2025:DHC:11892

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

***%*** ***Judgment Reserved on:25.08.2025***

***Judgment Delivered on:24.12.2025***

\+ **CRL.REV.P. 576/2014 & CRL.M.A. 14488/2014**

**VINOD KUMAR JHA** .....Petitioner

versus

**CBI** .....Respondent

\+ **CRL.REV.P. 142/2015 & CRL.M.A. 3516/2015**

**VIJENDER RANA** .....Petitioner

versus

**CENTRAL BUREAU OF INVESTIGATION** .....Respondent

\+ **CRL.REV.P. 534/2016 & CRL.M.A. 12642/2016**

**ABHISHEK VERMA** .....Petitioner

versus

**CBI** .....Respondent

**Advocates who appeared in this case:**

For the Petitioners : Mr. Manu Sharma, Senior Advocate with Mr. Abhir Datt, Mr. Debayan Gangopadhyay, Ms. Varnika Singh and Mr. Suryaketu Tomar, Advs. in CRL.REV.P. 576/2014

Mr. Maninder Singh, Senior Advocate with Mr. Dinhar Takiar, Mr. Mudit Marwah, Ms. Harshita Takiar, Ms. Sanjana Nari, Ms. Jahnvi Narang and Mr. Karan Tomar, Advs in CRL.REV.P. 534/2016.

For the Respondent : Mr. Anupam S Sharrma, SPP, CBI with Ms. Harpreet Kalsi, Mr. Vashisht Rao, Mr. Vishesh Jain, Ms. Riya Sachdeva and Mr. Ripudaman Sharma, Advs. in CRL.REV.P. 576/2014, CRL.REV.P. 142/2015&CRL.REV.P. 534/2016.

**CORAM**

**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petitions are filed against the order on charge dated 31.07.2014 and framing of charge dated 08.08.2014 passed by the learned Special Judge, CBI (PC Act), Delhi in SC No. 03/14.

2. The brief facts which are germane to the present case are as follows:

2.1. Briefly stated, the case RC 02(A)/2006-ACU-IX/New Delhi was registered on 20.03.2006 for the offences under Sections 3 and 5 of the Official Secrets Act, 1923 and Section 120B of the Indian Penal Code, 1860 ('**IPC**') against accused persons – Sh Kulbhushan Parashar, Ravi Shankaran, Wing Cdr. Sambhajee L. Surve. Cdr. Vijender Rana, Cdr. Vinod Kumar Jha, Capt. Kashyap Kumar, Wing Cdt. (Retd.) S.K. Kohli, Mukesh Bajaj, Ms. Rajrani Jaiswal and certain unknown persons on the basis of a DO letter of Ministry of Defence, Government of India, New Delhi sent to CBI on 18.02.2006. It was alleged that the then Wing Cdr. Sambhajee L. Surve, the then Cdr. Vijender Rana, the then Cdr. Vinod Kumar Jha and the then Capt. Kashyap Kumar in collusion with private persons, namely, Kulbhushan Parahsar, Ravi Shankaran, Wing Commander (Retd.) S.K. Kohli, Mukesh Bajaj, Ms. Raj Rani Jaiswal and unknown persons of a communication company called 'Atlas', conspired to unauthorisedly trade off classified documents relating to Ministry of Defence, Government of India, the disclosure of which allegedly was likely to affect the sovereignty and integrity of India.

2.2. A complaint was filed by Ms. Sonali Mishra, SP, CBI on 01.07.2006 for the offences under Sections 3/5 of the Official Secrets Act, 1923 and Section 120B of the IPC against Kulbhushan Parashar, Ravi Shankaran (P.O.), S.L. Surve, Vijender Rana and Vinod Kumar

Jha. On the said date, the learned CMM noted the submission of the complainant that an FIR had also been registered against the accused persons for the aforementioned offences and that the chargesheet was likely to be submitted shortly. Further, on 01.07.2006, an application under Section 210 of the Code of Criminal Procedure, 1973 ('**CrPC**') had also been moved by the CBI praying for the stay of the proceedings and the subsequently clubbing of the complaint with the chargesheet, if any, filed. The proceedings were consequently stayed. On 03.07.2006, chargesheet for offences under Sections 3/5 of the Official Secrets Act, 1923 read with Section 120B of the IPC as well as substantive offences were filed.

2.3. By order dated 10.07.2006, the learned CMM noted that the complaint filed by the CBI under Section 13(3) of the Official Secrets Act, 1923 were for the same offences and against the same accused persons as mentioned in the chargesheet. Consequently, *vide* order dated 10.07.2006 the learned CMM took cognizance for the offence under Section 3/5 of the Official Secrets Act, 1923 read with Section 120B of the IPC on the basis of the complaint. It was also noted that since both the State case as well as the complaint case were based on the same cause of action, the complaint case was clubbed with the State case and it was also noted that thereafter the proceedings would be recorded in the State case.

2.4. On 18.10.2006, a subsequent complaint was filed against accused Abhishek Verma under Section 13(3) of the Official Secrets

Act, 1923. The learned CMM *vide* order dated 18.10.2006, after going through the complaint, the authorisation order and the papers appended with the complaint, noted that *prima facie* commission of the offence under Sections 3/5/9 of the Official Secrets Act, 1923 read with Section 120B of the IPC was disclosed. Consequently, *vide* order dated 18.10.2006, cognizance of the said offences was taken on the basis of the complaint. On that occasion as well, it was submitted by the CBI that an FIR had been registered against the accused Abhishek Verma for the aforesaid offences and the investigation was already underway. An application under Section 210 of the CrPC had also been filed stating that since RC 02(A)/2006-ACU-IX of CBI was already pending investigation, further proceedings in the complaint be stayed till the filing of the chargesheet. Thereafter, supplementary chargesheet was filed for the offences under Sections 3/9 of the Official Secrets Act, 1923. Subsequently, *vide* order dated 31.10.2006, both the complaint as well as the chargesheet filed against Abhishek Verma were directed to be clubbed and the proceedings were directed to be recorded in a State case.

2.5. The learned CMM *vide* order on charge dated 31.07.2014 noted that *prima facie* sufficient ground existed to proceed against the petitioners for the offence under Sections 120B of the IPC read with Sections 3/5/9 of the Official Secrets Act, 1923. It was noted that there existed *prima facie* material for proceeding against petitioners Vijender Rana and Abhishek Verma for offences under Section 3(1)(c) of the Official Secrets Act, 1923 and *prima facie* material

existed for proceeding against petitioner Vinod Kumar Jha for offence under Section 5(1)(d) of the Official Secrets Act, 1923. It was further noted that *prima facie* material existed to proceed against petitioner Vijender Rana for offence under Section 5(1)(a) of the Official Secrets Act, 1923 and against petitioner Abhishek Verma for the offence under Section 9 of the Official Secrets Act, 1923.

