Karnataka High Court State Of Karnataka vs G. Lakshman And Others on 23 March, 1993 Equivalent citations: 1993 (2) ALT Cri 310, 1993 CriLJ 2331, ILR 1993 KAR 1430, 1992 (2) KarLJ 190 Bench: N Hanumanthappa ORDER 1. Since the question of law and facts involved in both these petitions are common, both the petitions are clubbed and a common order is passed. 2. These two petitions arise out of a common order passed by the Chief Judicial Magistrate, Bellary, in C.C. No. 227 of 1985 on I. As. Nos. 13 and 14 dated 26-5-1989 wherein he rejected I.A. No. 13 filed by the D.S.P., C.B.I., seeking for permission to make further investigation and to stay the proceedings and I.A. No. 14 filed by the D.S.P., C.B.I., requesting the Court to drop the proceedings and to discharge the accused and to hand over the documents produced in the case to him for further investigation. 2A. For the sake of convenience, in these petitions the parties are referred to as arrayed before the trial Court. Before the trial Court the accused were (1), G. Lakshman, (2) G. Raghunath, (3) G. Jagannath, (4) R. N. Laxman, (5) Srinivasulu, (6) Yadunandan Prasad Dangwal and (7) Hardeep Singh and the complainant was the State of Karnataka by M. Narayana D.S.P., C.B.I., Special Investigation Cell, New Delhi. 3. The case of the prosecution was as follows : Accused Nos. 1 to 3 at the time of initiation of proceedings were the joint proprietors of M/s. Dwaraka Arms Stores, Bellary which was carrying on business in the manufacture and sale of Fire arms. Accused No. 6 was an Officer, Arms Section, Ministry of Defence, Government of India, who subsequently retired from service. On 13-10-1983 one G. Krishna Rangappa of G. Krishna Rangappa & Sons, Jewellers and Bankers, Bellary, volunteered information about the illegal activities of Accused No. 1 from 1961 to 1983. Pursuant to the powers conferred under Rule 27 of the Arms Rules 1962 the District Magistrate, Bellary, inspected the premises of Dwarka Arms Stores. He conducted inspection along with his subordinates with police escort. During the course of inspection the following objectionable articles seized from the said stores : 1. One Single Barrel Gun No. FE/1/1982 with a revolving chamber containing 5 chambers; 2. One revolver and parts of revolver; 3. Two rifle barrels, each approximately 6 inches of length. 4. The prosecution contended that at the time of the inspection accused No. 3 was present and admitted before the District Magistrate that the Articles seized were manufactured by Dwarka Arms Stores under the manufacturing licence granted by Government of India in No. 67/78 FNO 19-6-76 GPA-V which authorised the firm to manufacture 700 BL/ML Guns per annum. But it did not authorise manufacturing of guns with revolving chambers or hand hold revolvers or rifle barrels. The above objectionable articles seized by the District Magistrate from M/s. Dwarka Arms Stores were manufactured by the said firm without licence and such manufacture was prohibited by the Arms Act, 1959 (hereinafter referred to as the Act). Dwarka Arms Manufacturing Company had manufactured a revolver with convertible solid chamber, solid barrel to make effective fire arm without licence with an intention of converting and selling illegally the said revolver. 5. The District Magistrate seized the following note-sheets and correspondence copies at the said inspection from the above Stores : i) Exhibit 21 - Note file of Ministry of Home Affairs signed by Sri Y. P. Dangwal, Desk Officer. ii) Exhibit 22 -

Extract from File No. V. 11018/49/81-GPA-V. iii) Exhibit 23 - Extract from file No. V. 11021/52/75 GPA-V dated 17-2-1982 and 17-5-82. iv) Exhibit 24 - D.D. No. V-11018/49/80-GPA-V dated May 1983 addressed to Sri. Dayanand Sahay, M.P. by the Home Minister. v) Exhibit 25 - Extract of note from F. No. V-11018/49 GPA-V dated 2-5-1983 etc. vi) Exhibit 27 - Extract from F. No. V-11018/49/80-GPA-V vii) Exhibit 28 - Extract from note sheet dated 25-9-82 signed by Y. P. Dangwal, Desk Officer. viii) Exhibit 29 - Note sheet dated 7-12-81 signed by Y. P. Dangwal, Desk Officer. ix) Exhibit 30 - Extract from file No. V-11018/49/80 GPA-V Note. x) Exhibit 31 - Note of Ministry of Home Affairs (GPA-V. Desk) dated 7-1-81 signed by Sri Y. P. Dangwal, Desk Officer. xi) Exhibit 32 - Extract from File No. V-11020/11/75 GPA-II (V) signed by S. V. Maruthi, Asst. Legal Adviser dated 18-10-1979 and G. P. Maini, Desk Officer. xii) Exhibit 34 - Letter dated 23-7-1984 of Sri G. Lakshman, Proprietor M/s. Dwaraka Arms Stores, Bellary, Camp, Hyderabad, Addressed to the President of India. xiii) Exhibit 35 - D.O. Letter dated 13th Aug., 1984 from Sri Kulwantsingh, addressed to P.S. to Minister of Home Affairs, Govt. of India, North Block, New Delhi. Apart from the above note sheets, the District Magistrate seized blank letter-head pads of Ministry of Home Affairs, Government of India foolscap size and half size. Accused No. 6 was helping accused No. 1 at every step. Accused No. 6 handed over carbon copies of original note sheets to accused No. 1. The modus operandi of accused No. 6 was to collect copies of the Government letters and note-sheets containing the notings of various officers from different files with a view to get proceeds and obtain orders. It was alleged that accused No. 1 must have obtained those blank letter-heads of Ministry of Home Affairs from the officials of the Home Affairs. On the request of the Superintendent of Police, Bellary, a trap was conducted, and one T. R. Raghunandan, I.A.S., Probationer was directed to act as decoy customer. Accused No. 4 offered to sell a Spanish made gun to the informant. On 11-10-1984 accused No. 4 and his son accused No. 5 had accompanied the informant and the decoy customer Sri Raghunandan and negotiated the sale of the Spanish made gun. The said negotiations were tape-recorded. The said Spanish gun was earlier tested in front of the informant. On 18-10-1984 accused No. 4 was arrested when he was found in possession of the import gun without licence. On the same day accused No. 5 was arrested as he was in possession of 2 cartridges offered for sale. Accused No. 7 was found in possession of instruments with which he could manufacture illegally a fire arm. The District Magistrate lodged the complaint before the Gandhinagar Police and it was registered as Crime No. 244 of 1984. On 4-2-1985 the District Magistrate gave detailed report on the basis of which the said police registered a case in Crime No. 17 of 1985. By a Government order both the Crime numbers were handed over to C.O.D. for investigation and who in turn consolidated both the cases, held an investigation and filed a single charge-sheet on 13-5-1985. It was also mentioned in the report that the documents are under examination by the Ministry of Home Affairs, GOI, New Delhi, Home Department, Vidhana Soudha, Bangalore, and other allied departments, and supplemental charge sheet in respect of the opinions furnished thereof be submitted in due course. From the charge-sheet filed and the charges made out

