$~

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

% Decided on: 31st May, 2023

\+ **CRL.M.C. 1604/2008 & CRL.M.A. No.1652/2009**

MAJ GEN. V.K. SINGH (RETD.) ..... Petitioner

Represented by: Dr. B.K.Subarao with Mr. Chander M. Maini & Mr. B.K. Wadhwa, Mr. Mayank Maini, Advocates.

versus

C.B.I. ..... Respondent

Represented by: Mr.Anupam S.Sharma, Special P.P. with Mr. Prakarsh Airan, Ms.Harpreet Kalsi, Mr. Ripudaman Sharma, Mr. Abhishek Batra, Advocates & Mr. Harish Kumar, Inspector, CBI.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. A complaint was filed by B.Bhattacharjee, Deputy Secretary, Government of India, Cabinet Secretariat with CBI seeking legal action against the petitioner Major General (retired) V.K. Singh under the provisions of Officials Secrets Act, 1923 on which FIR RC No.5 (S)/2007-SIU.V dated 20th September, 2007 was registered by CBI against the petitioner. The allegations in the FIR against the petitioner are that he revealed secret information by publication of his book titled as "India's External Intelligence- Secrets of Research and Analysis Wing (RAW)". On an application filed by CBI, search warrants were issued by learned Metropolitan Magistrate on 20th September, 2007 permitting CBI officers to conduct search of the premises of the petitioner, whereafter search was conducted and a compliance report was filed on 24th September, 2007.

Central Government vide its order dated 7th April, 2008 under Section 13 (3) of the Officials Secrets Act, 1923 authorized Saurabh Tripathi, S.P. (ACU-IX), CBI to file a complaint in this respect in the Court of competent jurisdiction, whereafter on 9th April, 2008, a complaint was filed against the petitioner and Vivek Garg under Section 13 of the Officials Secrets Act, 1923 ("OSA"). On an application of the same date under Section 210 Code of Criminal Procedure, 1973 (Cr.P.C.) the complaint filed by CBI was stayed till further proceedings pending, filing of charge sheet. Final report in the investigation in RC No.5 (S)/2007/SCU-V under Sections 3 and 5 of OSA and under Section 120B and 409 Indian Penal Code (IPC) against the petitioner was filed on 11th April, 2008 with request to keep the classified documents in sealed cover.

2. Vide order dated 17th April, 2008 learned Trial Court tagged both the files, that is, of the charge sheet and the complaint case against the petitioner. Cognizance was taken by learned CMM on 31st January, 2009 on the complaint for offence punishable under Sections 3 and 5 of OSA and on the charge sheet for offence punishable under Section 409 read with Section 120B IPC, however, sanction was received on 1st April, 2009. Hence, the petition seeking quashing of the FIR and charge sheet was filed. Later, an application being Crl. M.A. No.1652/2009 was filed seeking stay of the trial wherein this Court vide order dated 13th February, 2009 exempted the petitioner from appearing before the learned Trial Court subject to his being represented through counsel which order is continuing till date. Subsequently, the petitioner sought amendment of the prayer in the petition vide Crl.M.A. 10197/2019 seeking quashing of the complaint as well.

3. Learned counsel for the petitioner contends that the petitioner's intention to write the book was to highlight two major issues, that is, lack of accountability and corruption in Research and Analysis Wing (in short 'R&AW') the country's external intelligence agency. According to the petitioner, he reported the instances of corruption that came to his notice while he was serving in R&AW itself. One of such being procurement of VHF/UHF Antennae and second regarding procurement of communication equipment by SPG. It is the case of the petitioner that initially the deals were put on hold however, as the petitioner left R&AW, deals were revived and equipments were purchased at the original price.

4. Learned counsel for the petitioner submits that the charge of the CBI on the petitioner of revealing secrets that are allegedly harmful to the country's security and sovereignty are totally baseless and unfounded. It was submitted by learned counsel for the petitioner that on 31st January, 2009 the CMM took cognizance of offence under Sections 3/5 of OSA, 1923 along with Sections 409 read with Section 120B of IPC without the requisite sanction by the Central Government as required in terms of Section 197 of Cr.P.C. and thus, it makes the cognizance so taken as arbitrary and consequently renders the entire proceedings as void. It is pertinent to mention that the sanction was subsequently signed on 1st April, 2009 which clearly establishes that the sanction was accorded after two months of taking the cognizance whereas, Section 197 Cr.P.C. clearly mandates the requirement of a "previous sanction". According to learned counsel for petitioner if sanction is taken later i.e. after the cognizance, the same would be immaterial as a cognizance taken in absence of sanction is not a curable defect. Reliance was placed on the decision reported as (2013) 9 SCR 869

Anil Kumar & Ors. vs. M.K. Aiyappa & Anr., (1996) 1 SCC 478 *R. Balakrishna Pillai vs. State of Kerala & Anr.* and (2000) 8 SCC 500 *Abdul Wahab Ansari vs. State of Bihar*.

5. It was further submitted by learned counsel for petitioner that the present case is a complaint case exclusively triable by the Court of Sessions and investigation by CBI/police is impermissible. In terms of Section 4(2) of Cr.P.C., if any special statute is involved, investigation, inquiry and trial in such cases shall be conducted in accordance with the provision of such special act, which in this case is the OSA, and therefore, in terms of Section 13 (3) of OSA, a Magistrate can take cognizance only upon a complaint filed by a person duly authorized by appropriate authority and for sessions triable complaint case, the Magistrate has to take into consideration the provisions of Section 202 Cr.P.C. Reliance was placed on the decision reported as AIR 1981 SC 917 *Superintendent & Remembrancer Of Legal Affairs, West Bengal vs. Satyen Bhowmick And Ors.,* 1980 CriLJ 593 *Ramchander Rao & Ors. vs. Boina Ramchander & Anr.*, 1991 CriLJ 1392 *Zubeda Khatoon vs. Assistant Collector*, 1981 CriLJ 1558 Bajji vs. State of Madhya Pradesh and (1982) 2 GLR 724 *Laxmiben wife of Magan Parshottam vs. Magjibhai Bijiyabhai & Ors.* It was submitted that the learned CMM on 17th April, 2008 tagged the charge-sheet along with the complaint on the basis of which, on 31st January, 2009 learned CMM took cognizance and issued summons. There was no examination of the complainant or the witnesses as required in terms of Section 200 and 202 Cr.P.C. and thus, the entire procedure was in violation of the statutory provisions in respect of complaint case triable by the Court of Sessions.

6. Learned counsel for the petitioner further submitted that even otherwise the facts on record in the present case do not establish any prima facie material to support the offences levelled against the petitioner and that the present case is nothing but an abuse of the process of law intended to harass and intimidate the petitioner. The four charges contained in the charge sheet against the petitioner are:

i. Disclosure of the charter of duties of R&AW, recommended by the Group of Ministers on National Security in 2001;
ii. Facts related to Project "Vision 2000" related to upgradation of the technological capabilities R&AW;
iii. Facts related to the two projects of "Vision 2000" namely VSAT project and UHF/VHF antennae; and
iv. Disclosure of locations of the R&AW stations in India as well as in foreign missions.