2.6. Aggrieved by the same, the petitioners preferred the respective revision petitions.

2.7. By order dated 06.08.2025, this Court noted the contention of the learned Senior counsel for the petitioners that the procedure prescribed under Section 210 of the Code of Criminal Procedure, 1973 where a complaint and a police investigation in respect of the same offence can be tried together, is not applicable in regard to the offences under the Official Secrets Act, 1923 which is a Special Act and is a code in itself. Subsequently, by order dated 20.08.2025, this Court took note of the submission of the learned Senior counsel for the petitioners that the present petitions are being confined to the issue as noted above by order dated 06.08.2025.

3. The learned Senior counsel for the petitioners submitted that the learned Trial Court erred in clubbing the chargesheet along with the complaint. They submitted that camouflaged and manipulated procedure was adopted by the CBI to prosecute the accused persons which are untenable in the eyes of law. They submitted that on 18.01.2009, the then Superintendent of Police filed a complaint under

Section 13(3) of the Official Secrets Act, 1923 without any document or evidence before the learned Magistrate on which the cognizance was taken. They submitted that on the said date itself, that is, on 18.01.2009, an application was preferred by the CBI under Section 210 of the CrPC for staying the complaint stating that the investigation was pending in the FIR which is contrary to the settled principles of law.

4. They submitted that on 19.10.2009, chargesheet was filed by the CBI and thereafter on 31.10.2009, the learned CMM took cognizance of the offences under Sections 409/109/120B of the IPC on the basis of the chargesheet. They submitted that Section 13(3) of the Official Secrets Act, 1923 seeks to obviate the anomalies that might arise from taking cognizance of the same offence more than once. They submitted that in case where cognizance can be taken only in one way and on a complaint of a particular statutory functionary, no scope for taking cognizance more than once arises. They consequently submitted that Section 210 of the CrPC would not be applicable in the present case [Ref. ***State of Bihar v. Murad Ali & Others*** **: (1988) 4 SCC 655**].

5. They submitted that it is mandatory to examine the complainant and other witnesses under Section 200 of the CrPC prior to summoning the accused under Section 204 of the CrPC, which was not done in the present case. They further submitted that the clubbing of the complaint along with the chargesheet is not only untenable but

it also converts a complaint case into a State case. They submitted that the recourse adopted by the prosecution is not just illegal but the same also deprived the petitioners of obtaining discharge under Section 245 of the CrPC, and pre-charge evidence ought to have been recorded under Section 244 of the CrPC. They submitted that the procedure adopted by the prosecution has grossly violated the right of the petitioners to a fair and impartial trial within the meaning of Article 21 of the Constitution of India.

6. They placed reliance on the decision of this Court in ***Aniruddha Bahal v. CBI*** **: 2014 (2) JCC 1403** and contended that the Official Secrets Act, 1923 is a special Act and a complete Code in itself and consequently the trial under the said Act would be governed by Section 13(3) of the Official Act. They further placed reliance on the judgment in ***Jeewan Kumar Raut v. CBI*** **: (2009) 7 SCC 526**.

7. They further submitted that the decision of this Court in ***Aniruddha Bahal v. CBI*** *(supra)* is the earliest view in regard to the non-applicability of Section 210 of the CrPC and consequently the decisions sought to be relied upon by the CBI are *per incuriam.* They consequently submitted that the impugned orders are liable to be set aside.

8. They submitted that the petitioners were also discharged of the offence under Sections 409/109/120B of the IPC for which cognizance was taken on the offences mentioned in the chargesheet thereby evidently establishing that the petitioners were not charged for the

offences in the chargesheet but only for the offences under Sections 3/5/9 of the Official Secrets Act, 1923 for which the cognizance was taken on the basis of the complaint filed under Section 13(3) of the Official Secrets Act, 1923.

9. The learned Special Public Prosecutor for the State submitted that the investigation by CBI in cases where offences are committed under a self-contained Act is not barred. He relied upon the decision of the Hon'ble Apex Court in the case of ***Moti Lal v. CBI*** **: 2002 AIR SCW 1626** and argued that wherever no specific provision or procedure is prescribed under the Special Act pertaining to investigation, trial or the like, the provisions under the CrPC are required to be followed and consequently, CBI would have power to investigate the offences under the Act.

10. He submitted that the reliance of the petitioners on the cases of ***Aniruddha Bahal v. CBI*** *(supra) and* ***Jeewan Kumar Raut v. CBI*** *(supra)* is misplaced and the said judgments are *per incuriam* inasmuch as the same were passed without considering the decision of the Hon'ble Apex Court in ***Moti Lal v. CBI*** (*supra*). He submitted that the decisions relied upon by the petitioners would, in any event, not be applicable to the facts of the present case.

11. He submitted that the contention of the petitioners that since cognizance of offence under the Official Secrets Act, 1923 can be taken on the basis of the complaint filed before the Court thereby

barring the investigation by the Police or the Court to look into the material and evidence collected by the Police is without any merit.

12. He submitted that in the present case, the proceedings were initiated on the basis of a complaint made by an authorised public servant in discharge of his official duties under Section 13 of the Official Secrets Act, 1923 and the cognizance thereof was taken on the complaints and not on the police report. He pointed out that by order dated 31.10.2006, cognizance was taken of offences under Sections 409/109/120B of the IPC while observing that cognizance for offences under Sections 3, 9 of the Official Secrets Act, 1923 read with Section 120B of the IPC had already been taken on the basis of the complaint under Section 13 of the Official Secrets Act, 1923.

13. He submitted that since the offences as alleged to have been committed by the petitioners are cognizable offences, it is mandatory for the investigating agency to register an FIR/RC as per Section 154 of the CrPC. He submitted that Section 3 of the Delhi Special Police Establishment Act further empowers the CBI to investigate offences provided under the schedule to the Official Secrets Act, 1923. He relied upon the ratio laid down in ***Ashok Chawla v. CBI*** **: 2019 SCC OnLine Del 9551** and ***Maj Gen. V. K. Singh (Retd.) v. CBI*** **: 2023 SCC OnLine Del 3335**.

14. He submitted that this Court in the case of ***Ashok Chawla and Ors. v. CBI*** *(supra)* had noted that in a case instituted on a complaint under Section 13 of the Official Secrets Act, 1923, there was no

obligation to conduct an inquiry as envisaged under Sections 200 and 202 of the CrPC.

