus had intended that there ought to be a safeguard in respect of complaints pertaining to the offence relatable to judicial proceedings as engrafted in Section 195(1)(b) of the Code. It was observed that an offence which was treated as more serious by the first paragraph of Section 193 IPC, being one committed during the course of a judicial proceeding, should be held to be an offence committed in a proceeding in any court for the propose of Section 195(1)(b) of the Code. In terms of the majority decision that was rendered, the view taken by the High Court was sustained and the complaint was dismissed as not filed in compliance of the statutory prescriptions contained in Section 195(1)(b) of the Code.

39. Noticeably in course of the adjudication, it was marked that Section 195 was an exception to an ordinary rule that any person could make a complaint in respect of commission of an offence triable under the Code. The restrictive mandate of this provision of the Code against cognizance of any offence punishable under the sections mentioned therein, when those pertain to any proceedings in any court, except on the compliant in writing of such court or of some other court to which such court is subordinate, was underlined in particular. This Court, thus emphasised that in the matter of invocation of Section 195(1)(b) of the Code, vis-a-vis a complaint about any of the offences as mentioned therein, an exception to the ordinary rule of making complaint by any person has been carved out and by way of a safeguard, only the court in the proceeding before which such offence had been committed or such officer of the Court as it may authorise in writing or some other court to which to this Court is subordinate, has been legislatively identified as competent to do so.

40. The decision in Rajesh Kumar (supra) pertains to the decision of the authorities under the Act to conduct a special audit of the account of the petitioner - assessee in terms of Section 142(2-A) of the Act. This was subsequent to a raid conducted in the premises of the assessee in course whereof some documents including its books of accounts had been seized. The assessee questioned this decision of appointment of a special auditor principally on the ground of want of fairness in action as no opportunity of hearing was given to it, prior thereto. The interpretation and application of Section 142(2-A) of the Act in the textual facts thus fell for consideration in this case. It is in this context that this Court ruled that an assessment proceeding under the Act, is in terms of Section 136 thereof, a

judicial proceeding and that when a statutory power is exercised by the assessing authority in exercise of judicial function which is detrimental to the assessee, the same is not and cannot be administrative in nature. In the extant facts and circumstances the challenge of the assessee was upheld.

41. As the genesis of the debate is rooted to Section 195 of the Code, a detailed reference thereto is indispensable. For convenience, Section 195 as a whole is extracted hereinbelow:

> "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, or attempt to commit, such offence, or
>
> (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;
>
> (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 under section 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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].
>
> (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

Section 195(1)(b) of the Code, which is relevant for the instant pursuit, prohibits taking of cognizance by a court vis-a-vis the offences mentioned in the three clauses (i), (ii) and (iii) except on a complaint in writing of the Court when the offence(s) is/are alleged to have been committed in or in relation to any proceeding before it or in respect of a document produced or given in evidence in such a proceeding or by such officer of that court as it may authorise in writing or by some other court to which the court (in the proceedings before which the offence(s) has been committed) is subordinate. A patently regulatory imposition in the matter of lodging of a complaint for such offences is discernible assuredly to obviate frivolous and wanton complaints by all and sundry.

42. Sub-section (3) of Section 195 clarifies that the term "Court" would mean a Civil, Revenue or Criminal court and would include a tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

43. In terms of sub-section (4), for the purposes of sub-section (1)(b), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction, such Civil Court is situated.

44. The proviso to sub-section (4) explains that where appeals lie to more than one Court, the Appellate Court of the inferior jurisdiction shall be the Court to which such Court (in the proceedings before which the offence has been committed) shall be deemed to be subordinate and where appeals lie to a Civil and also to a Revenue Court, the subordination would be determined by the nature of the case or the proceeding, in connection with which the offence is alleged to have been committed.