7. Qua the first charge, it was contended by learned counsel for the petitioner that the charter/objectives of any public institution cannot be concealed from the Parliament and also the taxpayers. Even otherwise, in his book the petitioner is alleged to have revealed only the "recommended" Charter of R&AW which was already in public domain. It was also contended that the Group of Ministers' report was submitted to the government by the then Home Minister on 19th February, 2001 and later formally released on 23rd May, 2001 and it was admitted that the Chapter on Intelligence was deleted at the behest of the intelligence agencies, however, the Charter on R&AW did not fall in such category. It was submitted that the details of such deleted chapter were available on the MoD website as also in a large number of articles.

8. Qua the second charge, it was contended that mere mentioning of the words "Project Vision 2000" by itself does not compromise the security of

the country. Grading any matter as 'top secret' implies that disclosure of such matters could cause gravest threat to the country's security and the same is not used merely to protect secrets.

9. Qua the third charge, it was further contended that the tender enquiry giving details of VSAT project was sent to about twenty vendors, both Indian and foreigners, and the Technical Evaluation Committee had a detailed interaction with the vendors, and by the end of which, six vendors were shortlisted and, therefore, it was submitted that the details of the said project were known to the all the members of Technical Evaluation Committee as also the vendors. It was further contended that the said tender enquiry does not bear any security grading. Similarly, it was contended that the tender enquiry for VHF/UHF antenna was sent to about eighteen Indian and foreign vendors and such tender giving details of the VHF/UHF antenna also does not bear any security grading. It was further pointed out that similar VSATs networks and VHF/UHF antenna are used by armed forces, police as well as various corporate houses which are all purchased from private vendors on open tender system and thus, it was submitted that the disclosure of VSAT Network of R&AW and VHF/UHF Antenna does not compromise national security.

10. Qua the fourth charge, it was contended that the mentioning of a station in a general area without revealing any exact location cannot enable the enemy to take counter measures. Unlike army stations, R&AW stations are located in populated areas or within the camps of army or para-military forces and due to their small size and absence of logistics, R&AW stations cannot operate by themselves in a remote or secluded area and hence, their location is known to everyone. R&AW being responsible even for external

intelligence, the fact of R&AW having its station on foreign soils is no secret and as such the locations of such stations is freely available on the internet. Various books written by several authors also give details of R&AW stations in India as well as on foreign soils and, therefore, it was contended that the allegations leveled by the respondent in its FIR and subsequent charge-sheet are ill-founded and were levelled against the petitioner to intimidate and harass him for publishing a book exposing the corrupt practices brewing in R&AW.

11. Per contra, learned Spl. P.P. for CBI submits that the book titled "India's External Intelligence-Secrets of Research and Analysis Wing (RAW)" by the petitioner has revealed the contents of secret recommendations of the Group of Ministers' Recommendation of Internal Security given in 2001, details of 'top secret' future technology upgradation project "Vision 2000" of R&AW and specific technical aspects of the VSAT project and UHF/VHF projects along with the specific and general details of the locations of the R&AW stations in India, and the publisher Vivek Garg, despite being aware of the contents of the book as being secret/top secret/classified in nature, published the same. It was contended by learned Spl.P.P that even if the intent of the petitioner was to reveal the illegalities, corruption, indiscipline and nepotism in the functioning of R&AW, there was no need to divulge any secret/classified information of the organization. Learned Spl.P.P. for CBI further submits that during investigation 19 documents classified as secret/top secret were seized and owing to the sensitive nature of those documents, the learned Sessions Judge allowed for conducting in camera hearing of the anticipatory bail application in terms of the Section 14 of the OSA. It was submitted that the present case is not

related to any information on corruption, but pertains to unauthorized publication of secret and top-secret information. Further, the reliance by the petitioner on the MoD website as also various newspapers and magazine articles is misplaced as the entire chapter on 'Intelligence Apparatus' had been deleted from the said MoD website, and any article so published by any newspaper or magazine cannot be considered to be credible until endorsed or refuted by any government agency, but the petitioner was himself a part of R&AW, divulged the sensitive information soon after his retirement from the office of R&AW. It was further submitted that at the time of registration of FIR, reliable information in form of a letter from Cabinet Secretariat was received, which prima facie constituted offence committed by the accused persons and made out a case under Section 5 of OSA. Thus, the FIR was rightly registered and pursuant to the FIR, during investigation ample evidence has been collected by the respondent based on which complaint by the competent authority and a report under Section 173 Cr.P.C. was filed in the Court of concerned CMM.

12. Learned Spl. P.P. appearing on behalf of respondent/CBI contended that the present matter pertains to commission of a cognizable offence in terms of first schedule of Cr.P.C. and therefore, it was the bounden duty of the respondent to register FIR in terms of Section 154 Cr.P.C., and in this regard reliance was placed on a decision in AIR Online 2019 Del. 1306 *Ashok Chawla & Ors. vs. CBI* and W.P. (Crl.) 582/2008 (Delhi High Court) dated 17th March, 2009 *Sanjay vs. State*. It was further contended that the present case was instituted on complaint by an authorized public servant in discharge of his duties under Section 13 of OSA and reliance was placed on the decision in 2000 Cri.L.J. 930 *Rosy and Anr. vs. State of Kerala and Ors.*

Further, it was pointed out on behalf of the respondent that the petitioner did not urge the issue of sanction either before the Trial Court or in the present petition and has been raised only during the course of arguments, and therefore, the petitioner must be barred from urging this issue. It was contended that even otherwise the book in question was published by the petitioner much after his retirement and therefore, the same cannot be said to be an offence committed by him in discharge of his official duties and during the course of his service as contemplated by Section 197 Cr.P.C. and thus, the bar under the said provision would not be applicable to the petitioner in the present case. Furthermore, even if an accused is discharged for want of sanction, a fresh sanction can be obtained against him and he can be prosecuted, therefore, the argument of the petitioner with respect to sanction does not survive.

13. It is further contended by the learned SPP that subsequent sanction accorded after two months of taking the cognizance would not nullify the cognizance taken by the Court of competent jurisdiction, as no previous sanction for the alleged offence was required. Reliance of the petitioner on the decision in *Anil Kumar (supra)* is misconceived as the alleged offence was not in discharge of his official duty. Further, from the facts in the case of *Anil Kumar (supra)* it is evident that Supreme Court was dealing with case of an accused who was alleged for offences punishable under Section 406/409/420/426/463/465/468/471/474 read with 120B IPC and 149 IPC as also Sections 8, 13(1)(c), 13(1)(d), 13(1)(e), 13(1)(2) read with Section 12 of the Prevention of the Corruption Act (in short PC Act) thereby warranting a sanction under Section 19 of the PC Act. There is no allegations of offence punishable under the PC Act and as noted above sanction under Section 197

Cr.P.C. is required only for an act done in its discharge of the official duty, which is not the case in the present petition as noted above. In *R. Balakrishna Pillai (supra*) the allegations against the petitioner therein were that while he was performing his functions as Minister of Electricity, Government of Kerala, and not for an act post-demitting the office, in *Abdul Wahab Ansari (supra*) the act of the petitioner therein related to performance of his duties as a Duty Magistrate and while on the said duty he visited the site for removing the encroachments, several miscreants armed with weapons started hurling stones and as the situation became out of control the appellant ordered for opening fire resulting in one person dying and two being injured. It is in this background since the alleged act was in discharge of the official duty, Hon'ble Supreme Court held that previous sanction of the competent authority being a pre-condition of the Court in taking cognizance of the offence the proceedings against *Abdul Wahab Ansari* were quashed.