15. He submitted that the petitioners have placed significant emphasis on the procedure prescribed under Section 244 of the CrPC for recording of pre-charge evidence which was not followed in the present case, and consequently, the charges framed against the petitioners ought to be quashed. He submitted that the present case is one which is triable by the Court of Sessions, and once the case was committed to the Court of Sessions, the procedure laid down in Chapter XVIII is to be followed and not the procedure as laid down in trial of warrant cases before Magistrate governed by the provisions under Chapter XIX, which includes Section 244 of the CrPC. He submitted that no provision for recording any pre-charge evidence is provided under Chapter XVIII of the CrPC titled '*Trial before a Court of Sessions.*' [Ref : ***Smt Rajni Goswami v. The State (Govt. of NCT of Delhi)&Anr.*: CRL. M.C. 4606/2018**]

16. He submitted that in the case of ***Maj Gen. V. K. Singh (Retd.) v. CBI*** (*supra*), this Court observed that both the cases shall be clubbed together and shall be tried as a State case as per Section 210 of the CrPC. He submitted that while ***Ashok Chawla and Ors. v. CBI*** *(supra)* holds that Section 210 of the CrPC would not be applicable, however, it also holds that the evidence collected by the Police shall be considered during the trial since there is no investigating mechanism prescribed under the Official Secrets Act, 1923.

17. *In arguendo*, he submitted that the petitioners manifestly failed to show any prejudice caused to them on account of which the charge ought to be set aside. He submitted that the onus is on the petitioners to prove failure of justice in terms of Section 464 and 465 of the CrPC. He submitted that Section 465 of the CrPC would be applicable at the pre-trial stage as well. He relied on the case of ***Pradeep S. Wodeyar v. State of Karnataka*** **: AIR OnLine 2021 SC 1108** to contend that the accused is required to show failure of justice in case of seeking relief due to procedural errors.

18. He submitted that the trial of the present case has progressed significantly and is at its last stages. He submitted that in view thereof, this Court ought not to entertain the present petitions.

**ANALYSIS**

19. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the material on record. At the same time, it is well-settled that the Court may interfere if the allegations are patently absurd and the basic ingredients of the offence, for which the charge is framed, are not made out and/ or if the exercise of power is imperative to cure any grave error. In the case of ***Amit Kapoor v. Ramesh Chander*** **: (2012) 9 SCC 460**, the Hon'ble

Apex Court had discussed the scope of revisional jurisdiction, especially in relation to quashing of charge. The relevant portion of the judgment is as under:

> "***12.*** *Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself* ***as to the legality and regularity of any proceedings or order made in a case****.* ***The object of this provision is to set right a patent defect or an error of jurisdiction or law.*** *There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.* ***If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.*** *These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.*
>
> ***13.*** *Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order.* ***The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case,*** ***it may be reluctant*** ***to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated****. Even framing of charge is a much advanced stage in the proceedings under the CrPC.*
>
> xxx
>
> ***27.*** *Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At*

*best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*

xxx

***27.3. <u>The High Court should not unduly interfere</u>**. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

***27.4. <u>Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.</u>***

***27.5.** Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

***27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender**.*

xxx

***27.13. Quashing of a charge is an exception to the rule of continuous prosecution.** Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

***27.14.** Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

> ***27.15.*** *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge.* ***The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.****"*
>
> (emphasis supplied)

20. As noted above, since the trial has proceeded and the evidence of almost all the witnesses have been recorded, the petitioners have limited their challenge to the sole issue of legality of clubbing of the complaints and the charge sheets.

21. It is the case of the petitioner that in terms of Section 13 of the Official Secrets Act, 1923, no Court shall take cognizance of any offence under the said Act unless upon a complaint by the appropriate authority, and the trial ought to have proceeded accordingly. Highlighting the different connotations for the term 'complaint' [as defined under Section 2(d) of the CrPC] and the term 'police report' [as defined under Section 2(r) of the CrPC], it is argued that the provision of Section 210 of the CrPC (which pertains to joint trial in case where a complaint and a police investigation are initiated in respect of the same offence) is not applicable in regard to offences under the Official Secrets Act, 1923, which is a Special Code in itself. It is argued on behalf of the petitioners that the procedure adopted in the present case is untenable in law and the case has been erroneously converted into a State case.

***Relevant statutory provisions***

22. As the entire issue which is to be determined is helmed on the aforesaid provisions, this Court considers it apposite to take note of the same before proceeding further. Section 13 of the Official Secrets Act, 1923 and Section 210 of the CrPC read as under:

> *"**13. Restriction on trial of offences**.—(1) No Court (other than that of a Magistrate of the first class specially empowered in this behalf by the appropriate Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act.*
>
> *(2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding that it is not a case exclusively triable by that Court.*
>
> *(3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf:*
>
> *(4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found.*
>
> *(5) In this section, the appropriate Government means—*
>
> > *(a) in relation to any offences under Section 5 not connected with a prohibited place or with a foreign power, the State Government; and*
> >
> > *(b) in relation to any other offence, the Central Government.*
>
> ***210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.—**(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the*

*offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

*(2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."*

***Relied upon judicial precedents***

23. The petitioners as well as the prosecution have relied upon a number of judgments in support of their contentions, which need to be discussed before the issue can be adjudicated.

24. The judgments relied upon by the petitioners carry a reference to the judgment of the Hon'ble Apex in the case of ***Jeewan Kumar Raut v. CBI*** (*supra*). Reliance is placed on the same to contend that filing a charge sheet in a matter where cognizance is to be taken on a complaint under the aegis of a special act such as this one is prohibited. It is argued that consequently, the direction to club the chargesheet and the complaint as passed by the learned Trial Court is unsustainable in the eyes of law. In this case, the Hon'ble Apex Court was dealing with the question of applicability of Section 167(2) of the CrPC (default bail) in a case where cognizance has been taken on a

complaint for offences under Transplantation of Human Organs Act, 1994. It was held that stricto sensu, Section 167(2) of the CrPC would not apply. The Hon'ble Apex Court had also called on the Parliament to take steps to remedy the law in this respect. The relevant portion of the judgment is as under:

> ***"21.*** *Ordinarily, any person can set the criminal law in motion. Parliament and the State Legislatures, however, keeping in view the sensitivity and/or importance of the subject, have carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein. The FIR lodged before the officer in charge of Gurgaon Police Station was by way of information. It disclosed not only commission of an offence under TOHO but also under various provisions of the Penal Code. The officer in charge of the police station, however, was not authorised by the appropriate Government to deal with the matter in relation to TOHO; but, the respondent was. In that view of the matter, the investigation of the said complaint was handed over to it.*
>
> ***22.*** *TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.*
>
> ***23. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.*** *The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorised officer. Nobody else could do it. For the aforementioned reasons, the officer in charge*

*of Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.*

***25.*** *Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein.* ***The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report.*** *It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise.* ***In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.***

***26.*** *It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorisation under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable.*

***27.*** *The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO."*

(emphasis supplied)

25. Much emphasis has also been placed by the petitioners upon the judgment in the case of ***Aniruddha Bahal v. CBI*** (*supra*), where another Bench of this Court had ruled against the practise of clubbing the complaint under Section 13(3) of the Official Secrets Act, 1923

and the chargesheet by taking support of the provisions of Section 210 of the CrPC, finding that the latter would have no applicability to the trial of offences under the Official Secrets Act, 1923. The Court had referred to the judgment of the Hon'ble Apex Court in ***Jeewan Kumar Raut v. CBI*** (*supra*), and observed that the position under the Official Secrets Act, 1923 is similar to Transplantation of Human Organs Act, 1994.