45. Noticeably Section 195 of the Code appears under Chapter XIV enumerating the conditions requisite for initiation of proceedings thereunder. Though Section 190 of the Code outlines the categories of inputs on which a Magistrate of the first class, and any Magistrate of the second class specially empowered, can take cognizance of the offence alleged, Section 195 dealing with the prosecution for contempt of lawful authority of public servant and for offences against public justice or relating to documents given in evidence, unmistakably marks a departure from the usual modes of taking cognizance under Section 190 by prescribing the restrictions as adverted to hereinabove.

46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in C. Muniappan and Others vs. State of Tamil Nadu (2010) 9 SCC 567 wherein the following observations in Sachida Nand Singh and Another vs. State of Bihar and Another (1998) 2 SCC 493 were recorded with approval. “7.....Section 190 of the Code empowers 'any Magistrate of the First Class' to take cognizance of 'any offence' upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtained. It is a well- recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.....”. (emphasis supplied).

47. There is thus no escape from the proposition that for a valid complaint under Section 195 of the Code, the mandate thereof has to be essentially abided and as is easily perceivable this is to prevent frivolous, speculative and unscrupulous allegations relating to judicial proceedings in any court, lest the process of law is abused and public time is wasted in avoidable litigation.

48. That the search operations did constitute a proceeding under the Act before an income tax authority and that therefore the same is deemed to be a judicial proceeding within the meaning inter alia of Sections 193 and 196 IPC and that every income tax authority for the said purpose would be deemed to be a civil court for the purposes of Section 195 is not an issue between the parties.

49. The essence of the discord is the competence of the Deputy Director, Income Tax (Investigation)-I, Bhopal (M.P.) to lodge the complaint. Whereas, according to the appellants, he is not the authority or the forum before which appeals would ordinarily lie from the actions/decisions of the I.T.Os. who had recorded their statements, as mandated by Section 194(4) of the Code, it is urged on behalf of the respondent that having regard to the overall scheme of the Act, he indeed was possessed of the appellate jurisdiction to maintain the complaint. As nothing much turns on the ingredients of the offences under Sections 193,196,200 IPC qua the issue to be addressed, detailed

reference thereto is considered inessential. The relevant provisions of the Act next demand attention.

50. As enumerated under Section 116 of Chapter XIII of the Act, Deputy Director of Income tax/Deputy Commissioner of Income Tax/Deputy Commissioner of Income Tax (Appeals) amongst others are the designated income tax authorities. Section 118 authorises the Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963 (hereinafter referred to as "the Board") to direct by notification in the official gazette that any income tax authority or authorities specified therein would be subordinate to such other income tax authority or authorities as may be specified in such notification. In course of the arguments, such a notification as contemplated has been laid before this Court and attention has been drawn to clause (e) thereof in the following terms:

> "Income-tax Officers shall be subordinate to the Assistant Directors or Assistant Commissioners within whose jurisdiction they perform their functions or other income-tax authority under whom they are appointed to work and to any other income tax authority to whom the Assistant Director or the Assistant Commissioner, as the case may be, or other income tax authority is subordinate."

51. As would be evident from the above extract, it deals exclusively with the inter se subordination of the authorities mentioned therein so much so that Income Tax Officers have been made subordinate to Assistant Directors or Assistant Commissioners within whose jurisdiction they perform their functions or other income tax authorities under whom they are appointed to work and to any other income tax authority to whom the Assistant Director or the Assistant Commissioner as the case may be or other income tax authority is subordinate. Noticeably this clause does not spell out any territorial barriers but logically warrant some order/notification to activate the functional mechanism in order to address the institutional exigencies.

52. Our attention has not been drawn to any document to this effect. Additionally as well, the decisive and peremptory prescription of Section 195(4) of the Code is not merely the levels of the rank inter se but the recognised appellate jurisdiction ordinarily exercised by the authority or the forum concerned for a complaint to be validly lodged by it, if in a given fact situation, the initiation of prosecution is sought to be occasioned not by the court in the proceedings before which the contemplated offence(s) had been committed, but by a court to which ordinarily appeals therefrom would lie.