14. It was further submitted that power to quash the proceedings must be sparingly used and in rare cases only. The involvement and the role of the petitioner in the present case is prima facie established. It was further submitted that the contention as put forth on behalf of the petitioner qua Section 8 (2) of the RTI Act cannot be interpreted to mean that breach of Section 5 of OSA would not amount to an offence and in this regard reliance was placed on the decision in AIR 2020 SC 4333 *CIC vs. High Court of Gujarat*, AIR Online 2019 SC 1449 *CPIO, Supreme Court of India vs. Subhash Chandra Agarwal* and AIR Online 2021 Bom. 5508 *Rashmi Uday Shukla vs. State of Maharashtra*.

15. It is further contended by learned SPP that the investigation by CBI/ Police is permissible. Further, even though the case is exclusively triable by the Court of Session and in terms of Section 13(3) of the O.S. Act cognizance can be taken only on a complaint filed by the person duly authorized by appropriate Government, Section 202 Cr.P.C. is not required to be complied with.

16. Heard learned counsel for the parties.

17. Section 13 of the Official Secrets Act reads 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 Sessions, 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.]"*

18. Indubitably, Section 4(2) of the Cr.P.C provides that all offences under any other law i.e. other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of Cr.P.C., subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. In other words, for any special Act which is penal in nature, if the special Act provides for the manner or place of investigation, inquiry or trial, the same has to be followed, otherwise the procedure as provided under the Code of Criminal Procedure is required to be followed. Section 13(3) of the O.S. Act provides that no Court shall take cognizance of any offence under this Act unless upon a complaint made by order of, or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf. Thus for the purpose of taking cognizance, the requirement of Section 13(3) of the O.S. Act is required to be complied with.

19. An offence being "cognizable" and "cognizance of an offence by the competent Court" are two distinct terms. Section 2(c) of the Cr.P.C. defines a cognizable offence to mean an offence, for which a Police officer may in accordance with First Schedule or under any other law for the time being in force, arrest without warrant. The First Schedule to the Cr.P.C. provides which offences are cognizable or non-cognizable. For an offence against other laws (other than the IPC) the Schedule provides that if the offence is punishable with imprisonment for three years and upwards but not more than 7 years, the offence is cognizable, non-bailable and triable by Magistrate of First Class. The First Schedule also provides that if the

offence is punishable with death, imprisonment for life or imprisonment for more than 7 years, the offence is cognizable, non-bailable and triable by a Court of Sessions. A cognizable offence is, thus, one which vests power in the Police Officer to investigate an offence, after registration of FIR under Section 154 Cr.P.C. without any prior permission of the Court. However, if the offence is non-cognizable then the officer in-charge of the Police Station has to enter the substance of the information in a book and refer the informant to the Magistrate and no investigation can be carried out in a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial. As noted above, since the offences alleged against the petitioner are punishable up to three years and above, the offences are cognizable, non-bailable and hence registration of FIR by the Police or a Regular Case (RC) by the CBI is not barred.

20. The term "cognizance of the offence" has been provided for in Section 190 Cr.P.C. Supreme Court in the decision reported as (1995) 1 SCC 684 *State of West Bengal Vs. Mohd. Khalid & Ors*. explaining the term "cognizance of the offence" held that the expression in its broad and literal sense means taking notice of an offence, this would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. Thus, the word "cognizance" indicates the point when a Magistrate or a Judge first takes judicial note of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Therefore, though an offence punishable under the O.S. Act, can be investigated on registration of FIR/ RC by the Police/ CBI being a

cognizable offence, however as provided under Section 13(3) of the O.S. Act "cognizance of the offence" by the Court of competent jurisdiction has to be taken on the complaint filed by the appropriate authority or Government or an officer empowered by the appropriate Government.

21. Thus, the registration of FIR/ RC and the investigation thereon not being barred in view of the allegations of cognizable offence, the CBI was within its jurisdiction to register the FIR and investigate the offences. Further, once the investigating agency registers FIR, it has to culminate in a report under Section 173 Cr.P.C. [See (2002) 4 SCC 713 *Moti lal Vs. CBI & Anr.*]. Needless to note that in the present case the prosecution filed the report under Section 173 Cr.P.C. along with the complaint of the competent authority. It is on the complaint that the cognizance for offences under the O.S. Act was taken in terms of Section 13(3) of the O.S. Act.

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. Some of these special Statutes are '*Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994*' wherein Section 27 provides the offence to be cognizable, non-bailable and non-compoundable whereas Section 28 provides that no Court shall take cognizance of the offence under the said Act except on the

complaint of the appropriate authority; '*Transplantation of Human Organs and Tissues Act, 1994 (THOA*)' wherein Section 22 provides that no Court shall take cognizance of an offence under the Act except on the complaint made by the appropriate authority and the offence being punishable upto 10 years is cognizable in nature; '*Mines and Minerals (Development and Regulation) Act, 1957*' wherein Section 22 provides that no Court shall take cognizance of an offence punishable under the Act except on the complaint of the person authorized by the Government/ appropriate authority, and Section 21(6) provides that offence is cognizable; '*Wild Life Protection Act, 1972'* Section 55 whereof provides that the cognizance of the offences under the Act can be taken only on the complaint of the Director of Wild Life Preservation or any other officer authorized in this behalf or the wild life warden etc., at the same time most of the offences being punishable for imprisonment for three years and upwards, the offences would be cognizable as provided under the First Schedule of the 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 Vs. P.K. Gupta & Anr.*, following the Division bench decision reported as ILR (1969) Del 286 (DB) *State Vs. 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.

26. Section 190 Cr.P.C. provides for the manner in which cognizance is to be taken on a complaint and a Police report. The provision of 190 Cr.P.C. falls under Chapter XIV of the Cr.P.C. However, post the taking of cognizance, the procedure has been prescribed under Chapter XV of the Cr.P.C. wherein the relevant portion of Section 202 Cr.P.C., pressed in service by learned counsel for the petitioner, reads as under:

> *"202. Postponement of issue of process.*
> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police*

officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant."

27. At this stage it would be also relevant to note Section 200 Cr.P.C. which provides for examination of the complainant before summons are issued and the proviso thereto exempts examination of the complainant and witnesses in case the complaint is filed by a public servant acting or purporting to act in discharge of his official duty. Section 200 Cr.P.C. reads as under:

"200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them."

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.

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:

"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. "

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. 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. 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.

31. The next issue which calls for determination is whether the cognizance of the offence under Section 3 and 5 of the O.S. Act by the learned CMM was bad for want of sanction. Section 197 Cr.P.C. reads as under:

> *"197. Prosecution of Judges and public servants.*
> *(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*
> > *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.