In the said case, after registration of FIR by CBI, a complaint was filed for offences under the Official Secrets Act, 1923 on account of facets that came to light during investigation. Subsequently, charge sheet was filed on the same allegations, whereafter, cognizance was taken by the learned Magistrate. One of the arguments raised before the Court was that the cognizance of the offences on the basis of the challan was erroneous in view of Section 13 (3) of the Official Secrets Act, 1923. It was in these circumstances that it was found that the Magistrate therein had erred in taking cognizance by making reference to challan as well as the complaint before taking cognizance. In that case as well, the complaint and charge sheet were clubbed together. Although no reference to any specific provision was made, the Court noted that it appeared that the Magistrate had the provision of Section 210 of the CrPC in mind, and observed that the same would have no applicability to the trial under the Official Secrets Act, 1923 as the same is a complete Code in itself. Pertinently, in the said case, the Court had also found that no *prima facie* case was made out against

the accused persons before setting aside the order on charge. The relevant portion of the judgment is as under:

> *"35. The term 'complaint' vide Section 2 (d) of Cr.P.C. 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.*
>
> xxx
>
> *37. Thus, the term 'complaint' and 'police report' have different meaning and connotation. In this case, the CBI initially filed the complaint under Section 13(3) of the Act, thereafter, proceeded to file a charge sheet under Section 173 Cr.P.C. In the order dated 15.6.2005 the learned CMM has referred to challan and the complaint under Section 13(3) of the Act.* ***Thus, it would appear that the learned CMM took cognizance of the offence based on the police complaint and the charge sheet.*** *Moreover, the learned CMM vide order dated 7.7.2005 also ordered that the complaint filed under Section 13(3) of Act and the charge sheet be clubbed together as per law.*
>
> *38. Learned CMM has not referred to the law by which complaint under Section 13(3) of Act and Section 173 of Cr.P.C. were liable to be clubbed together. However, it may be that the learned CMM had the provisions of Section 210 Cr.P.C. in her mind.*
>
> xxx
>
> *40.* ***Provisions of Section 210 Cr.P.C. would have no applicability to the trial of offences under the Act. Under Section 13(3) of the Act reproduced above, no court can take cognizance of an offence under the Act unless upon complaint made by order of, or under authority from appropriate Government or some officer empowered by the appropriate Government in this behalf.***
>
> *41. The Official Secrets Act is a Special Act and a complete code in itself. As per the mandate of the Official Secrets Act, no Court shall take cognizance in the absence of a 'complaint' filed under authority of the Appropriate Government. Therefore a 'complaint' as defined under Section 2(d) of the Code, and the authority of the Appropriate Government for filing the complaint for the offence*

*committed under the Official Secrets Act, if any, are the sine qua non for taking cognizance of any offence under the Act.*

xxx

*44.* ***The position under the Official Secrets Act is also similar to the position under TOHO. Here also the law prohibits the filing of charge sheet by implication.***

*45.* ***In these circumstances, taking cognizance of the offence and the directions to club the charge sheet and the complaint by the learned CMM cannot be sustained.***

*46. I also find substance in the submission of accused persons that there was no sufficient material on record to frame the charge against the accused persons."*

(emphasis supplied)

26. On the other hand, CBI has argued that both the previous judgments are rendered *per incuriam* as no consideration was paid in the same to the decision of the Hon'ble Apex Court in the case of ***Moti Lal v. Central Bureau of Investigation*** (*supra*), which has since attainted *locus classicus*. The short question before the Hon'ble Apex Court in that case was as to whether CBI was authorised to investigate an offence punishable under the Wild Life (Protection) Act, 1972. It was held that investigation by CBI is permissible even in cases where offences are committed under a self-contained Act.

27. Further reliance is placed on the case of ***Ashok Chawla v. CBI*** (*supra*) passed by another Bench of this Court, where the accused petitioner had argued that the procedure therein was suffering from incurable illegality as cognizance was taken on the complaint under

Official Secrets Act, 1923 when no report had been filed under Section 173 of the CrPC in the FIR. It was argued that in view of the inhibition in Section 210 of the CrPC, when investigation was still pending, no cognizance could have been taken. The Court endorsed the view in ***Aniruddha Bahal v. CBI*** (*supra*) and found that Section 210 of the CrPC had *no applicability* in the case. It was however noted that although the Court cannot take cognizance for the offences committed under the Official Secrets Act, 1923 on the basis of the report under Section 173 of the CrPC but only on a complaint presented by the appropriate government under Section 13 of the Official Secrets Act, 1923, the said Act does not create or establish its own investigating machinery whereby the complaint would be based on and would invariably rely on the material collected by the police which had registered the FIR.

It was further noted that when a cognizable offence is committed, it is the statutory duty of the police to register an FIR in terms of Section 154 of the CrPC and post the investigation, to present a report under Section 173 of the CrPC before the Court along with the material and evidence gathered during investigation. Certain other observations were also made in respect to applicability of Sections 200 and 202 of the CrPC, which are discussed in the latter paragraphs. The relevant portion of the said judgment is reproduced hereunder:

> "***24…*** *If commission of a cognizable offence is brought to the notice of an officer in-charge of the police station, it is his statutory duty, in terms of sections 154 Cr. P.C. (registration of FIR), to*

*have the information reduced to writing and thereafter investigation thereinto taken up.*

xxx

***26.*** *It is trite that a report of investigation under section 173 Cr. P.C., in the event of sufficient evidence having been found, may propose prosecution of an individual on the charge for the offence which has been committed and in such case the report is generally labelled as "charge sheet". On the other hand, if no evidence has been found to support the allegations about commission of a cognizable offence, the final report under section 173 Cr. P.C. may propose cancellation of the case and such report is commonly known as "cancellation report". Further, there can be a situation where the police may have found sufficient evidence showing commission of a cognizable offence but investigation may not have brought to light sufficient evidence to charge for such offence to be brought against, or seek prosecution of, any specific individual. The final report of investigation may thus request the Magistrate to permit closure, such report generally called "closure report".* ***It is incumbent, however, on the part of the investigating police to submit the final report of investigation under section 173 Cr. P.C., regardless of the result of the investigation - whether it culminates in presentation of a "charge sheet" or a "cancellation report" or a "closure report". Submission of final report of investigation under section 173 Cr. P.C. is the logical end to which each case registered (under section 154 Cr. P.C.) by the police must eventually reach.***