53. Considerable emphasis has been laid on behalf of the respondent on the provisions of the Act outlining the jurisdiction of the income tax authorities as encompassed in Sections 120 and 124 of the Act in particular. Section 120 provides that income tax authorities would exercise all or any of the powers and perform all or any of the functions conferred on or as the case may be assigned to such authorities under the Act in accordance with such directions as the Board may issue in this regard. The factors to be taken note of by the Board or any other income tax authority authorised by it for such purposes have also been prescribed. As a necessary corollary, the Board can also by general or special order and subject to such conditions, restrictions or limitations as may be specified therein, authorise such authorities as enumerated in sub-section (4) thereof to perform

such functions, as may be assigned.

54. The powers of an assessing officer vested with the jurisdiction as permitted by Section 120 of the Act, extends as is clarified by Section 124, to any person carrying on business or profession, if the place at which he carries on his business or profession is situated within the limits of the area over which such officer had been vested with the jurisdiction or if the person concerned carries on business in more places than one, if the principal place of his business or profession is situated within the area over which the assessing officer has jurisdiction. In addition, such officer would have also jurisdiction in respect of any other person residing within the area. Sub-section 3 of Section 124 debars a person to call in question the jurisdiction of an assessing officer in the eventualities as mentioned in sub-clauses (a) and (b) thereof.

55. The power with regard to discovery, production of evidence etc. and the officer empowered to exercise the same has been dealt with in details in Section 131 of the Act. The procedure to be complied with in conducting search and seizure has been delineated in Section 132 of the Act. Seemingly, to this extent, the parties are one and ad idem.

56. The bone of contention lies in the interpretation of Section 246 of the Act in particular which is contained in Chapter XX dealing with Appeals and Revision. Whereas Section 246 catalogues the orders of an assessing officer other than those of the Deputy Commissioner from which appeal would lie to the Deputy Commissioner (Appeals), Section 246A lists the orders from which appeal would lie to the Commissioner (Appeals). Admittedly, the categories of orders specified under Section 246(1) of the Act do not include one stemming from any proceeding before an assessing officer under Section 132 of the Act pertaining to search or seizure. Noticeably though under Section 116 of the Act, as referred to hereinabove, under clause (d) thereof, Deputy Director of Income Tax, Deputy Commissioner of Income Tax and Deputy Commissioner of Income Tax (Appeals) have been bracketed together, it is only the Deputy Commissioner (Appeals), as is apparent from Section 246(1), who has been conferred with the appellate jurisdiction to entertain appeals, albeit from specified orders passed by an assessing officer as mentioned in that sub-section. The Deputy Director of Income Tax in particular, has not been designated to be the appellate authority or forum from such orders or any other order of the assessing officer. Having regard to the issue to be addressed, it is considered inessential to dilate on Section 246A which deals with the appeals to the Commissioner (Appeals).

57. Our attention has not been drawn to any provision of the Act whereunder the Deputy Director of Income Tax has been designated to be an authority or forum before whom an appeal would lie from any order of any subordinate officer including the I.T.O.. To reiterate, I.T.Os. are included in the classes of income tax authorities as per Section 116 of the Act and having regard to the hierarchy designed, they are subordinate in rank to the Deputy Director of Income Tax, Deputy Commissioner of Income Tax and the Deputy Commissioner of Income Tax (Appeals).

58. On a conjoint reading of the above provisions of the Act, it is thus patent that the statute has not only identified the income tax authorities but also has specified their duties and jurisdiction, territorial and otherwise. It has stipulated as well the eventualities and the pre-requisites, for the

exercise of such jurisdiction or performance of the duties assigned to ensure effective and purposeful implementation of the provisions thereof. These functional framework indubitably has been made for the desired conduct of the organisational affairs as legislatively intended.

59. The word "ordinary" as defined in Blacks Law Dictionary, 10th Edition, reads thus:

> "Ordinary: occurring in regular course of events; normal; usual. The word "ordinarily" is a derivative of this word (adverb) carrying the same meaning.