(3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of

> *Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.*
> *(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."*

32. Thus, one of the essential requirement of Section 197 Cr.P.C. is that accused should be alleged of having committed an offence while acting or purporting to act in discharge of his official duty. Hon'ble Supreme Court in the decision reported as (1993) 3 SCC 339 *State of Maharashtra Vs. Budhikota Subbarao (Dr.)* elaborating on the meaning of the expression "official duty" held that:

> *"Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature".*

33. In the present case the petitioner retired from service in June 2002 whereafter he published the book in June 2007 which is the bone of contention, whereafter the FIR was registered by the CBI and complaint and Police report filed before the Court of competent jurisdiction on 9th April, 2008 and 11th April, 2008 respectively. Mere utilization of the knowledge gained during the discharge of official duty subsequently, will not warrant invocation of Section 197 Cr.P.C. mandating prior sanction before cognizance of an offence is taken. In the present case the FIR was written

on the allegation that the appellant published the book titled "*India's External Agency – Secrets of Research and Analysis Wing (RAW*)" publishing various classified secret information including the names of various officials and their designations, functions, station codes, various technical projects, functioning of Telecom Division and Signals Intelligence, including that of SPG etc. Though it is claimed that after registration of FIR on search being conducted, it is alleged that classified documents were recovered, which would thus warrant grant of sanction as held by the Supreme Court in *State of Maharashtra (supra*), however on perusal of the complaint and the report there is no allegation for recovery of classified documents and no prosecution for offence of being in possession with classified documents has been initiated. In the absence of such an allegation, the book having been published after the retirement of the petitioner, this dissemination of the information available to him during the course of his duties, cannot lead to the inference that the offence was performed by the petitioner in discharge of his official duty. Consequently, no sanction under Section 197 Cr.P.C. was required at the time of taking cognizance. Be that as it may, subsequently sanction was taken from the competent authority and in case at any stage it is revealed that the alleged offence was committed in discharge of the official duty, the learned CMM would be at liberty to take fresh cognizance if so warranted and legally permissible.

34. It may be noted that aggrieved by the fact that the petitioner has been discriminated on the count that there were two other books, namely, "*Inside RAW: The Story of India's Secret Service*" by Shri Asoka Raina, published by Vikas Publishing House, Delhi, 1981 and "*The Kaoboys of R&AW-*

Down Memory Lane" by Shri B. Raman, published by Lancer Publishers, New Delhi, July 2007, on which no action was taken, the petitioner filed a complaint against the said authors being Complaint Case No.324/1 for taking cognizance for offences under Section 3 & 5 of the Official Secrets Act. In the said complaint, the petitioner clearly pointed out that he had sought for sanction under Section 13(3) of the O.S. Act several times for taking action against the said publishers and authors, however the Central Government has failed to grant sanction. On the complaint of the petitioner cognizance for offence punishable under Section 3 & 5 of the O.S. Act was taken against Shri B. Raman, Lancers Publishers House, Shri Asoka Raina and Vikas Publishing House Pvt. Ltd.

35. Learned counsel for the petitioner heavily relies upon the findings of the learned CMM in complaint case No. 324/1 stating that on a comparative analysis of all the three books, it is apparent that the material contained in the other two books i.e. the two books other than that of the petitioner was far more explicit than the one contained in the book of the petitioner. On a query raised by this Court as to the outcome of the complaint filed by the petitioner being Complaint Case No. 324/1 titled '*Major General V.K. Singh (Retd.) Vs. Central Bureau of Investigation & Ors*.', learned counsel for the petitioner on instructions submitted that the accused summoned by the learned CMM vide the order dated 6th February, 2012 preferred a petition before this Court and since the complaint filed by the petitioner was not by a person authorized by the Government, the order of summoning was set aside and thereafter the petitioner withdrew the said complaint, also because of the fact that both Mr. B. Raman and Mr. Asoka Raina had passed away. Even though the petitioner has now withdrawn the complaint, the fact that the

petitioner preferred a complaint under Sections 3 & 5 of the O.S.Act against others for this material, it is evident that even as per the petitioner's own understanding, disclosure of facts relating to the GOM recommendations amounted to an offence under Sections 3 & 5 of the O.S.Act.

36. Before proceeding on the merits of the case, it would be relevant to note the two decisions of this Court one in the case of the petitioner himself and the other in the case of another officer of RAW. A Single Judge Bench of this Court in the case of petitioner himself in W.P.(C) No. 7671/2010 decided on 8th December, 2010 titled as '*Maj. Gen. V.K. Singh (Retd.) Vs. Union of India*' seeking the report of the GOM under the Right to Information Act held as under:

> *"2. In relation to a Report dated 19th February 2001 of the Group of Ministers („GOM") on National Security, the Petitioner filed an application under Right to Information Act, 2005 („RTI Act") on 28th April 2008 raising numerous queries. Inter alia, it was pointed out by the Petitioner that many parts of the Report contained security deletions. These deletions were listed out by the Petitioner. He sought "the reasons for these deletions, and the agencies on whose recommendations they were carried out."*
>
> *5. The Central Public Information Commissioner („CPIO") of the National Security Council Secretariat („NSCS") refused to provide information in respect of some of the Petitioner"s above queries. In response to the query concerning the deletion of the entire chapter on intelligence, the response was that "the deletion was as per the recommendations of the GOM accepted by the Cabinet Committee on Security („CCS")." In response to the query concerning the reasons for the deletions, the CPIO replied that "the CCS approved the Security deletions on grounds of implications on national security. The deletions were recommended by various Govt. departments concerned with various aspects of national security. Therefore, the information cannot be provided under Section 8(1)(a) of the RTI Act.*

Moreover, the information relates to third party in terms of Section 11 of the RTI Act." The NSCS stated that the disclosure of information concerning the above matter and certain other queries would, in terms of Section 8(1)(a) of the RTI Act, "prejudicially affect the security and strategic interest of the country." In the response to another query, the Petitioner was informed that the Report of the GOM on national security had not been placed before the Parliament.

7. At the hearing before the CIC on 20th November 2008, the Petitioner claimed that the full Report of the GOM, including the portion on intelligence, that was already in the public domain. In support of this submission he produced copies of certain articles published in the `Frontline" and `The Hindustan Times" as well as news report of the Press Information Bureau („PIB"). The CIC then issued notice to the journalists to share information with the CIC whether in fact they had a complete copy of the Report of the GOM.

13. This Court is unable to accept the above submission of the Petitioner. The letter written by `The Hindu" to the PCI no doubt acknowledges that `The Hindu" has a copy of the Report of the GOM. However, it by no means does acknowledges that the said copy of the Report includes the chapter on intelligence which even according to the Petitioner stands deleted. Incidentally, it must be observed that the Petitioner has been able to download from the internet a copy of the GOM Report minus the deleted portions. Therefore, what the Petitioner is really seeking is not a copy of the GOM Report which is available in the public domain. His queries under the RTI Act unmistakably shows that he wants to access the deleted portions and the reasons for deletion of the chapter on intelligence.

14. The Petitioner has proceeded on the premise that the press has already been given a copy of the GOM Report together with the deleted portion. However, he has not been able to substantiate this. There is no question, therefore, for the CIC directing the NSCS to furnish to the Petitioner a copy of the GOM Report together with the deleted portions.