***27.*** *In this context, it has to be borne in mind that in addition to registration of the FIR under section 154 Cr. P.C., it is also the statutory duty of the officer in charge of the police station, who has received information about the commission of a cognizable offence, to simultaneously make a report, inter alia, to the Magistrate empowered to take cognizance of such an offence, in compliance with section 157 Cr. P.C. The final report of investigation under section 173 Cr. P.C. is the "police report" referred to in section 190(1)(b) which the Magistrate so informed awaits.*

***28.*** *The obligation of the police in respect of a crime of which note has been taken under section 154 Cr. P.C. is, thus, not complete till the final report of investigation under section 173 Cr. P.C. has been presented to the competent Magistrate, action on such report*

*in accordance with law thereafter being the responsibility of the said judicial authority.*

xxx

***61. <u>As said before, it being essential to recapitulate here, having regard to the punishment that is prescribed for the offences under the Official Secrets Act, with which this matter is concerned, there can be no doubt as to the fact that they are "cognizable offences" within the meaning of the expression defined in Cr. P.C. It is because of such nature of the crimes that the matter having come to the notice of the concerned agency - CBI in the present case - an FIR was registered in terms of Section 154 Cr. P.C.</u>*** *As noted at length in the earlier part of this judgment, the registration of FIR relating to a cognizable offence under Section 154 Cr. P.C. is bound to be followed up by investigation in accordance with the provisions contained in relevant part (Twelfth Chapter) of Cr. P.C., such investigative process expected to culminate eventually in the report of investigation under Section 173 Cr. P.C. It is not a matter of choice, whims or fancy of the police officer responsible for investigation into a cognizable offence to decide as to whether or not he is obliged in law to file such report "on completion of investigation". It is his bounden duty to do so. It is the report under Section 173 Cr. P.C. which presents before the court the material or evidence which has been gathered during such investigation, leaving the matter in the hands of the court thereafter to pass appropriate orders in its light. But then, in a case of a special law like the Official Secrets Act, such report of investigation under Section 173 Cr. P.C. cannot result in cognizance being taken by the competent court under Section 190(1)(b) Cr. P.C. ("upon a police report"). Section 13 of the Official Secrets Act requires instead a complaint to be presented by a public servant authorised by the appropriate Government to do so.* ***The Official Secrets Act, however, does not create or establish its own investigative machinery. It is inherent in this scheme of things that the complaint submitted by the empowered public servant, under authority from the appropriate government, would be based, in turn, on the material (or evidence) which has been gathered by the police that had registered the cognizable offence under the Official Secrets Act.***

***62.*** *In the above scenario, it necessarily follows that ordinarily the complaint under Section 13 of the Official Secrets Act would be presented by the empowered or authorised public servant in the*

*wake of "completion of investigation" by the police.* ***The allegations in the complaint under Section 13 would thus be based essentially on the evidence that has been gathered in such investigation. The complaint would invariably rely on the evidence which has been gathered during such police investigation. In this scenario, it is desirable that the report of investigation under Section 173 Cr. P.C. is also submitted before the court alongside, or in the wake of, if not simultaneous to, the presentation of the complaint under Section 13 of the Official Secrets Act.***

***63.*** *No doubt, the competent court would be expected, in terms of section 13(3) of Official Secrets Act, to act on the complaint to decide whether a case had been made out for cognizance to be taken in exercise of the power under Section 190(1)(a) Cr. P.C. But, for purposes of seeking assurance that the facts stated in the complaint do constitute offence(s) under the Official Secrets Acts and are well founded, based on evidence which was gathered in accordance with law, it would have the benefit of report of investigation under Section 173 Cr. P.C. placed before it by the police.* ***The court of cognizance does not act on such police report of investigation but only on the complaint.***

***64. This court, for detailed reasons set out above, endorses the view taken in Aniruddha Bahal (supra) that the provision contained in Section 210 Cr. P.C. has no applicability to a complaint case instituted by a public servant under Section 13 of the Official Secrets Act.*** *But, in order that such dust as has been raised in the present case is not thrown up in future, it is desirable that the investigating agency bears in mind that no purpose is served by withholding - that too indefinitely - the report of investigation under Section 173 Cr. P.C. Once such investigation into a cognizable offence under the Official Secrets Act has been completed, the case at the end of the investigating police must* ***culminate in a report of investigation being prepared and submitted, though it not expected to be treated as a "charge-sheet" on which cognizance is to be taken under Section 190 Cr. P.C****."*

(emphasis supplied)

28. The respondent has also relied on the case of ***V.K. Singh v. CBI*** (*supra*), where under similar circumstances as the present case, after

institution of complaint, the proceedings were stayed for filing of charge sheet in the FIR on an application filed by CBI under Section 210 of the CrPC, whereafter, the matters were tagged together. In that case, the accused had essentially sought quashing of FIR and complaint and one of the grounds raised was that clubbing of complaint and FIR under Section 210 of the CrPC was erroneous. The Court found that registration of FIR by police or regular case by CBI was not barred and an offence under Official Secrets Act, 1923 could be investigated into by the said authorities being a cognizable offence. It was however reiterated that cognizance in such cases would be on the basis of complaint. Finding CBI to be within its power to register an FIR/RC and investigate the offence, it was noted that the same has to undoubtedly culminate in a report. Unlike ***Ashok Chawla v. CBI*** (*supra*), the Coordinate Bench found Section 210 of the CrPC to be applicable in such circumstances. The observations *qua* applicability of Section 202 of the CrPC to such proceedings are discussed later. The relevant portion of the judgment is as under:

> *"**22.** One of the main contentions of learned counsel for the petitioner is that since cognizance for offences punishable under Section 3 and 5 was required to be taken on a complaint case of the authorized officer, the learned Magistrate could not have proceeded to issue summons under Section 204 IPC without recording evidence of the witnesses, as the offence is triable by the Court of Sessions and that the procedure as provided under Section 210 Cr. P.C. of clubbing the complaint case with the Police report was illegal.*
>
> ***23.** It would be proper to note that an offence punishable under Section 3 and 5 of the Official Secrets Act is triable by a Special Court not below the Court which is a Court of Sessions. In this*