by the prosecution it was clear that the accused conspired to acquire unlicenced weapons with an intention of selling them illegally through irregular channels and they acquired secret official documents by committing theft of the opinions of various levels of officers in the Ministry of Home Affairs and the letters and other documents belonging to the Ministry of Home Affairs, Home Department, Government of Karnataka, Department of Planning etc. with a dishonest intention and that they possessed such stolen document knowing or having reason to believe that they were stolen documents and that they thereby committed offences punishable under sections 25 and 30 of Arms Act, S. 5(1)(c) of the Official Secrets Act, 1923 and Sections 379 and 411 read with Sections 34 and 120-B of the Indian Penal Code. 6. In pursuance of the aforesaid conspiracy accused 1 to 3 being the joint proprietors of Dwaraka Arms Stores, Bellary, contrary to the conditions of a licence issued to them by the Joint Secretary, Ministry of Home Affairs, Government of India, manufactured single barrel 12 bores 5 chambered breech-loading revolving shot gun and thereby committed an offence punishable under S. 30 of the Arms Act read with Sections 34 and 120-B, I.P.C. accused 1 to 3 who were the joint owners of Dwaraks Arms Stores without licence manufactured revolver with convertible head chamber, solid barrel to make it an effective fire arm and possessed with an intention of converting it and selling it illegally. Thus committed the above offences. Accused No. 6 in pursuance of the aforesaid conspiracy who was formerly working as Desk Officer, Arms Section, Ministry of Home Affairs, Government of India, new Delhi was found having in his possession or control secret official documents containing the information in No. 9/33/48 police addressed to Provincial Government. Copy of Letter No. 18/3/72/GPA-2 dated 7-2-73 addressed to the Government of Mizoram by Sri Amar Singh concerning Ministry of Home Affairs, Government of India, copy of note dated 17-4-82 of Sri Zial Singh, Home Minister dated 23-4-1982, copy of the letter addressed to Home Secretary, M.H.A., Government of India in May, 1982, copy of confidential letter dated 27-4-1966 of M.H.A., G.O.I., copy of confidential letter dated 23-3-1973 of Amar Singh, G.O.I., addressed to Secretary to Government of Rajasthan, Home Department, copy of confidential letter of M.H.A., Government of India, dated 24-11-69 addressed to State Governments, Rajasthan, copy of the confidential letter of M.H.A., Government of India, dated 24-11-69 addressed to State Governments and retained them in his possession when he had no right to retain them and thus committed an offence punishable under S. 5(1)(c)(4) of the Official Secrets Act read with Sections 34 and 120-B of I.P.C. Accused 1 to 3 were found in possession of several notings of the various officers of the Ministry of Home Affairs, Ministry of Defence, Government of India, copies of notings, copies of letters, forming part of the case files of the above Ministries after committing theft of those documents with a dishonest intention of keeping them or making use of them contrary to the interest of the case files of the Ministry or receiving them having reason to believe or knowing the same to be stolen documents belonging to the Ministry of Home Affairs and they thereby committed an offence punishable under S. 379 or 411 read with S. 34 or 120-B, I.P.C. In pursuance of the aforesaid conspiracy, accused No. 4 and accused No. 5 acquired an unlicenced shot gun and attempted to sell it to

Raghunandan on 11-10-1984 the Decoy customer and they were in possession of such a weapon on 18-10-1984 at Hospet and they have thereby committed an offence punishable under S. 25 of the Arms Act read with Sections 34 and 120-B, I.P.C. Further accused 7 was found in possession of instruments with which he could manufacture illegally the fire arm and thereby committed an offence punishable under S. 25 of the Arms Act read with Sections 34 and 120-B, I.P.C. 7. After issuing summons to the above accused, the Government of Karnataka by its notification dated 5-9-1986 accorded sanction to exercise the power and jurisdiction by the member of Delhi Police Establishment within the State of Karnataka for investigation of offences punishable under sections 25 and 30 of the Arms Act. M. Narayana, D.S.P., C.B.I. Special Investigation Cell, New Delhi took up investigation. The said D.S.P. filed 2 interlocutory applications, viz. I. As. 13 and 14 and the orders passed on said I.As. are under challenge in these revision petitions. 8. The grounds which the D.S.P. made out to get reliefs on I.A. No. 13 are as follows : "The charge-sheet filed by the State Police was not a final report, as the investigation was incomplete. The Government of Karnataka issued the notification according sanction to the Delhi Police to investigate the offences punishable under sections 25 and 30 of the Arms Act. Pursuant to the sanction accorded the D.S.P. Special Police Establishment registered a case in R.C. No. 1 of 1987 S.I. V-III-C.B.I. SIC (P). New Delhi on 21-1-1987 and the original F.I.R. has been submitted to the Special Judges, Dharwad, who has jurisdiction to try the offence arising under the Prevention of Corruption Act. The said case has been registered as No. 244/84 and 17/85. The accused in these two cases are the same. The D.S.P. had collected material documents, viz. the case file, connected to the complaint filed by the complainant, C.O.D., Bangalore. In order to conduct further investigation the D.S.P. required all the original documents filed before the Court." 9. The contention raised by D.S.P. Special Police Establishment in support of I.A. No. 13 opposed by the accused by filing detailed counter in the following way : "I.A. No. 13 is not only misconceived but filed just to harass the accused. C.O.D. after detailed investigation filed the charge-sheet. After filing the charge-sheet, the prosecution took time to investigate further, and after more than an year, the Special Public Prosecutor submitted to the Court that there are no further documents to be filed and requested the Court to post the case for arguments before charge. The intention of the prosecution is to protract the progress of the case with ulterior motive to harass the accused. Whatever documents required were infact produced by the prosecution. The earlier investigation was made after obtaining the opinion of the State and the Central Government and as such no further investigation is required. This Court in Writ Petition No. 16532 of 1986 held that two of the main charges in this case which were also the points for consideration in the said writ petitions held as without any substance. I.A. No. 13 is filed only with a view to please those who are inimically disposed towards the accused. The grounds made out in I.A. No. 13 apart from quite evasive are also lacking in particulars. When the entire investigation has been completed and charge-sheet has been filed it is not proper for those who are ill-disposed towards the accused once again seek for further investigation." Thus