60. The word "ordinarily" therefore would denote developments which are likely to occur, exist or ensue in the regular or normal course of events as logically and rationally anticipated even though not set out or expressed in categorical terms. This is a compendious expression to encompass all events reasonably expected to occur in the usual and common course of occurrences and are expected to so happen unless prohibited, prevented or directed by some express and unexpected interventions to the contrary.

61. As adverted to hereinabove, Section 195 of the Code read as a whole unambiguously impose restrictions in the matter of lodgement of complaint qua the offences as mentioned in sub-section (1)(b) thereof in particular and therefore as a corollary, any interpretation for identifying the court/authority/forum contemplated thereby to be competent has to be in furtherance of the restraint and not in casual relaxation thereof. Consequently, therefore the exposition of the provisions of the corresponding substantive law which designs the forums or authorities and confers original and appellant jurisdiction has also to be in aid of the underlying objectives of the restrictions stipulated. Any postulation incompatible with the restrictive connotations would be of mutilative bearing thereon and thus frustrate the purpose thereof, a consequence not approvable in law. To reiterate, Section 195 of the Code clearly carves out an exception to the otherwise conferred jurisdiction on a court under Section 190 to take cognizance of an offence on the basis of the complaints/information from the sources as enumerated therein.

62. Viewed in this context, in our estimate, the notification issued under Section 118 of the Act cannot be conceded an overriding effect over the scheme of the statute designating the appellate forums more particularly in absence of any order, circular, notification of any authority thereunder to that effect. The Deputy Director of Income Tax for that matter, as the framework of the Act would reveal, has not been acknowledged to be the appellate forum from any order or the decision of the assessing officer/I.T.O., notwithstanding several other provisions with regard to conferment of various powers and assignments of duties on the said office. In the teeth of such mindful and unequivocal module of the Act, recognition of the Deputy Director of Income Tax to be a forum to whom an appeal would ordinarily lie from any decision or action of the assessing officer/income tax officer would not only be inferential but would also amount to unwarranted judicial legislation by extrinsic additions and doing violence to the language of the law framed. On the contrary, acceptance of the Deputy Commissioner (Appeals) as the forum to which an appeal would ordinarily lie from an order/decision of the assessing officer/I.T.O., would neither be inconsistent with nor repugnant to any other provision of the Act and certainly not incompatible with the legislative scheme thereof. Mere silence in Section 246 of the Act about any decision or order other than those

enumerated in sub-section (1) thereof as appealable /decision to the Deputy Commissioner (Appeals), does not ipso fact spell legislative prohibition in that regard and in our comprehension instead signifies an affirmative dispensation.

63. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not feel the gaps in statute, their functions being jus discre non facere i.e. to declare or decide the law. In reiteration of this well- settled exposition, this Court in (2008) 306 ITR 277 (SC) Union of India and others vs. Dharmendar Textile Processors and others had ruled that it is a well settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the Legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in Stock v. Frank Johns (Tipton) Limited (1978) 1 All ER 948 (HL) that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that, rules of interpretation do not permit the courts to do so unless the provision as it stands meaningless or doubtful and that the courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the court except in the case of clear necessity and that reason for is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently this Court amongst others in Petroleum and Natural Gas Regulatory Board vs. Indraprastha Gas Limited and Others (2015) 9 SCC 209 had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in Sree Balaji Nagar Residential Association vs. State of Tamil Nadu and Others (2015) 3 SCC 353 to the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment.

65. The judicial formulations on the theme is so consistent and absolute in terms that no further dilation is essential. The scheme of the Act and the legislative design being unreservedly patent in the instant case, that it is plainly impermissible to acknowledge the Deputy Director of Income Tax to be the forum to which an appeal would ordinarily lie from an order/decision of an assessing officer/I.T.O. The present is thus not a case where this Court can premise that the statute suffers from casus omissus so as to recognise the Deputy Director of Income Tax as such an appellate forum.