*regard, the Central Government in exercise of its power conferred by sub-Section (1) of Section 13 of the Official Secrets Act had issued a Notification on 6th March, 1998 vide GSR No. 126(E) empowering Chief Metropolitan Magistrate, Delhi to try offences punishable under the Official Secrets Act, 1923. However, this notification was subsequently rescinded vide the Notification dated 21st June, 2006 vide GSR No. 373(E) thereby reverting to the jurisdiction of the learned Sessions Court to try the offence though clarifying that "such rescission shall not affect anything done or omitted to be done under the said Notification before such rescission".* ***In the present case, the complaint was filed before the learned CMM on 9th April, 2008, therefore, the complaint was required to be committed to the Court of Session Judge and hence the argument by learned counsel for the petitioner that Section 202 Cr. P.C. was applicable and the Magistrate could not have opted for taking the route under Section 210 Cr. P.C. by tagging the charge-sheet along with the complaint and thereafter proceeding as a trial on Police report.***

***24.*** *This dichotomy brought out by learned counsel for the petitioner arises in number of Statutes wherein the offence is cognizable i.e. FIR under Section 154 Cr. P.C. can be registered by the Police and a valid investigation carried out culminating in the filing of a final report under Section 173 Cr. P.C., however, at the same time the special Act provides that cognizance for the offence under the said Act can be taken only on the complaint of a designated authority and hence cognizance under Section 190 Cr. P.C. has to be taken on the complaint of the said authority and not on the final report of the Police under Section 173 Cr. P.C.….*

***25.*** *Similarly, Section 32 of the 'Drugs and Cosmetics Act, 1940' provides that no prosecution shall be instituted except by an Inspector or a Gazetted Officer of the Central Government, person aggrieved or recognized Consumer Association and Section 36-AC provides that offences under the Act are to be cognizable and non-bailable. Further Section 32(2) of the Drugs and Cosmetics Act, 1940 also provides that no Court inferior to that of a Court of Sessions shall try an offence punishable under the said Act. The provision under the Drugs and Cosmetics Act being similar in nature i.e. cognizance can be taken on the complaint of an aggrieved person or an Inspector or authorized person and the offences at the same time being cognizable and non-bailable, resolving the controversy this Court in the decision reported as* ***(2002) 65 DRJ 139 Ram Chander v. P.K. Gupta****, following the*

*Division bench decision reported as* ***ILR 1969 Del 286 (DB) State v. Moti Lal*** *held that in order to meet the requirements of Section 32 of the Drugs and Cosmetics Act, the complaint by the Drug Inspector* ***could be filed along with the report under Section 173 Cr. P.C. with the specific prayer for taking cognizance on the complaint of the Drug Inspector****. To obviate this anomaly the NDPS Act, 1985 in terms of Section 36A provides that when a person is forwarded to it under Clause (b) of sub-Section (1) of Section 36-A, the Special Court shall have the same powers which the Magistrate having jurisdiction to try a case may exercise under Section 167 Cr. P.C. Thus, this procedure does away with the committal proceedings and the accused under the NDPS Act is required to be produced before the Special Court itself, which is the Court of Sessions even for the purpose of taking remand and cognizance.*

xxx

***29.*** *Further the argument of the learned counsel that the complaint and final report cannot be tagged and the case has to proceed as per the complainant case procedure, ignores Section 210 Cr. P.C. which reads as under…*

***30.*** *A bare reading of Section 210 contemplates the situation where for the same offence a complaint has been filed and an investigation is also being carried out.* ***This situation arises because of two peculiar provisions in some of the special enactments as noted above including the O.S. Act which provide that firstly the offence is cognizable thereby warranting an investigation by the Police and secondly that cognizance on the complaint of a designated/appropriate authority can only be taken by the Court concerned. Section 210 Cr. P.C. is the proper Section which envisages the situation that arises when investigations are carried out on registration of FIR and at the same time cognizance is required to be taken on a complaint and provides the procedure thereof. Thus, in terms of Section 210 Cr. P.C. when a complaint is filed and it is also found that an investigation is being carried for the same offence, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the Police Officer conducting the investigation.*** *In case the report by the investigating Police Officer under Section 173 Cr. P.C. relates to the said accused, the complaint case and the Police report are required to be clubbed and tried together as cases instituted on a Police report…Hence, in*

> *the present case the learned CMM committed no error in awaiting the report of the Police after filing of the complaint by the authorized person and on receipt of the Police report, the complaint case and the Police report were tagged and they were required to be proceeded as a case instituted on a Police report in terms of Section 210(2) Cr. P.C.*"
>
> (emphasis supplied)

29. A bare perusal of the aforesaid judgments makes it clear that there is much confusion and inconsistencies in the various decisions brought before this Court regarding the appropriate procedure that is to be adopted in cases involving offences under Official Secrets Act, 1923. Whilst this Court is tasked with reconciling the decisions as much as possible to adjudicate the issue at hand, it is relevant to note that there is however no dispute that cognizance *qua* offences under the Official Secrets Act, 1923 can *only* be taken on a complaint.

***Filing of report and applicability of Section 210 of the CrPC***

30. It is stressed by the petitioners that the earliest view has to be taken as the succeeding view whereby this Court is bound to accept the view taken by the Coordinate Bench in ***Aniruddha Bahal v. CBI*** (*supra*) in relation to non-applicability of Section 210 of the CrPC, and the petitioners ought to be discharged due to the infirmity in procedure.

31. On the other hand, it is essentially the case of CBI that as it is mandatory for an investigating agency to register an FIR/RC in terms of Section 154 of the CrPC on receipt of information in relation to commission of a cognizable offence, the filing of a consequential

police report under Section 173 of the CrPC and clubbing of matters under Section 210 of the CrPC cannot be faulted with.

32. Thus, the primary issue before this Court is *qua* filing of report pursuant to investigation as well as clubbing of matters by way of Section 210 of the CrPC.

33. *Firstly*, as far as the issue of filing of police report being impermissible is concerned, this Court finds particular favour with the decision in the case of ***Ashok Chawla v. CBI*** (*supra*) in this regard. It has been righty opined in the said case as well as ***V.K. Singh v. CBI*** (*supra*) that once it is found that the CBI is entitled and obligated to record an FIR/ RC in respect of the offences under the Official Secrets Act, 1923 and investigate the same [Ref. ***Moti Lal v. CBI*** (*supra*)], the investigation process has to culminate in filing of a report. Such a report is only for the purpose of adducing the findings of the investigation. Thus, it cannot be stated that no report *at all* can be filed, especially when offences under IPC are also made out from the facts of the case. Such a proposition cannot be entertained as the same will result in such FIRs/RCs being left in a legal limbo, and the investigating agency being precluded from charge sheeting the accused for ancillary offences under IPC.