16. This Court is unable to appreciate how, within the scope of its powers under the RTI Act, the CIC can possibly sit in

appeal over the subjective satisfaction of the GOM that certain portions of its Report should be deleted since it could have security implications. For that matter even this Court cannot possibly sit in appeal over such determination by the GOM. In matters concerning security, it would be very difficult for either the CIC or this Court to override the views of the agencies on security issues. The CIC, or even this Court, lacks the expertise to evaluate the various inputs that go into such decision. In other words, the determination by the GOM which prepared the Report that the chapter on intelligence should be deleted as its disclosure would prejudicially affect the security interests of the state are not capable of being judicially reviewed either by the CIC or this Court."

37. The Division Bench of this Court in W.P.(C) 2735/2010 decided on 7th January, 2019 titled as '*Union of India & Anr. Vs. Nisha Priya Bhatia*' dealing with what is the "Security of the State" held:

"64. Construing the term "security of state" the Supreme Court held, in Union of India v Tulsiram Patel, AIR 1985 SC 1416 that:

"Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations these which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of

the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military Forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a paramilitary force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or paramilitary Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces.

Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the member of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them." By the Constitution (Fiftieth Amendment) Act, 1984, this Article was substituted. By the substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of

the Fundamental Rights is made wider. The substituted Article 33 reads as follows :

"33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,

(a) the members of the Armed Forces ; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered of such vital importance to the country that in order to ensure this the Constitution has conferred upon Parliament to restrict or abrogate to them.

The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 33. The satisfaction of the President or Governor must, therefore be with respect to the expediency or

inexpediency of holding an inquiry in the interest of the security of the State."

65. The applicant's arguments are that the expression "security" is a vague term and does not have any meaning. It is argued by her that the use of the term without the use of any other expression renders it vague and capable of misuse. In this context, the court would reiterate that the R&AW is an organization concededly engaged in intelligence activities that concern security interests of the nation. In the absence of any other expression, the natural meaning of the expression "security" would be – in the context of Rule 135 if the activities of the employee or the officer are such that it is considered reasonably as a threat to the security of the organization or the country, the Rule can apply. In this context, the above observations in Tulsi Ram Patel (supra) are relevant. The court had underlined that it is difficult to enumerate the various ways in which the security of the State can be affected. The court had also highlighted that security of the State included the security of part of the State. If one sees these observations in the context of the fact that members of the R&AW are covered by Article 33 of the Constitution (as amended by the 50th Amendment Act, 1984), it is obvious to the court that any act, to fall within the mischief of Rule 135, should be of such nature as to pose a threat to the security of the nation or security of R&AW. Furthermore, the organization comprises of its members and personnel. Therefore, if in a given case, any member of R&AW indulges in behaviour that is likely to prejudice its overall morale or lead to dissatisfaction, it may well constitute a threat to its security.

66. As regards, the applicant's objection to the term "exposure", here again upon a plain interpretation, it is evident that if the identity of any member of R&AW, which ought not to be known widely, is so made known or publicised, and that incident or rationale is a cause of threat – real or apprehended, to its security or the security of its personnel or the security of the state, the rule can be attracted. It is difficult to visualize the various situations in which exposure of R&AW personnel might lead to a security threat. For instance, identity of someone, who

is known to head a senior position, per se, may not pose a threat to the security or to R&AW. However, the disclosure of identity through any incident, of its officers who are involved in sensitive functions or operations, in any manner whatsoever, can lead to compromise of the security of R&AW or the state. One of the ways this can happen is that if the truth of such an individual is known, he or she can be open to scrutiny by forces hostile and on occasions even subjected to threats which might lead to disclosures- voluntary or otherwise with regard to the secrets of the organization which can be a threat to the security of the country. Therefore, the use of the expressions "security" and "exposure", are not vague or arbitrary but, having regard to the context and the underlying objectives of the R&AW, mean security of the State or security of R&AW and exposure of the identity of the concerned individual.

[Emphasis supplied]"

38. Section 3 and 5 of the Official Secrets Act read as under:

"3. Penalties for spying.—

(1) If any person for any purpose prejudicial to the safety or interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States],

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force

establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of [Government] or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section [***] it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, [information, code or password shall be presumed to have been made], obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

5. Wrongful communication, etc., of information.—

(1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, [or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act,] or which has been entrusted in confidence to him by any person

holding office under [Government], or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under [Government], or as a person who holds or has held a contract made on behalf of [Government], or as a person who is or has been, employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or password or information, he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner

prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.
[(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.]"

39. A bare perusal of Section 5 of the OSA notes that if an officer has had access owing to his position as a person holding office or as having held such an office, in case such an officer fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or password or information, he shall be guilty of the said offence. In the light of the provision of Section 5 Sub-section 1(d) of the OSA the book written by the petitioner is to be analyzed.

40. According to the petitioner he has sought to expose the corruption and malpractices in book and thus the lines as noted in the complaint and relied by the respondent cannot be read in isolation. Certain portions of the book have been relied upon by the petitioner to show that the petitioner in his book only highlighted the shortcomings, lack of professionalism, accountability, malpractices and corruption. The portions of the book authored by the petitioner and relied are reproduced hereinafter (after redacting the names, places, etc., which are likely to be prejudicial.

"Page 49 - Malpractices Foreign trips at Government Expense
The Secretary wields enormous clout, not only in deciding postings but also tours. He can send anybody anywhere in the World at the drop of a hat, and most senior officers had at least half a dozen foreign jaunts every year, with the number increasing during the summer months. This facility was the source of envy of every other department of the Government of India, where even ministers and senior bureaucrats have to obtain clearance from the PMO and the Ministries of Finance and External affairs before proceeding on

tours to foreign countries. Not surprisingly, anyone who had children studying in USA or UK - the percentage is quite large - was able to visit them at government expense ….Another senior officer, who was due to retire, was asked if there was any particular place he wanted to visit. His daughter was studying in the (……), so he was given a two-week holiday, all expenses paid.

Page 50 - Lack of Accountability and Professionalism

Of course, the funds allotted to RAW are not subject to audit. The Ministry of Finance knows how much money is spent by the organisation, but no one really knows how it is spent. The expenditure Incurred on administration including salaries, allowances, buildings, maintenance, purchase of stores, transport etc. is naturally controlled and audited. But funds for acquisition of intelligence are kept out of the purview of such controls, for obvious reasons. A large amount of this is paid to sources (agents, spies, informers and moles) whose identity is known only to the officer who is running them. This system is followed by intelligence agencies all over the World. However, whether the amount is actually spent on actual Intelligence work depends on the integrity of the concerned officers. One often heard murmurs and whispers that implied that there were black sheep in the flock. One story that I heard concerned an officer in a foreign mission who was paying for his daughter's education in a college abroad, classifying her as a 'source'. In normal circumstances, this sort of thing can only continue for two to three years, since the 'source' would have to be handed over to the new incumbent when the officer is transferred. But sources sometimes dry up and even vanish, without a trace.

Page 50 51 Closure of Station at (……)

Barely two months after I joined, a severe earthquake devastated several towns in (.....), including (.....), where a station was located. Though none of our personnel lost his life, the building and some of their equipment was damaged. The Joint Secretary (TM), (.....) was immediately sent to (.....). He found the personnel traumatized and decided to close the station and evacuate all the staff to Delhi. When I heard about this I was surprised, since apparently nobody had been hurt.