contending, it was prayed that the application I.A. No. 13 be dismissed. 10. In support of I.A. No. 14 D.S.P. contended as follows : "The Court has not taken cognizance of the offence punishable under Official Secrets Act as there was no complaint from the Government as required under S. 13 of the Official Secrets Act. The C.O.D. has not obtained any sanction from the District Magistrate for prosecuting the accused as required under S. 39 of the Arms Act. S. 39 of the Arms Act envisages that no person shall be prosecuted in respect of any offence under S. 3 of the Arms Act without the previous sanction from the District Magistrate. The absence of sanction is a mere technical defect. Proceeding without such a sanction is null and void." 11. Thus contending the prosecution prayed that the proceedings be dropped and the accused be discharged and the documents etc. relating to the case be handed over to the C.B.I. Whereas the accused filed objections to I.A. No. 14. In the detailed counter, the accused contended as follows : "No reasons are given by the prosecution for dropping the proceedings and discharging the accused. The reasons given are untenable. When it is made out that the charges levelled against the accused are groundless the accused have to be discharged on merit under S. 239, Cr.P.C. and it is not proper for the C.B.I. to seek for permission for further investigation. This Court in Writ Appeal No. 1 of 1987 dated 23-8-1987 while confirming the decision of the single Judge in Writ Petition No. 16532 of 1986 has held that, accused Nos. 1 to 3 have not at all committed any offence punishable either under S. 25 or under S. 30 of the Arms Act. The finding of the High Court was that in view of the opinion of the Ballistic expert and other evidence the prosecution has not made out any offence punishable under S. 25 or S. 30 of the Act. The accused 1 to 3 held a licence under S. 5 of the Arms Act for manufacture of fire arms mentioned in the licence. The licence was issued to the accused under Form No. 9 of the Arms Rules, 1962. The accused have not committed any act punishable under sections 25 and 30 of the Act as such there is no necessity of obtaining sanction under S. 39 of the Act. Violation of S. 3 of the Arms Act is made punishable under Section 25-B(b). When the High Court held that Section 5 of the Arms Act is applicable to the instant case, there is no necessity to obtain sanction under S. 39 of the Act. The accused are entitled to be discharged on merit as this Court has categorically held in W.A. No. 1/1987 that the offence alleged against accused punishable under sections 25 and 30 of the Arms Act as not sustainable. Charge No. 6 against accused 4 and 5 is the subject-matter of a case registered in Hospet P.S. Crime No. 211 of 1984 and as such, the said case against accused 4 and 5 should not have been clubbed with the case." Thus contending the accused prayed that the application be dismissed. 12. In support of rival contentions on I.As. Nos. 13 and 14, counsel on both sides in addition to filing writing arguments further submitted as follows : It was argued by the Public Prosecutor that in spite of taking cognizance by police, the right of the police to further investigate is not exhausted and the police can exercise such a right as often as necessary when fresh information comes to light. If the Inquiry Officer receives a fresh information he can certainly file an additional charge-sheet. The opinion of Ballistic expert given in the case cannot be accepted as he was not an authority to give opinion about the said arms.

The SBBL gun and revolver are to be sent to the Fire Arm Expert in the Controllerate of Inspection, Ordnance Factory, Ishapur, West Bengal for opinion. He further contended that under the Arms Act, a revolver, the trigger of which is out of order is a fire arm or arm within the meaning of S. 2 of the Arms Act. In the present case a finding should have been given by the Fire Arm Expert and not by a Ballistic expert. Thus contending the prosecution requested that applications be allowed. 13. On the other hand, the learned counsel for the accused submitted that the request of the prosecution on I.As. Nos. 13 and 14 has no basis. According to them, the grounds on which the prosecution sought for investigation were as follows : 1. Sanction was required to be obtained by the District Magistrate to prosecute the accused Nos. 1 to 3 for having manufactured 5 chambered SBBL gun and a revolver in contravention of the licence granted to them. 2. Sanction had to be obtained from the Central Government under S. 167, Cr.P.C. for prosecuting A-6. 3. Opinion had to be obtained from Fire Arms Expert serving in Ordnance Factory, Ishapur. 14. To meet the above grounds, the learned counsel for the accused submitted as follows : To prosecute accused 1 to 6 obtaining prior sanction under S. 3 of the Act is not warranted to the case of accused 1 to 6. When accused 1 to 3 possessed licence to manufacture fire arms and they were authorised to repair 50 pistols and 50 revolvers to say that their case comes under S. 3 of the Act punishable under sections 25 and 30 of the Act is untenable. Obtaining sanction under S. 197, Cr.P.C. so far as A-6 is concerned, the same is not necessary as the Court has not taken cognizance of the offences punishable under S. 5 of the Official Secrets Act as the complaint is not lodged by the Central Government under S. 13(3) of the Official Secrets Act. In earlier proceedings on similar contention when this Court held that "(i) as per the opinion of the expert, the revolver seized from the factory of accused 1 is not a fire arm for which no licence is required; (ii) that accused 1 to 3 have not committed any offence so far as SBBL gun is concerned; (iii) no case has been made out against accused 1 to 3 to punish them under sections 25 and 30 of the Act; (iv) accused are entitled for renewal of the licence", it is not proper to ignore the same. Once the prosecution after a detailed investigation filed the charge-sheet and in the absence of disclosing necessary material to be produced, it is not proper for this Court to grant the permission to investigate further. It was also contended that on merit the accused are entitled for discharge. 15. After hearing both sides, the trial Court framed the following points for consideration : 1. Whether the accused are to be discharged on technical grounds as contended by the prosecution, or on merit under S. 239. Cr.P.C. as contended by the accused ? 2. Whether the prosecution is entitled for permission for further investigation ? Before deciding the request of the prosecution made in I.As. Nos. 13 and 14 or to consider the case under S. 239, Cr.P.C., the trial Court first took up for consideration the case of accused 4 and 5. The trial Court took into consideration the submissions made by the Public Prosecutor that I.As. Nos. 13 and 14 not pressed against accused Nos. 4 and 5 as the accused are facing trial on the same allegations on the basis of the complaint registered in No. 211/84 in the Hospet Town Police Station and the said case is not handed over to the C.B.I. for further investigation,

the Court held that accused 4 and 5 are entitled to be discharged and refused permission to C.B.I. to make further investigation so far as accused 4 and 5 are concerned. 16. The trial Court after hearing both sides and considering the entire material produced and also taking into consideration the effect of certain provisions of IPC, Cr.P.C. Arms Act, Official Secrets Act, etc. referred by both sides including the law laid down by this Court, other High Courts and also the Supreme Court held that on the material made available the prosecution failed to make out a prima facie case so as to connect the accused to the offences alleged. It observed that if the request of the S.P.P. on I.As. Nos. 13 and 14 is granted it amounts to compelling the accused to under go unnecessary harassment. While so observing the trial Court held that the accused deserve to be discharged under S. 239, Cr.P.C. 17. The reasons given by the trial Court to reach the conclusion that the accused deserve to be discharged are as follows : "The 5 chambered SBBL gun and the revolver seized from the premises of the accused were sent to the Ballistic expert for opinion and the Ballistic Expert gave his opinion which is on the record. The Ballistic Expert opined that it is not a fire arm and it is only an imitation fire arm which requires no licences for its manufacture. The view taken by the Ballistic Expert is not contrary to the view taken by the Government of India. The opinion of the Ballistic Expert is that the revolver is a dummy revolver and the same cannot be converted to a lethal fire arm with a small modification, Dummy revolver requires boring of its cylinder for housing ammunition and a firing pin attached in order to fire the ammunition and to make the dummy revolver into an effective fire arm. When the opinion of the Ballistic expert that the revolver is not a fire arm, and it is dummy revolver the question of obtaining licence for its manufacture does not arise. The contention of the Special Public Prosecutor is negatived by the letter of the Central Government which is produced as document No. 7 in the case and it is dated 15-3-1983/12th February, 1985 addressed to the Deputy Inspector General of police, C.I.D., Bangalore by the Deputy Secretary to the Government of India wherein the Deputy Secretary has stated that the Central Government also admitted that the Ballistic expert is a competent person to speak about the fire arms and, therefore, there is no necessity to once again obtain the opinion of the fire Arm Expert. Under licence No. 67 of 1978 the accused are entitled to manufacture Breech Loading Gun. The opinion given by the Ballistic expert is that manufacturing of Breech Loading Gun is not in contravention of the licence issued. The contention raised by the prosecution were negatived by the High Court in Writ Petition No. 16532 of 1986 and confirmed by the Division Bench in Writ Appeal No. 1 of 1987. The observations made in Writ Petition No. 16532 of G. Lakshman v. State of Karnataka read as follows :"(c) Under the Act, conversion of an imitation fire arm can be done only under a licence. Manufacture of an imitation firearm does not require a licence. That is the reason S. 5 does not cover 'imitation firearm' but 'firearm' as defined under S. 2 of the Act. (vi) In Form No. I, firearms or ammunition of categories 1(a) relate to prohibited arms as defined in S. 2(I)(i) of the Act and such others as may be notified. A reading of Clause (a) in Form I indicates that machinery for manufacture also is treated as 'fire arms' for the purpose of licence in Form No. I and