66. In this persuasive backdrop, the conferment of appellate jurisdiction on the Deputy Commissioner of Appeals from the orders/decisions of the assessing officers as is apparent from

Section 246 of the Act, has to be construed as a conscious statutory mandate. This is more so as noticed hereinabove, the Deputy Director of Income Tax, Deputy Commissioner of Income Tax and the Deputy Commissioner of Income Tax (Appeals) have been otherwise placed at par in the list of income tax authorities provided by Section 116 of the Act. The omission to either vest the Deputy Director of Income Tax with the appellate powers or to contemplate the said post to be an appellate forum from the orders/decisions of the assessing officers cannot thus be accidental or unintended. The relevant provisions of the Act pertaining to the powers, duties and jurisdiction of the various income tax authorities do not leave any room for doubt, in our estimate, to conclude otherwise. True it is, that the Deputy Commissioner of Appeals has been construed in terms of Section 246 of the Act to be an appellate forum from the orders as enumerated in sub-section (1) thereof, but in absence of any provision in the statute nominating the Deputy Director of Income Tax to be an appellate forum for any order/decision of the assessing officer/I.T.O., the inevitable conclusion is that the said authority i.e. Deputy Director of Income Tax cannot be construed to be one before whom an appeal from any order/decision of any income tax authority, lower in rank would ordinarily lie.

67. The Parliament has unmistakably designated the Deputy Commissioner (Appeals) to be the appellate forum from the orders as enumerated under Section 246(1) of the Act. This however, in our view, as observed hereinabove does not detract from the recognition of this authority to be the appellate forum before whom appeals from the decisions of an assessing officer or of an officer of the same rank thereto would generally and ordinarily lie even in the contingencies not referred to in particular in sub section 1 of Section 246. This is more so, to reiterate, in absence of any provision under the Act envisaging the Deputy Director of Income Tax to be an appellate forum in any eventuality beyond those contemplated in Section 246(1) of the Act. Neither the hierarchy of the income tax authorities as listed in Section 116 of the Act nor in the notification issued under Section 118 thereof, nor their duties, functions, jurisdictions as prescribed by the cognate provisions alluded heretobefore, permit a deduction that in the scheme of the legislation, the Deputy Director of Income Tax has been conceived also to be an appellate forum to which appeals from the orders/decisions of the I.T.Os./assessing officers would ordinarily lie within the meaning of Section 195(4) of the Code. The Deputy Director of Income Tax (Investigation)-I Bhopal, (M.P.), in our unhesitant opinion, therefore cannot be construed to be an authority to whom appeal would ordinarily lie from the decisions/orders of the I.T.Os. involved in the search proceedings in the case in hand so as to empower him to lodge the complaint in view of the restrictive preconditions imposed by Section 195 of the Code. The complaint filed by the Deputy Director of Income Tax, (Investigation)-I, Bhopal (M.P.), thus on an overall analysis of the facts of the case and the law involved has to be held as incompetent.

68. The cavil on the competence of the Court of the Chief Judicial Magistrate, Bhopal to entertain the complaint and take cognizance of the offences alleged, though reduced to an academic exercise, in view of the above determination needs to be dealt with in the passing.

69. In Y. Abraham Ajith (supra), the issue of territorial jurisdiction of the Trial Court in which a complaint had been filed by the respondent No. 2 under Sections 498A and 406 IPC, in the face of Sections 177 and 178 of the Code surfaced for scrutiny. The defence raised the plea that as no part of the cause of action constituting the alleged offence had arisen within the jurisdiction of the court

before which the complaint had been filed, it lacked competence to entertain the same and conduct the trial following the submission of the charge-sheet. The complaint had disclosed that the allegations levelled therein related to the incident that had happened at her previous place of stay beyond the territorial limits of the court in which it had been filed. This Court after dilating on the scope and purport of Sections 177 and 178 of the Code as well as the judicially expounded connotation of the expression "cause of action" sustained the objection to the maintainability of the complaint. It was noticed that there was no whisper of any allegation relatable to the offences imputed at the place of stay of the complainant where the complaint had been filed. It was thus held that no part of cause of action did arise within the jurisdiction of the Trial Court before which the complaint had been filed and the proceedings resultantly were quashed.