Since only the building had been damaged, I suggested that we shift the station to an alternate location. Having served in the area earlier, I knew that the Army had a brigade in (.....), and I offered to arrange for our detachment to be attached to the signal company, until our own accommodation was repaired. I had come to know that the brigade had also suffered extensive damage and many of their personnel, including families, were staying in tents. But I was sure that they would give us at least one room, if not two. However, my suggestion was not accepted, as (.....) and other officers of TM Wing felt that none of the personnel were in a fit state to go back. The Adviser (Tele), (.....) could not bring himself to overrule the objections of Verma and his team, and went along with their recommendation. In the event, the station at (.....) remained closed for over a year, until the accommodation was repaired. Such a thing would have never happened in the Army, or for that matter, in any other organization with a modicum of self-respect and pride in its job.

Page 53-55 Misuse of Canteen Facilities

A few months after I joined, (.....) came to my office. He was an ex-EME officer who was looking after the CRF (Centre Repair Facility), which was responsible for providing vehicles to everyone in the organisation. He wanted me to counter sign an application from RAW for opening a CSD (Canteen Stores Department) canteen. As is well known, the CSD caters for personnel of the armed forces, who are exempted from paying sales tax on goods purchased by them through the CSD. The application from RAW was based on the premise that it had a large number of ex servicemen, who found it inconvenient to go to the Station Canteen, which was quite far away. I asked (……) why he was not getting it signed by (.....), the Chief Military Intelligence Adviser, who was the senior Army officer present. (……) told me that according to the rules, only a serving major general could counter sign the application. Since General (……)had retired, and was re-empioyed, he could not sign it. I counter signed the application, without further ado.

After a few months, the canteen was inaugurated, with much fanfare. It was the brainchild of (.....), who had recently

taken over as Additional Secretary (Personnel). Circulars were issued and notices regarding opening of the canteen were put up. However, I found that instead of catering exclusively to ex-servicemen, the canteen was open to all employees. In fact, very few ex-servicemen used the facility, preferring to go to the canteen to which they were attached for drawing their liquor quota. At the next Annual Conference, (.....), who had now assumed the appointment of Special Secretary (Personnel), grandly announced the opening of the canteen, among the various welfare measures that he had introduced after had taken over. He was applauded warmly for this achievement, which had been tried unsuccessfully several times earlier.

Page 54 55 This was not ail. The circular clearly stated that the privilege of purchasing goods from the canteen was available to all serving and retired employees of RAW and ARC, and others who may be authorized by the Executive Committee. According to the rules applicable to all canteens, they are subject to a quarterly audit by a board of officers from outside, ordered by the Station Headquarters. There was no such audit being carried out in RAW. Similarly, the canteen profit is to be utilized for welfare of officers and men, in the ratio of their purchases from the canteen. According to the circular, 10% and 65 % respectively would be transferred to the welfare funds of ARC and RAW, with the remaining 25% being retained by the canteen for development and expansion.

It now became clear that RAW had resorted to a subterfuge by using the ex-servicemen to get a canteen sanctioned for their own personnel who were not entitled to such facilities. Since I had been partly responsible for this, I felt I must inform the concerned authorities. Accordingly, I wrote a DO letter to the Quarter Master General, Army Headquarters, informing him of the anomalies in the canteen being run by RAW. I wrote a similar DO letter to the GOC (……) Area, who was directly responsible for all canteens in his area, including prevention of misuse and audit. I do not know if any action was taken in the matter. With its penchant for getting around rules, I am sure RAW would have found a way to continue the canteen.
Page 64 - The Signal Centre

During my visit to the signal centre I was informed that almost every message was being graded secret and being given the highest priority. This put an unnecessary load on the cipher staff and also increased the time for transmission. When I asked for the standing orders I was told that there were none. Any officer could initiate a top secret or secret message and give whatever priority he wished to. I was indeed upset when I heard this. There was no way of ensuring that important messages were cleared first. I was also surprised to find that no one seemed to be perturbed if a message was delayed, even for two or three days. The Under Secretary in charge of the signal centre rarely bothered to inform anyone if a circuit was down, especially on a holiday. Perhaps he had realized that no senior officer liked to be disturbed by such mundane occurrences, especially when he could not do much about it. This was in stark contrast to what prevailed in the Army. I remembered my days as a young officer, when I had to give hourly reports to my company commander or commanding officer in case messages were being delayed or circuits were down, at all hours of the day and night.

Page 70 -71. Purchase of Equipment Not needed

The reluctance of senior officers to take action against erring subordinates appeared to be strange, considering that it was an Intelligence agency, where responsibility had to be fixed in case of lapses. I recall a case where two computers that were part of a newly acquired system were found missing during transhipment from the Central Stores to the outstation. The Additional Secretary (Tele) asked (.....) to conduct an Inquiry, which held certain individuals responsible for the loss. However, no action was taken against the individuals, other than a verbal reprimand. In another, instance, during a visit to the transmitter station, I found certain equipment in wooden crates. On enquiring from the officer in charge, it was revealed that these contained brand new antennae, which had been purchased several years earlier, but had never been used. When I went back to headquarters I brought this to the notice of the Additional Secretary (Tele). It appeared to be a criminal waste of money, and I felt that the officer who had placed the demand

should be asked to explain. It was discovered that the concerned officer had since retired, and since no use could be found for the antennae, these had to be condemned. Later, when I was presiding officer of a condemnation board, I found several items lying in the stores, still in their original packing cases. It appeared that there was no mechanism to check the actual need for smaller equipment and accessories, which were often purchased even when they were not required, causing loss to the government.

Page 83 Corruption - THE CASE OF THE VHF/UHF ANTENNAE

I decided to surf the Internet and find out if the prices were realistic. After browsing the sites of several antennae manufacturers, I found that no one made antennae covering both the (.....) and (.....) bands completely. The common band covered by most was (.....) MHz, which was the band commonly being used for communications. If additional coverage was required, a combination of two antennae had to be used. I found that the order placed on Rohde and Schwarz also specified two antennae, which were to be used in combination. The cost of the antennae covering (.....) MHz was about Rs. 9.6 lacs, while the second one covering (.....) MHz was about Rs. 1.8 lacs. Hence the cost of the antennae elements alone was Rs. 11.4 lacs. The remaining items such as RF cable, antenna selector, mast and the rotating mechanism etc. accounted for the balance Rs. 4 lacs. On the Internet, the price of the antennae covering up to (.....) MHz was around 300 US $, which worked out to less than Rs. 15,000. In other words, we were paying Rohde and Schwarz almost hundred times what it was costing in the international market.

Page 86- Once I had collected the above facts, I decided to bring it to the notice of my superiors. The previous Adviser, (.....) had left, and his job was temporarily being looked after by one of the additional secretaries, (.....). When he was not present, I dealt directly with (.....), Special Secretary (West), on Important issues. After I had put everything down in writing, I rang up (.....) and asked If I could come over. I handed over the note that I had prepared and as he read through it I could see

his eyebrows rising. "This is day light robbery", he exclaimed, after he had read through the note. In front of me, he made a few calls. The first was to the Director of Accounts, (.....), with a request not to open the LC (Letter of Credit). He then spoke to (.....) and told that he was sending the note to him. He could examine the issues raised and then decide how the order could be cancelled. I came away from (.....) office with the feeling that my efforts had not been In vain.