that machinery could be only for the purpose of manufacturing prohibited arms in category I(a). Significantly category II does not figure in any other licences mentioned in Schedule II obviously because no separate licence is required to possess machinery for the manufacture of arms which are not prohibited. That is the reason the Government of India had clarified that Form IX licence was good enough to cover machinery for manufacture of arms and ammunition and Form I was granted for possession of machinery for manufacture of weapons of 'exempted category' namely category (1a) weapons. "(vii) It cannot be said axiomatically that pendency of criminal cases under the Arms Act would be a disqualification to hold a licence. It depends on the nature of the offences with which the person is charged. If it is a case of a person being involved in shooting another, or smuggling fire arms to another country, or trading in fire arms without a licence with persons dangerous to society those offences may be relevant for the purpose of deciding whether a person is unfit to hold a licence." The same came to be confirmed by the Division Bench in Writ Appeal No. 1 of 1987, State of Karnataka v. G. Lakshman. When the High Court itself rejected the said contentions now advanced, it is not proper for him to give a different finding." 17A. For the proposition whether issue estoppel is involved in the case, the trial Court took into consideration the following authorities relied upon by the prosecution : i) Ravinder Singh v. State of Haryana, wherein the Supreme Court held as follows (at page 771 of Cri LJ) : "In order to invoke the rule of issue estoppel not only the parties in the two trials must be the same but also the fact-in-issue proved or not in the earlier trial must be identical with that is sought to be reagitated in the subsequent trial." ii) Baidayanath Basak v. Union of India, 1983 Cri LJ 1542 in which the High Court of Calcutta held as follows (at page 1557) : "In order to attract the principle of issue estoppel there must have been distinctly raised and appropriately decided, the same issue in the earlier criminal trial between the same parties." Taking into consideration the principle laid down in the above authorities the trial Court gave a finding that though the issue estoppel is not there, however the finding given by the High Court on the similar contentions raised by the prosecution cannot be ignored and the same apply to the case on hand. It observed that the accused did not commit any offence punishable under sections 25 and 30 of the Act. 18. Regarding the conspiracy, the trial Court held that no material to hold that accused 7 committed an offence punishable under S. 25 of the Act. When accused 1 possessed a licence, the question of accused 7 also should possess a licence not warranted. Thus observed that the charge levelled against accused 7 as groundless. Regarding offences under Sections 379 and 411 of Cr.P.C. the trial Court found that no case has been made out for the offence punishable under sections 25 and 30 of the Arms Act. It held that there is no material to connect the accused to the offences under sections 319 and 411, Cr.P.C. and under S. 5 of the Official Secrets Act. The trial Court observed that the statement of Sivakumar made before the Inquiry Officer is a death blow to the case of the prosecution. The Court also observed that when no cognizance for offence punishable under Official Secrets Act has been taken the question of discharging the accused under S. 5 of the Official Secrets Act does not arise. The trial Court found that there is

no necessity for further investigation in view of the letter of the Superintendent of Police, C.O.D., Bangalore, who conducted the investigation relevant portion of which reads as follows : "The Government have in their letter cited ordered for a full enquiry into the contention of Deputy Commissioner, Bellary against illegal transactions of G. Laxman, proprietor of Dwaraka Arms Manufacturing Company, Bellary. Securing these documents for the purpose of enquiry was very essential. Hence, I requested Deputy Commissioner, Bellary in my letter of even No. dated 7-1-85 requesting him to cause production of the documents and other articles seized on 12-10-84 drawing his attention to the provisions of S. 91 of the Code of Criminal Procedure, 1973. The Deputy Commissioner, Bellary, was reluctant to hand over the documents and in his reply dated 7-1-1985 intimated under the pretext that those articles/documents requisitioned are necessary for the purpose of his investigation and they are not necessary for the investigation of the case cited. Copy of the letter addressed to the Deputy Commissioner, Bellary and copy of his reply are annexed. For the purpose of carrying out a full enquiry it is requested that the Government may direct the Deputy Commissioner, Bellary to cause production of those articles/documents. This firm is licenced to manufacture 1,800 guns of S.B.B.L/DBBL category per year since 1974. An inspection of the documents of this firm also does not indicate evidence of manufacture of arms in excess of licenced capacity. The contention of the Deputy commissioner, Bellary that G. Laxman Manufactures arms and ammunition in excess of the licenced capacity is far from truth. ..... The contention of the Deputy Commissioner, Bellary that he bribes the testing masters of Kirkee appears to be baseless. Making allegations of such type on such a high authority without basis does not speak well. ..... Local enquiries also did not fetch any support that Lakshman has sold the guns or ammunition to dacoits or bad elements as alleged in the report of the Deputy Commissioner, Bellary. The Deputy Commissioner who raised this point in his letter to Government was not able to suggest or point out any evidence in support of this contention. The Deputy Commissioner making such imaginary allegations on suspicion or suppositions that G. Lakshman supplied arms and ammunition to dacoits and others was uncalled for in the circumstances. ..... The contention of the proprietor, Dwaraka Arms Manufacturing Company that the Deputy Commissioner has not observed the norms of law in securing local respectable panchayatdars for the search is with sense. ..... My enquiry and the investigation made so far discloses that G. Laxman, proprietor of Dwaraka Arms Manufacturing Company has not indulged in unfair methods to manufacture arms and ammunitions. The contention of Sri G. Laxman that the Deputy Commissioner is harassing him also leads to the truth." Likewise the report of one Shri Nanaiah, Police Inspector, C.A., C.O.D., Bangalore, which stated that the allegations made against the accused are baseless and the relevant portion of which reads as follows : "The investigation so far conducted by me, reveals, that, the Superintendent of Police, Bellary had kidnapped Sri R. N. Laxmaiah and his son from his house on 11-10-84 at 07-00 hrs. in Car No. MER 1442, through the Probationer I.A.S. Officer and the Circle Inspector of