70. A similar fact situation obtained in Bhura Ram (supra) also involving offences under Sections 498A/406/147 IPC. In the attendant facts, it being apparent that no part of the cause of action for the alleged offence had arisen or no part of the offence had been committed within the jurisdiction of the court before which the complaint had been filed, the proceedings were quashed.

71. Both these decisions on territorial jurisdiction, to start with having regard to the facts involved herein are distinguishable and are of no avail to the appellants. As hereinbefore stated, the appellants as assesses, had residences both at Bhopal and Aurangabad and had been submitting their income tax returns at Bhopal. The search operations were conducted simultaneously both at Bhopal and Aurangabad in course whereof allegedly the appellants, in spite of queries made, did not disclose that they in fact did hold a locker located at Aurangabad. They in fact denied to hold any locker, either individually or jointly. The locker, eventually located, though at Aurangabad, has a perceptible co-relation or nexus with the subject matter of assessment and thus the returns filed by the appellants at Bhopal which in turn were within the purview of the search operations. The search conducted simultaneously at Bhopal and Aurangabad has to be construed as a single composite expedition with a common mission. Having regard to the overall facts and the accusation of false statement made about the existence of the locker in such a joint drill, it cannot be deduced that in the singular facts and circumstances, no part of the offence alleged had been committed within the jurisdictional limits of the Chief Judicial Magistrate, Bhopal.

72. Chapter XIII of the Code sanctions the jurisdiction of the criminal courts in inquries and trials. Whereas Section 177 of the Code stipulates the ordinary place of inquiry and trial, Section 178 enumerates the places of inquiry or trial. In terms of Section 179, when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. For immediate reference, Sections 177 and 178 are extracted hereinbelow.

"177: Ordinary place of inquiry and trial – Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed.

178: Place of inquiry or trial – (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a court having jurisdiction over any of such local areas.

73. As would be evident from hereinabove, ordinarily every offence ought to be inquired into and tried by a court within whose local jurisdiction it had been committed as is mandated by Section 177 of the Code. Section 178, however marks a departure contingent on the eventualities as listed in clauses (a),(b), (c) and (d) of Section 178 to identify the court that would have the jurisdiction to try the offences as contemplated therein.

74. Though the concept of "cause of action" identifiable with a civil action is not routinely relevant for the determination of territoriality of criminal courts as had been ruled by this Court in Dashrath Rupsingh Rathod vs. State of Maharashtra and Another, (2014) 9 SCC 129, their Lordships however were cognizant of the word "ordinarily" used in Section 177 of the Code to acknowledge the exceptions contained in Section 178 thereof. Section 179 also did not elude notice .

75. Be that as it may, on a cumulative reading of Sections 177, 178 and 179 of the Code in particular and the inbuilt flexibility discernible in the latter two provisions, we are of the comprehension that in the attendant facts and circumstances of the case where to repeat, a single and combine search operation had been undertaken simultaneously both at Bhopal and Aurangabad for the same purpose, the alleged offence can be tried by courts otherwise competent at both the aforementioned places. To confine the jurisdiction within the territorial limits to the court at Aurangabad would amount, in our view, to impermissible and illogical truncation of the ambit of Sections 178 and 179 of the Code. The objection with regard to the competence of the Court of the Chief Judicial Magistrate, Bhopal is hereby rejected.

76. The inevitable consequence of the determination in its entirety however is that the complaint is unsustainable in law having been filed by an authority, incompetent in terms of Section 195 of the Code.

77. In the result, the appeal succeeds and the impugned proceeding and the order assailed are set-aside. The respondent is however left at liberty to take appropriate steps in the matter, as available in law, if so advised.

.....J. (PINAKI CHANDRA GHOSE) .....J. (AMITAVA ROY) NEW DELHI;

AUGUST 31, 2016.