Page 87 - The last recommendation was based on certain facts that had come to my notice. I had asked the Procurement Cell to compile data of all purchases above Rs. 50 lacs during the last five years. The results were revealing. (.....) had made six large purchases, totaling more than 28 crores since 1996-97. Out of these four orders were placed on Rohde and Schwarz, their value being 23 crores. In other words, more than 80% of the expenditure incurred by (.....) had benefited one company – Rohde and Schwarz. There appeared to be no doubt about the German company being the favourite, if not the favoured, supplier of (.....). During the same period, the SM Wing had placed 10 orders, totaling 54 crores, each one on a different vendor. In addition, two orders for communication equipment totaling 2 crores had been placed on two different vendors.

Page 89 - Coming back to the antennae, I came to know that my note sent to (.....) had been passed on to the Director (R), (.....) for comments. He prepared an exhaustive note justifying the purchase, and recommended that the order should not be cancelled. This was endorsed by (.....) and forwarded to (.....) who put it up to (.....). The Secretary felt that the reasons offered for the high price being paid to Rohde and Schwarz were not convincing, and ordered that the order should be put on hold. He also asked that data be collected on similar equipment purchased by other agencies such as the Army, IB, ARC, Police and the Central Monitoring Organisation. As a result, Rohde and Schwarz were informed that the order was being 'put on hold'. I was asked to obtain the data from other organizations, for the information of the Secretary.

Page 92 - My recommendation to re-tender was not accepted by (……)House. Kaptel's credentials were questioned, since it was an 'untried' company, and there was no guarantee that their equipment would perform well. (…..), when asked to justify the increase the frequency coverage, had little to offer except that they had already procured receivers with the higher coverage, and these would not be fully utilised unless the antennae were matching. Of course, there was no confirmed information of our adversaries using he higher frequencies. The Army (…..) units would certainly have procured equipment with higher frequency coverage if they had felt a need for it. Also, the manufacturers would have begun production of the antennae with higher coverage if there was a market for them. Meanwhile, (…..) had agreed to scale down their demands for the antennae with coverage up to (…..) MHz to nine. Finally, in December 2003 Rohde and Schwarz were asked to deliver only (…..) antennae instead of (…..) that had been ordered earlier. There was no change in the price, which in fact was now higher, due to devaluation of the Rupee against the Euro. Naturally, the company protested vehemently, and insisted that all 27 must be bought, as ordered earlier.

When I left RAW in June 2004, the case was still hanging fire. However, I have learned that all (…..) antennae were eventually purchased. I am not sure if all of them are being put to use. Even if they are, there is no doubt in my mind that public money has been squandered, and Rohde and Schwarz have made a neat profit in the bargain. I am equally sure that this could not happened without the active support of officers in the (…..) of RAW and (…..) Cell in the Cabinet Secretariat. Unfortunately, the organization is not subject to statutory audit by the Comptroller and Auditor General of India. If it was, perhaps this particular expenditure, along with several others, would have caught their eye, and been the subject of a parliamentary question.

Page 112-117 Communication Equipment for the SPG

In April 2003 a Tender Acceptance cum Price Negotiation Committee was constituted to consider the financial bid of Motorola for the (…..) communication system for the

SPG. The chairman of the (.....) was (.....), Secretary (Security), Cabinet Secretariat. The other members of the committee were the Additional Secretary & Finance Adviser, Ministry of External Affairs; Joint Secretary (PM), Ministry of Home Affairs; Joint Secretary (Tele), Research & Analysis Wing: Special Commissioner (Communication), Delhi Police; Joint Director, Police Wireless, Ministry of Home Affairs; IG (Technical), SPG; and Director (Security), who was also the convener. (.....), Joint Secretary (Tele-SM) was nominated to represent RAW In the TAC-PNC.

The first meeting of the (.....) was held on 02 May 2003. Due to some reason, all members could not attend, and the committee was not able to proceed. The second meeting was called on 20 May 2003. Since (.....) was pre-occupied, I was asked to attend the meeting, which was held In the North Block office of (.....), Secretary (Security). (.....) was an ex-emergency commissioned Army officer, who had joined the IAS after completing his term in the Army. He was from the Corps of Signals, which was also my parent arm, and served in (.....)Regiment, which was also my first unit, though he joined soon after I left. I reached his office a bit early, to reminisce over old times.

Before calling in the representatives of Motorola, the committee deliberated on several points that had been included in the briefing papers, which had been prepared for the members. Since the (.....) had recommended only Motorola, the then Secretary (Security), (.....) had decided that only the financial bid of this company should be opened. This had already been done and the total cost of the equipment was coming to about Rs. 30 crores, which included Rs. 2.34 crores for engineering, training and the factory acceptance tests (FAT) and Rs. 1.4 crores for certain essential operational requirements at the request of SPG. The first point that we discussed was the price. In 1999, Motorola had installed a similar system for the Delhi Police at a cost of Rs. (.....) crores, which had been upgraded in 2002 at a cost of Rs. (.....) crores. The price of the system being provided to SPG Rs. (.....) crores appeared to be very high. The SPG justified the increase in

price by saying that the system being procured by them had (.....) facility, which was not there in the Delhi Police system. However, I felt that paying more than 10 crores for this feature was not really justified.

The next point was cost for engineering, training and the (.....), which was coming to Rs. 2.34 crores. My experience in RAW as well as in the Army was that these services were always provided by the supplier at his cost, and I felt Motorola was not justified in including this as an additional cost. It was also brought out that when the original system had been installed In 1989, the company had hot asked for any additional cost on this account. The committee agreed to ask Motorola to waive this cost. Another Interesting point was the payment of advance. Motorola was asking for 90% advance payment within 10 days of the contract being signed. I was surprised, since this is the first instance I saw of a company asking for an advance against a government order, and that too such a large amount. (.....), the Finance representative, felt the same way, and it was decided to query the Motorola officials on this point.

It also came to light that a case had been filed by Iridium India against Motorola for fraud and inducement to invest through false claims and suppression of material facts. The Mumbai High Court had issued an interim order restraining Motorola from remitting or transferring any money out of India, until the case was finally decided. A report in this regard had been published in the Indian Express dated 19 September 2002. We were surprised at this development, since it could mean that the project could be indefinitely delayed. The committee decided to ask the company to give a clarification on this point.

Once the financial points were over, I asked the SPG officers whether the crypto system being offered had been approved by (.....). The chairman intervened to say that the (.....) was required to discuss only financial aspects, since the technical features had already been examined by the (.....). I clarified that the (.....) report clearly mentioned that the company should submit an appropriate (.....) evaluation certificate and I was only asking for confirmation if this had been done. At this stage the chairman mentioned that his

predecessor, (.....), had waived the requirement of SAG evaluation, on file. I was literally shocked at this disclosure. The issue concerned the security of a person no less than the Prime Minister, and someone had decided to waive it, just like that!