Police, Hospet, took him to Kampli Road near Kuduthini and assaulted him mercilessly on the canal bund, tape-recorded his speech, brought him back to Low Level canal guest house, Bellary, after giving him breakfast from Suddha Hotel near Spinning Mill and took him to Rampur Police Station and wrongfully confined him in the lock up, tortured him ad his son at Travellors Bungalow, Rampur, then, the Deputy Superintendent of Police. Hospet and Circle Inspector of Police, Hospet, went to Rampur in Jeep No. MEK 1141 from Hospet to Rampur via Bellary and took Sri R. N. Lakshmaiah and his son from the lock-up and brought them to Hospet via Gudekota, Kudligi, Maremanahally on 18-10-84 and booked a false case in Cr. No. 211/84, stating that he was found with a gun and cartridges at K.S.R.T.C. bus stand etc. His house was searched on 10-10-84 by the Police Sub-Inspector, Town Police Station, Hospet. ..... "The Superintendent of Police is responsible to tell how and from where he got the gun to book a false case against an innocent retired reserve Sub-Inspector. ..... It clearly shows that, the Superintendent of Police, Bellary is dictating the C.O.D. Officers and asking the officers to change the Investigating Officers in the middle. Why the Superintendent of Police, Bellary is visiting COD when the cases are under investigation and serious allegations are against him. It clearly indicates that he does not want impartial investigation by the COD. If so where is justice ? I do not know the reasons, why I have been asked to hand over the case file to some other officer without valid grounds." The trial Court also held that when the material produced does not connect the accused to the offence alleged if once again the accused are subjected to further investigation, the same tantamounts to a clear case of harassment. 19. Regarding the scope of further investigation, the trial Court took into consideration the scope of S. 173, Cr.P.C. and also the authorities relied upon by the prosecution wherein respectively held as follows : (i) Deepak Dwarakadas Patel v. State of Gujarat 1980 Cri LJ 29 wherein the Gujarat High Court held as follows (at page 30) : "It is not necessary that there should be a fresh investigation and discovery of new material for lodging an additional charge-sheet in the case. If the very material is misunderstood by the Police Station Officer and if he has received proper light from his superiors, he can certainly file an additional charge-sheet." (ii) Anil Anantrao Lokhande v. State of Maharashtra, 1981 Cri LJ 125 wherein the Bombay High Court held thus (at Page 130) : "Sub-section 8 of S. 173, Cr.P.C. newly introduced in the Code confers an express and specific power in the police to carry out further investigation after cognizance is taken by the Court." (iii) P. G. Periaswamy v. Inspector of Police, Pennagaram Police Station, 1984 Cri LJ 239 wherein the Madras High Court held as follows (at page 241) : "Section 173, Cr.P.C. does not say anything about the filing of one or more charge-sheets on the basis of the same investigation. A police officer who has filed a charge-sheet in which he has not laid a charge against two or several persons against whom information was received by him at the earlier stage of investigation, could file a further charge-sheet against those persons without further investigation being done." (iv) Aravindakshan v. State of Kerala, 1985 Cri LJ 1389 wherein the Kerala High Court held as follows (at page 1394) : "The power of the Court to order

further investigation even after taking cognizance of the offence is always there and S. 173(8) need not be understood as empowering the police alone and prohibiting the Magistrate (at page 1393). It would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light." (v) State of Bihar v. J. A. C. Saldanna, , wherein the Supreme Court held as under : "The State Government is competent to direct I.G.P., vigilance to take over investigation of cognizable offence registered at police station." 20. The learned counsel for the accused did not dispute the principles laid down in the said cases. But the learned Magistrate after satisfying that (i) no fresh material produced for making further investigation, (ii) the points made out by the prosecution for further investigation were the following : "(1) Sanction has to be obtained from the District Magistrate in respect of the offences punishable under sections 25 and 30 of the Arms Act. (2) Sanction has to be obtained under S. 197, Cr.P.C. in respect of A-6, and (3) S.B.B.L. gun and revolver seized in this case were sent to Ballistic Expert for opinion and said Ballistic expert is not competent person to opine about the said articles and as such, it is necessary to send the articles of Fire Arm Expert in the Controllerate of Inspection Ordnance Factory, Ishapur." and (iii) bearing in mind the principle laid down in State v. Ram Chand, and in N. Brahmeshwararao v. Sub-Inspector of Police Vinukonda, 1978 Cri LJ 1005) held as follows : (a) The case of the accused was only under S. 5 of the Arms Act and not under S. 3 of the Act, the sanction not warranted. (b) Sanction for prosecuting also not warranted as no fresh material found out after filing of charge-sheet. (c) When no cognizance has been taken against accused 6 the question of obtaining sanction under S. 169(197), Cr.P.C. does not arise. (d) If the permission as sought is granted, it results in allowing the prosecution to file a fresh case and prosecute the same after the period of limitation which is not permissible in law. By so observing the trial Court dismissed both the applications. 21. Aggrieved by the orders of the trial Court these revision petitions have been filed pleading as follows : (1) The order of the trial Court is arbitrary and illegal. (2) The order of the Court below is contrary to the provisions of S. 173. Cr.P.C. (3) The observation that, when the C.O.D. had filed charge-sheet the C.B.I. has no right in making a request for permission for further investigation is incorrect. (4) The order of discharge has been made on the basis of the incomplete information. (5) The trial Court committed a mistake in placing reliance on the opinion of the Ballistic expert, on the other hand should have directed to obtain opinion form the Fire Arms Expert. (6) The trial Court committed an error in not noticing that according permission under S. 197, Cr.P.C. a mandatory one, as the same was not obtained for further investigation a just one. (7) The reasoning adopted to hold that the case of the prosecution does not come within the purview of the Act is incorrect. (8) The trial Court failed to take into consideration the effect of the Official Secrets Act. (9) The trial Court committed an error in not directing the C.O.D. to proceed further under S. 173, Cr.P.C. (10) The opinion formed by the trial Court about the nature of the gun possessed by the accused and sent for opinion quite wrong. The trial Court should not have taken cognizance on the insufficient material that too