34. While the nomenclature used by the learned Magistrate of a charge sheet being awaited/ filed may be incorrect, insofar as the offences under Official Secrets Act, 1923 are concerned, the report is merely for the purpose of bringing forth the findings of investigation,

which can be relied upon, and cognizance is *per se* not reliant on the same. Filing of such a report thus does not run contrary to bar on cognizance as stipulated under Official Secrets Act, 1923.

35. At best, the lapse on part of the prosecution in the present case appears to be that the complaint as well as the police report were not presented before the Court alongside each other, and rather, time was sought by the prosecution for filing the report. As the complaint will invariably rely on the evidence found in the investigation so carried out, normally, the same ought to be filed after completion of investigation.

36. Inasmuch as the judgments relied upon by the petitioners are concerned, as rightly pointed by CBI, the issue of permissibility of investigation by CBI and registering of FIR/RC, on receipt of information regarding a cognizable offence, has not been discussed in ***Aniruddha Bahal v. CBI*** (*supra*) and ***Jeewan Kumar Raut v. CBI*** (*supra*). Moreover, unlike in ***Aniruddha Bahal v. CBI*** (*supra*), in the present case, the Magistrate has not taken cognizance for offences under Official Secrets Act, 1923 on the challan and the same has been taken only on the complaint.

37. It is imperative to note that the issue in ***Jeewan Kumar Raut v. CBI*** (*supra*) was also significantly different than the one in the present case and the ratio in ***Moti Lal v. CBI*** (*supra*) has not been discussed therein. Although not much deference was paid to the aspect of

investigation by CBI, towards the end of the judgment, the Hon'ble Apex Court had observed as under in the said case:

> *"**37.** In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a charge-sheet **is precluded from doing so only by reason of Section 22 of TOHO**…."*
>
> (emphasis supplied)

38. In that case, the Hon'ble Apex Court was seized of an issue in relation to default bail in a matter involving offences under TOHO Act. Although the provisions *qua* cognizance are similarly worded in TOHO Act and Official Secrets Act, 1923, the aspect of investigation is not *pari materia* in both the acts. It is imperative to note that Transplantation of Human Organs Act, 1994 specifically provides that it is the function of the appropriate authority to investigate any complaint of any breach of provisions of the Act or the rules made thereunder, and empowers the authority with powers of a civil court in respect to summoning any person who is in possession of information relating to violation of act, discovery and production of any document or material object and even issuing search warrants for any place. There is no separate investigation mechanism in the Official Secrets Act, 1923 and the bar is limited to cognizance, which shall undoubtedly be taken only on a complaint as envisaged under Official Secrets Act, 1923. The same does not tantamount to a bar against investigation or filing of a report indicating findings of investigation by CBI [Ref. ***Moti Lal v. CBI*** (*supra*)], as well as charge sheeting accused for other IPC offences.

39. Insofar as the applicability of Section 210 of the CrPC is concerned, it appears that the same was invoked for clubbing of the matters since the complaint filed under Section 13 of the Official Secrets Act, 1923 and the charge sheet were against the same persons in respect of same/connected offences. While it is held in ***Aniruddha Bahal v. CBI*** (*supra*) that the said provision shall have no applicability to offences under the Official Secrets Act, 1923, as rightly noted in ***Ashok Chawla v. CBI*** (*supra*), no articulate reasons are provided for the same.

40. The Court in ***Ashok Chawla v. CBI*** (*supra*) has however endorsed the view by finding that the true import of the said provision seems to be prevention of parallel proceedings *qua* the same offence by clubbing of proceedings when there is a case instituted on a private complaint and police investigation in respect of the same as well. It was found that the said objective is also reflected in the report of the Joint Select Committee of Parliament, on whose recommendation such a provision was included in CrPC (of 1973) as no such provision was present in the old CrPC (Code of Criminal Procedure, 1898). The Court had also observed that "*there cannot conceivably be a situation*" where the criminal court may have to take cognizance on a private complaint, and thereafter, pass yet another order on cognizance.

41. On the other hand, although the Coordinate Bench in ***V.K. Singh v. CBI*** (*supra*) has opined that recourse to Section 210 of the CrPC is the correct procedure, the decision in this regard suffers from

lack of deference to the decisions in ***Aniruddha Bahal v. CBI*** (*supra*) and ***Ashok Chawla v. CBI*** (*supra*).

42. A bare perusal of Section 210 of the CrPC indicates that the provision does not make any distinction between a case instituted otherwise than on a police report by a private person or by a duly authorised officer. In the opinion of this Court, the purpose of Section 210 of the CrPC can thus not be restricted to mere clubbing of proceedings initiated on private complaints and police investigation in respect of the same. The judgment in ***Ashok Chawla v. CBI*** (*supra*) does not reflect if substantive offences under IPC were involved as in the present case. Section 210 of the CrPC will not come into play if the police report is one that is restricted to findings of investigation in relation to offences under Official Secrets Act, 1923, as there can be no cognizance on such a report by virtue of the bar under Section 13 of the Official Secrets Act, 1923. However, when offences under IPC are also borne from investigation conducted pursuant to registration of FIR/RC, recourse to Section 210 of the CrPC can be the only way forward and the investigating agency cannot be precluded from adding such offences which are found to be made out from the investigation. In the present case as well, while taking cognizance for the offences under IPC, the learned Magistrate has explicitly noted that the cognizance for the offences under Official Secrets Act, 1923 has already been taken.

43. Merely because the accused persons were subsequently only charged for offences under Official Secrets Act, 1923, no deliberate malice can be attributed to the prosecution that the same was intended to take away the right of the accused persons. Even if it is assumed that Section 210 of the CrPC ought not to be applicable in the facts of the present case, as discussed in the latter paragraphs, the same has had no adverse impact on the case of the accused persons as the matter was to be committed to the Sessions Court.

***No prejudice caused to the accused***

44. Be that as it may, it is pertinent to note that cognizance against the accused persons was taken way back in the year 2006, when the proceedings were clubbed as well, despite which, no challenge appears to have been instituted against the same specifically till framing of charges. The orders whereby cognizance is taken also do not register any opposition on behalf of the counsel for the accused. While it is argued that prejudice is caused to the petitioners on account of the infirmity in the procedure, in the opinion of this Court, the petitioners have failed to exhibit the prejudice so caused to them. This Court thus finds merit in the argument of the prosecution that once it has been found that a *prima facie* case is made out against the petitioners, in the absence of any apparent prejudice, the petitioners cannot be allowed to go scot free merely on account of some purported infirmity in procedure.