The officials from Motorola were called. (.....), the Regional Manager (……), who had flown down from (……) for the (.....), headed the team. He began by informing us that Motorola was providing us with a very sophisticated system not with the intention of making a profit but purely out of a sense of patriotism, since they knew how important it was for the SPG to have the best system available anywhere in the World. I could see that everyone was smiling at his smugness. After a few minutes the Chairman asked him to come to the point and we began with the points already listed. When the issue of 90% advance came up, and it was pointed out that no other government department did this, he magnanimously offered to reduce it to 50%, which was what he had got from the Delhi Police. The SPG and Police representatives seemed to be quite satisfied with this. The other points concerning the price, cost of engineering service, training, (.....) etc were discussed, but the company did not yield much. I could make out that they knew that they already had the order in the bag, and that this meeting was a formality.

Finally, I asked them about the security grading of their crypto system. They said that it was very secure, and better than anything that we had. When I asked them to spell out its crack resistivity, I got the same answer, with assurances that it was highly secure. I then asked them if the algorithm for the crypto system had been specially designed or customized for us, or was it the same as the one being used by others. He replied that it was being used in similar Motorola systems elsewhere, but there was no problem, since the keys would be our own. This again was a shocking disclosure, which left me quite disturbed.

Once I returned to my office, I thought over the whole episode, and came to the conclusion that all was not above board. As a rule, security and intelligence agencies always used indigenous crypto systems, with foreign companies only

providing the radio system and accessories. Even in the case of indigenous crypto systems, including those developed by public sector companies, the algorithms were customized for the particular agency, and not used by others. In this particular case, the entire set up, including the (.....), was developed by Motorola, which was an American company. What was especially alarming was the fact that the system was to be used by the SPG, which was responsible for protecting the Prime Minister. The security of the system was definitely doubtful. Since it was being procured from a foreign firm, it was quite likely that foreign intelligence agencies would have access to the algorithm. In other words, a foreign intelligence agency such as the CIA or maybe even the ISI would be able to eavesdrop on the network and know the exact details of the movements of the Prime Minister and the measures being taken to protect him. It was a horrifying prospect. I was reminded of the biblical story. In which Jesus was betrayed by one of his own apostles, for a few pieces of silver.

I discussed the matter with the Additional Secretary (Tele) and told him of my reservations. He agreed that the matter was serious. I told him that I wanted to send an official note to the SPG, voicing my concerns. He asked me to go ahead, giving a reference to the note that had constituted the (.....). I wrote a note pointing out three lacunae in the procurement process. Of course, the most important was the fact that the crypto system was not indigenous, had not been approved by (.....), and that the algorithm had been not been customized for the SPG. The second point was that the SPG appeared to have manipulated the technical evaluation by formulating the specifications in manner that would result in only Motorola being short listed, as had been alleged by another firm. The third point was that the TEC rejected the bids of others without valid reason, and in violation of CVC guidelines. The note was addressed to (.....), Assistant Director (Purchase Cell), SPG, who had convened the (.....). I endorsed copies of the note to (.....), Secretary (Security); (.....), Director SPG; and (.....), who was the Finance representative in the (.....).(.....) told me that she would be taking up other points

concerning pricing, payment terms etc, through finance channels. I also floated an internal note, for the information of the Secretary, pointing out the above lapses.

I was not sure whether my note would have any impact. I could see that Motorola had very long arms, and it was quite likely that nothing would be done. So I decided, on my own, to inform someone who mattered. Since the issue concerned the Prime Minister's security, I felt that his office must be informed. I wrote a demi official (DO) letter to (.....), Joint Secretary (R) in the Prime Minister's Office, apprising him of the lacunae in the crypto system that was being procured for use by the SPG, and the serious implications it might have on the Prime Minister's security.

Page 139 -141 Illegal Interception SMW Cable

Sometime in 2000-2001, someone in RAW proposed that monitoring equipment should be installed at the VSNL gateway in Bombay. When I joined RAW in November 2000, the project was still being discussed. I was not directly involved with the project, which was being handled by the Joint Secretary (SM), (.....). However, it was discussed in the regular meetings in the Telecom Division to monitor the progress of various projects. When the project was planned, VSNL was still a government owned company. It agreed to provide the facilities for installation of the interception equipment, but expressed misgivings about the presence RAW personnel and equipment in its premises, which were frequently visited by foreign members of the consortium. I am sure VSNL must be aware of the Supreme Court's ruling regarding interception of telephone calls, but apparently their fears were allayed by a bit of arm twisting.

.... I expressed my misgivings several times, trying to draw a line between legal interception, such as intercepting radio or satellite traffic off the air, and illegal interception, such as tapping telephones without authorization. What we were planning to do was clearly another form of illegal interception. In fact, it was worse because we would not only be violating our own but also international laws. I was surprised when I found that other people in RAW not only disagreed but

scoffed at my ideas. According to them, there was nothing illegal about intercepting international calls. In fact, for RAW, almost all activities connected with acquisition of intelligence abroad were illegal, and if they were to keep this in mind they would not be able to do their job. The CIA routinely carries out such activities and no one should be surprised if RAW does the same thing. In the world of espionage, there are no rules and taking risks is part of the game.

When VSNL was privatized, I thought they would back out of the deal and the problem would be solved. But apparently this did not happen. The management remained unchanged and we continued to deal with the same officers. VSNL desired that a new agreement should be signed with them, and this was done. I am not sure whether details of the project were brought to the notice of the new Chairman or the Board of Directors. In fact, I am not sure if the project was implemented at all, since I left RAW In June 2004. But the fact that it was planned and approved raises many questions. Espionage Is a dirty business but an honorable profession. It is difficult to lay down rules that intelligence agencies must follow to acquire intelligence. Spies are fiercely patriotic and take grave risks in carrying out their tasks. It is a pity that most of their exploits remain unknown and unrewarded. However, intelligence agencies need to be reminded, occasionally, that they are working not for themselves but the country and its citizens, who must never be humiliated by their actions."

41. No doubt, the entire tenor of the book of the petitioner highlights certain irregularities etc., at RAW but the grievance of the respondent is as to the names of the officer, location of the places and recommendations of the GOM etc. This Court in the decisions as noted above i.e. in the case of *petitioner himself* as also in case of Ms. *Nisha Priya Bhatia* has noted that what prejudices the national security cannot be decided by the Courts. Even in the present case, the recommendations of the GOM, which were deleted from publication, have been reproduced verbatim by the petitioner. The

petitioner has heavily relied upon some other books and articles wherein references have been made to the recommendations of the GOM but it may be noted that in none of those articles or publications the recommendations of the GOM have been reproduced verbatim. It may also be noted that the petitioner himself was of the opinion that similar revelations by the two other authors and publishers amounted to an offence under the Official Secrets Act and thus filed complaint wherein cognizance was taken by the learned CMM; though on a challenge before this Court the same was set aside as the complaint was not filed by the competent authority. Thus, it would be a matter of trial after the witnesses are examined to see whether the revelations by the petitioner in his book is likely to affect the sovereignty and integrity of India and/or the security of the State.

42. In view of the discussion aforesaid, this Court finds no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 31, 2023
'vn/ga'