when the C.B.I. wanted further investigation. (11) The trial Court committed a mistake in holding that some of the issues have been already decided by the High Court in favour of the accused. (12) The trial Court should have noticed that the observation made by the High Court in earlier writ proceedings only in respect of interpretation of document. (13) The observation made by the learned Magistrate on the complaint that the District Magistrate acted as if as an investigating agency was unwarranted as the District Magistrate was discharging his official duties on the specific instructions from the Government of India. (14) The finding of the trial Court that there cannot be a permission for further investigation by C.B.I. on the ground that subsequent to filing charge-sheet no fresh material has been produced in unsustainable. (15) The findings given by the trial Court on other offences punishable under sections 381 and 397, I.P.C. again incorrect. (16) The procedure followed by the learned Magistrate in taking cognizance for the offences alleged and subsequently discharging the accused under S. 239, Cr.P.C. is quite illegal and without jurisdiction. 22. In support of the above contentions, the learned Advocate-General argued as follows : (1) The learned Magistrate was not right in rejecting the applications filed by the prosecution, viz., I.As. 13 and 14, and discharging the accused. (2) When proceedings initiated were without obtaining prior sanction of the competent authority, the request of the prosecution to return the documents seized and allow for further investigation was a just request. (3) The trial court committed a mistake in not noticing the opinion given by the ballistic expert not a competent one. Because the opinion should have been given by a Fire Arm Expert. (4) Merely because the proceedings reached the stage of hearing on charges the same was not a ground to reject the prosecution's request as it is well settled that under S. 173(8) of the Cr.P.C. permission be granted for further investigation at any stage even after the closure of the case provided a fresh material is found out. (5) The finding given by the trial Court on the issue estoppel by making use of the orders passed by this Court in writ proceedings is quite incorrect. (6) When the offences levelled against the accused were serious in nature the learned Magistrate should have noticed that the prosecution's request a reasonable one instead of he discharging the accused. (7) The order of the trial Court is resultant of failure to exercise the powers conferred under S. 176(3), Cr.P.C. 23. In support of his contentions, he also placed reliance of the decision of the Supreme Court in Ram Lal Narang v. State (Delhi Admn.), and in State of Bihar v. J. A. C. Saldanna, . Thus, the learned Advocate-General submitted that the petitions be allowed. 24. As an answer to the above contentions, Sri P. Viswanatha Shetty, learned counsel for the accused, submitted as follows : (1) Under S. 176(3) of Cr.P.C. the learned Magistrate has got power to direct the prosecution to go ahead with further investigation. But, that does not mean that the same shall be exercised in each and every case. (2) The trial Court was justified in refusing to grant the request of the prosecution made in I.As. Nos. 13 and 14 as the prosecution failed to substantiate how such a request was tenable. (3) Merely because the offence alleged is of serious in nature that does not mean an innocent person be subjected to harassment and humiliation even in the absence of sufficient material to connect him/them

to the said offence. (4) Mere contention that the prosecution desires further investigation without producing fresh material which it had collected and on which further investigation is required was not a ground to grant permission for further investigation. (5) When the issues involved in the present case almost identical in the earlier writ proceedings and when this Court after considering the material produced gave a finding in favour of the accused it is not proper once again to reconsider such issue. (6) When it is not shown any manifest illegality or improper exercise of jurisdiction by the trial Court while passing order under challenge it is not proper to interfere with the orders under challenge. 25. In support of his contentions Sri Shetty placed reliance on the following authorities : (1) Amritlal Ratilal Mehta v. State of Gujarat, AIR 1980 SC 310 : (1980 Cri LJ 214) wherein the Supreme Court held thus (at page 215 of Cri LJ) : "The learned Judge of the High Court was of the view that the acquittal on the charge under S. 477-A was not a bar to a conviction under S. 420 as the ingredients of the two offences were different. According to the learned Judge, the gist of the offence under S. 477-A was that the false entries must have been made wilfully and with intent to defraud whereas the absence of the offence under S. 420 was that the accused should have acted dishonestly. We are afraid that the learned Judge entirely misdirected himself. The question here is not whether the ingredients of the two offences are the same or substantially the same. That question would be relevant if the plea was one autrefois acquit or autrefois convict. The question is not even of 'issue estoppel' properly so-called as there were no separate trials. The question really is about the binding force and the conclusive nature, at later stage of a case, of finding of fact finally determined at an earlier stage of the case. The question of res integra. In Bhagat Ram v. State of Rajasthan and State of Rajasthan v. Tarachand Jain it had been held by this Court, an earlier finding which had attained finality is binding in the subsequent proceedings in the case. The question about the binding force of a finding at an earlier stage would depend on the question as to what the allegations were, what facts were required to be proved and what findings were arrived at. The question thus is not whether the ingredients of the two offences are the same but whether the facts alleged and required to be proved in the particular case to establish the offences are basically the same. The charges set out by us at the outset show that the essential allegation which was required to be proved in respect of the two charges was whether the gate passes were made dishonestly so far as the charge under S. 420 was concerned with 'with intent to defraud' so far as the charge under S. 477-A was concerned. A finding that the gate passes were made inadvertently and negligently was destructive of both the charges. If for the purpose of the offence under S. 477-A, the Court found that the entries made by the accused in the gate passes were made inadvertently and negligently but not wilfully or with a view to defraud and that finding became final, it would not be open to the Court, later to find, on the charge under S. 420, that the entries on the gate passes were made not inadvertently and negligently, but dishonestly. On the facts of the present case, we hold that the finding of fact to the effect that the gate passes were made inadvertently and negligently and not wilfully or with intent to defraud which led to the acquit-

tal of the accused on the charge under S. 477-A must, that acquittal having become final, operate for the benefit of the accused and lead to their acquittal on the charge under S. 420 also. The finding that the gate passes were made inadvertently and negligently, as we said, was destructive of the charges under both S. 420 and S. 477-A." (2) In Lalta v. State of Uttar Pradesh, the Supreme Court held thus (at page 1272 of Cri LJ) : "It is manifest in the present case that the appellants cannot plead the bar enacted in S. 403(1) of the Criminal Procedure Code. It is equally manifest that the prosecution of the appellants would be permitted under sub-section (2) of S. 403, Criminal Procedure Code. The question presented for determination in this appeal is, however, different. The question is whether where an issue of fact has been tried by a competent Court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding a reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of S. 403(2), Criminal Procedure Code. The distinction between the principle of autre fois acquit and the rule as to issue estoppel, in other words, the objection to the reception of evidence to prove an identical fact which has been the subject-matter of an earlier finding between the same parties is clearly brought out in the following passage from the judgment of Wright, J. in the Queen v. Ollis (1900) 2 QB 758 at pp. 768-769 : 'The real question is whether this relevant evidence of the false pretence on July 5, or 6 ought to have been excluded on the ground that it was part of the evidence given for the prosecution at the former trial, at which the prisoner was charged with having obtained money from Ramsey on that false pretence, and was acquitted of that charge.' " (3) The State of Rajasthan v. Tarachand Jain, wherein the Supreme Court held thus (at page 1401) : ".....
Although the above observations of the Special Judge were assailed in appeal before the High Court and the High Court set aside the judgment of the Special Judge in this respect, we are of the opinion that the question as to whether sanction had been accorded by the chief Minister could not be agitated in view of the earlier Division Bench decision dated October 5, 1962 of the High court. ..... The judgment dated October 5, 1962 of the Division Bench of the High Court, in our opinion, was binding upon the High Court when it disposed of the appeal filed by the accused-respondent as per judgment dated March 27, 1968 and it was in our opinion, not permissible to go into the question as to whether the sanction had been accorded by the Chief Minister. The question as to what is the binding effect of a decision in subsequent proceedings of the same criminal matter was considered by this Court in the case of Bhagat Ram v. State of Rajasthan and it was held that the principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. ..... 14. There is no question in the present case also of a previous trial and acquittal. This fact would not, however, detract