45. Reliance has been placed by CBI on the case of ***Pradeep S. Wodeyar v. State of Karnataka*** **: AIR OnLine 2021 SC 1108**, whereby the Hon'ble Apex Court had noted that the infraction of a procedural provision cannot constitute a ground for interference by superior court unless such infraction has caused irreparable prejudice to the accused. As opined in the said case, the accused has to specifically plead that failure of justice has occasioned on account of which the charge ought to be set aside.

46. The only argument made by the petitioner regarding prejudice due to infirmity in procedure is in relation to– (i) no pre-summoning inquiry was held under Sections 200 and 202 of the CrPC; and (ii) that the petitioners have been derived of the benefit of the procedure under Chapter XIX Part B, which includes recording of pre-charge evidence (under Section 244 of the CrPC) and discharge of accused if no case warranting conviction is made out against the accused (under Section 245 of the CrPC).

47. Insofar as the first limb of the said argument is concerned, as rightly held in the cases of ***Ashok Chawla v. CBI*** (*supra*), in a case instituted upon a complaint under Section 13 of the Official Secrets Act, 1923, there is no obligation to conduct an inquiry in terms of Sections 200 and 202 of the CrPC as a complaint made by a public servant stands on a different footing than a private complaint. The relevant observations in this regard are as under:

"***32. In contrast, if a criminal complaint is presented (whether for cognizable or non-cognizable offence), the action at the end of the magistrate begins by consideration as to whether a case is made out for cognizance to be taken under section 190(1)(a) Cr. P.C. If the magistrate does take cognizance on such complaint, he ordinarily proceeds to hold preliminary inquiry (under fifteenth chapter) in terms of sections 200 and 202 Cr. P.C. But, it is here that the action on complaint made by a private individual differs from the action on a complaint presented by a public servant acting or purporting to act in discharge of his official duties (a complaint made by a court under section 195 Cr. P.C. also being clubbed in the latter category).***

xxx

***34.*** *It is inherent in the scheme of procedure envisaged in the fifteenth chapter (complaints to magistrates) that the further inquiry (or investigation) under section 202 Cr. P.C. follows due compliance with the initial steps prescribed in afore-quoted section 200 Cr. P.C. It is also clear that if the complaint is presented by a public servant acting or purporting to act in discharge of his official duties, there is no obligation on the part of the inquiring magistrate to compulsorily record the statement of the complainant and witnesses. He may or may not do so. It is his prerogative and a matter of his judicial satisfaction.*

***35.*** *In the case of* ***Rosy (supra)****, the order of committal of the case to the court of session had been quashed by the High Court of Kerala and the case remitted to the magistrate for conducting a fresh inquiry in terms of proviso to section 202(2) Cr. P.C. before such order of committal could be passed.* ***The order was set aside by the Supreme Court with directions to the session court to dispose of the case on merits, the issue raised being as to whether the inquiry under the proviso to section 202(2) Cr. P.C. by the magistrate in cases exclusively triable by the sessions court was discretionary or mandatory. There was divergence of opinion between the two hon'ble judges, the decision eventually turning in above way for the reason the objection had been taken belatedly.***

***36. Since the criminal case against the petitioners herein was instituted on complaint under Section 13 of Official Secrets Act by an authorised public servant acting in discharge of his official duties, there was no obligation on the CMM to record pre-***

> ***summoning evidence under Sections 200-202 Cr.P.C. The objection raised as to omission is frivolous and rejected.***"
>
> (emphasis supplied)

48. Similar observations have also been made in the case of ***V.K. Singh v. CBI*** (*supra*) where the argument *qua* applicability of Section 202 of the CrPC was rejected as the complaint was required to be committed to the Court of Sessions. The relevant paragraphs are as under:

> ***"28.*** *Undoubtedly, as noted in Section 202 Cr. P.C. on a complaint being filed before the Magistrate, if the offence is exclusively triable by the Court of Sessions, it is mandated that the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath.* ***However, as noted above, Section 200 Cr. P.C. exempts examining of the witnesses of the complainant if the complaint is filed by the public servant in discharge of the official duty.***
>
> ***30****… Thus, even though Section 202 Cr. P.C. provides that the Magistrate is bound to record the statement in a case triable as a Sessions case, the same is exempted in a complaint filed by a public servant, further if for the said offence an investigation is already pending the Magistrate is bound to follow the procedure as prescribed under 210 of the Cr. P.C. and proceed in accordance therewith. Even when the offence complained of is triable exclusively by the Court of Sessions…*"
>
> (emphasis supplied)

49. As far as the second limb of the argument in relation to opportunity for discharge under Section 245 of the CrPC is concerned, this Court finds merit in the argument of CBI that the same shall have no applicability in a case triable by the Sessions Court. As noted in paragraph 23 of the judgment in the case of ***V.K. Singh v. CBI*** (*supra*), by way of central government notification dated 21.06.2006

*vide* GSR No. 373(E), the jurisdiction to try offences under Sections 3 and 5 of the Official Secrets Act, 1923 was reverted to the learned Sessions Court, and the earlier notification empowering Chief Metropolitan Magistrate, Delhi to try such offences was rescinded. Pertinently, although the RC was registered on 20.03.2006, the complaints for the offences under Sections 3/5 of the Official Secrets Act, 1923 were filed *after* 21.06.2006, whereby it is clear that the same were to be committed to the Court of Sessions.

50. Since there is no distinction in procedure for trial before the Sessions Court for cases instituted on a police report or complaint, the argument of the petitioner that the prosecution manipulated the procedure is without any merit.

51. Even otherwise, if the case of the petitioners in regard to applicability of procedure in case of warrants trial is taken at the highest, it is relevant to note that Section 245 of the CrPC provides for discharge of an accused if the *unrebutted* case of the prosecution would not warrant conviction, or if the charge is groundless. On the other hand, Section 227 of the CrPC provides for discharge of an accused if there is no sufficient ground for proceeding against the accused, and even in case only suspicion as supposed to grave suspicion is made out against the accused. Having presented arguments on charge extensively and failed to satisfy the Court that no *prima facie* case is made out against them, in the opinion of this Court,

the petitioners have failed to make out a case evidencing the failure of justice on account of such procedural infirmity.

52. As is rightly said, procedure is the handmaiden of justice and absolving the petitioners at this stage on account of any purported folly in procedure, which did not even prejudice them, would frustrate the ends of justice. Procedure cannot be allowed to become a bottleneck to stifle legitimate prosecutions.

**CONCLUSION**

53. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned orders at this juncture.

54. The present petitions are dismissed in the aforesaid terms.

55. It is made clear that this Court has not gone into the merits of the allegations levelled against the petitioners in the present case and any observations made herein are limited to the short question pressed before this Court.

**AMIT MAHAJAN, J**

**DECEMBER 24, 2025/***'KDK'*