from the binding force of the earlier decision of the High Court. All that we are concerned with is as to whether the judgment of the High Court in revision is binding in the subsequent proceedings in the case. So far as this question is concerned, we have no doubt in our minds that the judgment of the High Court in revision is binding in the subsequent proceedings in the case." So arguing Sri Shetty submitted that the petitions be dismissed. 26. In order to appreciate the correctness or otherwise of the order passed by the trial Court rejecting I.As. 13 and 14 and discharging the accused; whether the prosecution is entitled for further investigation; whether there are any merits in the contentions raised by both sides, it is proper to understand the scope of the following sections, viz. (1) Sections 25 and 30 of the Indian Arms Act, 1959, (2) Ss. 3, 5(1)(c) and (4) of the Official Secrets Act, 1923, (3) Sections 379, 411 read with Sections 34 and 120-B of the Indian Penal Code and (4) Ss. 173(3) and (8), 197, 239, 300, 397 and 401 of the Code of Criminal Procedure. 27. Section 25 of the Indian Arms Act reads as follows : "25. Punishment for certain offences. - (1) Whoever - (a) manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion repair, test or proof, any arms or ammunition in contravention of S. 5; or (b) shortens the barrel of a firearm or converts an imitation firearm into a firearm in contravention of S. 6; or (c) acquires, has in his possession or carries, or manufactures, sells, transfers, converts, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any prohibited arms or prohibited ammunition in contravention of S. 7; or (d) brings into, or takes out of, India, any arms or ammunition of any class or description in contravention of S. 11, Shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable for fine. (1-A) Whoever has in contravention of a notification issued under S. 24-A in his possession or in contravention of a notification issued under S. 24-B carries or otherwise has in his possession, any arms or ammunition shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years shall also be liable for fine. (1-B) Whoever - (a) acquires, has in his possession or carries any firearm or ammunition in contravention of S. 3; or (b) acquires, has in his possession or carries in any place specified by Notification under S. 4 any arms of such class or description as has been specified in that notification in contravention of that section; or (c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of S. 8 or dies any act in contravention of sub-section (1) of that section; or (d) being a person to whom sub-clause (ii) or sub-clause (iii) of Clause (a) of Sub-section (1) of S. 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or (e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of Clause (b) of sub-section (1) of S. 9; or (f) brings into, or takes out of, India, any arms or ammunition in contravention of S. 10; or (g) transports any arms or ammunition in contravention of S. 12; or (h) fails to deposit arms or ammunition as required

by sub-section (2) of S. 3, or sub-section (1) of S. 21; or (i) being a manufacturer of, or dealer in, arms or ammunition, fails on being required to do so by Rules made under S. 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals such arms or ammunition or refuses to point out where the same are or is manufactured or kept shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine : Provided that the Court may, for any adequate and special reason to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year. (1-C) Notwithstanding anything contained in sub-section (1-B), whoever commits an offence punishable under that sub-section in any disturbed area shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Explanation. - For the purposes of this sub-section, 'disturbed area' means any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, and includes any areas specified by Notification under S. 24-A or S. 24-B. (2) Whoever being a person to whom sub-clause (i) of Clause (a) of sub-section (1) of S. 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. (3) Whoever sells or transfers any firearm, ammunition or other arms - (i) without informing the Deputy Magistrate having jurisdiction or the officer-in-charge of the nearest police station, of the intended sale or transfer of that firearm, ammunition or other arms; or (ii) before the expiration of the period of forty days from the date of giving such information to such District Magistrate or the officer-in-charge of the police station in contravention of the provisions of Clause (a), or Clause (b) of the proviso to sub-section (2) of S. 5, shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both."(4) Whoever fails to deliver up a licence when so required by the licensing authority under sub-section (1) of of S. 17 for the purpose of varying the conditions specified in the licence or fails to surrender a licence to the appropriate authority under sub-section (10) of that section on its suspension or revocation shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to five hundred rupees, or with both. (5) Whoever, when required under S. 19 to give his name and address, refuses to give such name and address or gives a name or address which subsequently transpires to be false shall be punishable with imprisonment for a term which may extend to six months, or with fine of an amount which may extend to two hundred rupees, or with both." Section 30 of the Arms Act reads thus : "30. Punishment for contravention of licence or rule. - Whoever contravenes any condition of a licence or any provision of this Act or any Rule made thereunder, for which no punishment is provided

elsewhere in this Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both." Section 3 of the Official Secrets Act, 1923, reads thus : "3(1). If any person for any purpose prejudicial to the safety or interest 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 pass word, or any sketch, plan, model, article or not 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 prosecutions 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 pass word 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 of 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 pass word 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." Section 5 of the Official Secrets Act reads as under : "5. (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 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 hold 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) willfully communicates the code or pass word, 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 interests 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 pass word 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, pass word, 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." Section 379 of the Indian Penal Code is extracted hereunder : "379. Punishment for theft. - Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both." Section 411 of the Indian Penal Code reads as follows : "411. Dishonestly receiving stolen property. - Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either discription for a term which may extend to three years, or with fine, or with both." Section 34 of the Indian Penal Code reads as under : "34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone." Section 120-B of the Indian Penal Code reads thus : "120-B Punishment of criminal conspiracy. - (1) Whoever is party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both." Section 173(3) and (8) of the code of Criminal Procedure

read as follows : “173(3) Where a superior officer of police has been appointed under S. 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation. ... ... (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-secs. (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).” Section 197 of the Code of Criminal Procedure is extracted below : “197. (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 Art. 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 Art. 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 Art. 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 of 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." Section 239 of the Code of Criminal Procedure reads as under : "239. If, upon considering the police report and the documents sent with it under S. 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." Section 300 of the Code of Criminal Procedure reads thus : "300. (1) A person who has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of S. 221, or for which he might have been convicted under sub-section (2) thereof. (2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of S. 220. (3) A person convicted of any offence constituted by any act causing consequence which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted. (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged. (5) A person discharged under S. 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate. (6) Nothing in this section shall affect the provisions of S. 26 of the General Clauses Act, 1897 or of S. 188 of this Code. Explanation. - The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section." Section 397(1) of the Code of Criminal Procedure reads thus : "397(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or property of any

finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of S. 398." Section 401 of the Code of Criminal Procedure is extracted below : "401. (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 390 and 391 or on a Court of Session by S. 307 and when the Judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by S. 392. (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous"brief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly." 28. In order to appreciate whether the prosecution had made out a case for proceeding against the accused for the offences referred to and whether the request for further investigation and return of the documents was a just one and discharging of the accused was correct it is proper to bear in mind the following points : No doubt the charges levelled against the accused were serious in nature. But, the material produced by the prosecution was not sufficient to connect the accused to the offence alleged. The offence alleged in the instant case was that Accused 1 to 3 without possessing licence were manufacturing fire arms. An identical complaint was made in the writ proceedings referred to earlier. The learned single Judge as well as the Division Bench of this Court held in the writ proceedings that the respondents therein failed to establish that the accused were manufacturing any fire arm without licence. Thus observing directed the authorities to renew the licence. The facts involved in the said writ proceedings and the complaint made in these proceedings against the accused were almost identical. 29. After appreciating the material and considering the rival contentions, this Court both in the writ petition and in the writ appeal held as follows : In the writ petition : "16. (a) Unlicensed manufacture of five chambered Chamber loading gun under licence No. 67/78 : The licence in question permitted the manufacture of breech loading and muzzle loading guns. Petitioner's case is that a five chambered gun comes under the category of breech loading gun. This view was supported by the opinion of the Ballistic

Expert. Respondent differed from this opinion placing reliance on Rule 20 of the Rules. Rule 20 reads as under : '(1) The licensing authority while granting a licence in Form IX shall show clearly in the licence Form : (i) the categories and description of the arms or ammunition covered by the licence; (ii) the transactions permitted in respect of the different categories of arms or ammunition, and omit any transactions, or categories of arms or ammunitions, not covered by the licence. (2) A copy of every licence granted in Form IX by an authority other than the District Magistrate of the place of business, factory or shop of the licence shall forthwith be sent to that District Magistrate.' This Rule casts an obligation on the Licensing Authority to categories and describe the arms that could be manufactured under the licence granted. It is common ground that the petitioner had manufactured one gun of this type in 1982 and sent the same for proof testing. This gun was not proof tested because the petitioner was asked to get the clearance from the Home Ministry as the proof testing authorities found that this gun was not 'in conformity with the shot guns normally being manufactured' by 'the trade firms in India'. Petitioner had written to the Home Secretary. Government of India on 3-11-1982 for such permission pleading that this gun was covered by the licence in question. The Government of India do not appear to have taken a contrary view. The Ballistic Expert had also opined that this gun is 'a Breech loading revolving shot gun'. If there was any ambiguity in the licence granted to the petitioner, that ambiguity could not be used against the petitioner. The persons who were better qualified to give their opinion was the Government of India which granted the licence and the Ballistic expert who had given a favourable opinion. 16(c). Unauthorised manufacture of a revolver by the applicant : The third ground on which respondent rested its recition was that the petitioner had manufactured parts of a revolver in his factory premises. Parts of revolver would also be 'fire arm' under the Act. The opinion of the Ballistic expert was that it was a dummy revolver and could not have been converted into a lethal firearm with 'small modifications'. According to him a dummy revolver required boring of its cylinder and barrel for housing ammunition and a firing pin to be attached in order to fire the ammunition and make the dummy an effective firearm. Respondent took the view that these modifications are 'simple modifications' which any manufacturer of arms and ammunition could make with the machinery and the other facilities he would be having. It also found that no established manufacturer would manufacture a 'dummy' without meaning to develop it 'eventually as a firearm'. Even otherwise such manufacture was not covered by any of the licences. Respondent does agree with the opinion of the Ballistic Expert that the petitioner had manufactured a dummy weapon. Does this 'dummy' become a firearm which is prohibited under the Act and/or requires a licence under the Act is the pertinent question. S. 6 of the Act gives a clue to this question. It reads : 'no person shall shorten the barrel or convert and imitation firearm into a firearm unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder.' A similar provision is not found in the 1878 Act. A similar provision is not found in the English Act (Fire Arms Act, 1968). However a provision is found in the Fire Arms Act, 1982 in

the United Kingdom as follows : '(1) This Act applies to an imitation firearm if : (a) it has the appearance of being a firearm to which S. 1 of the 1968 Act (firearms requiring a firearm certificate) applies; and (b) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies.' Under our Act, conversion of an imitation firearm into a firearm can be done only under a licence. Manufacture of an imitation firearm does not require a licence. That is the reason S. 5 with which we are concerned does not cover 'imitation firearm' but 'firearm' as defined under S. 2 of the Act. It is not the case of the respondent that imitation firearm is of such class or description as prescribed by any notification. This section was not referred to by respondent in the impugned order. All the same it came to the conclusion : 'Government therefore, are constrained to observe that even in this case the manufacture of this half-finished weapon amounted to unauthorised manufacture contravening the specific provisions of the Arms Act and the Rules framed thereunder.' What those provisions and the Rules are, this court cannot discern from the impugned order. The only provision in the Act on 'dummy' arms is S. 6 and without a consideration of the same, respondent could not have come to the conclusion that the manufacture of 'dummy' revolver was unauthorised manufacture as the same was not covered by any of the licences petitioner had." In the writ appeal at paras 44 and 45 of the judgment the Division Bench of this Court held as follows : "Regarding the cases pertaining to the manufacture of 5-chambered breech loading revolving gun and dummy model revolver, in respect of which offences under sections 25 and 30 of the Arms Act etc., have been alleged, the learned single Judge has held that, on the face of it, the allegations cannot be sustained. As already pointed out, neither the impugned order of the respondent nor its statement of objections to the Writ Petition, explain as to how these alleged involvement actually constitute a serious charge, specially when the opinion of the Ballistic expert and of the Central Government support the petitioner's claim. Para 24(vi) of the order refers to unauthorised manufacture of a revolver by the petitioner. There is no dispute that this was a half-finished product. A remote possibility of this half finished product into a revolver has been equated to the manufacturing of a revolver itself ignoring the report of the Ballistic expert who stated that it was a dummy revolver and cannot be converted into a lethal fire arm by small modifications. Elaborate reasons are given by the learned Single Judge in para 16(c) of his order to reject this ground as irrelevant. In fact, a finding has been given that manufacture of an 'imitation firearm' does not require a licence. During the course of argument, no serious attempt was made to dislodge the findings of the learned Single Judge on this issue. It is one thing to make allegations in damaging term. But, when it comes to analyse the allegations, the allegations will have to stand the test of reason. As shown above, these allegations when scrutinised, are shown to be immaterial, trivial and irrelevant." 30. In view of the above observations made against the accused to apply Sections 25 and 30 of the Arms Act, it is not proper to contend once again that the accused are liable to be punished for the same offence. In view of the principle of res judicata or the principle of Issue Estoppel, if S. 300 is properly understood the conclusion is that a person cannot be tried twice for

the same offence. Though earlier proceedings were not criminal proceedings, but the finding given by this Court in the earlier proceedings and in subsequent proceedings basically on same set of facts, it is not proper to try for the same as the observations of this Court in the earlier proceedings will have binding nature on the present proceedings. The trial Court while taking into consideration the scope of S. 300, Cr.P.C. and the authorities relied upon by both sides held that on facts the authorities relied upon by the prosecution are not applicable to the case. On the other hand, the trial Court observed that the principle laid down in the writ proceedings and observations made on the alleged offences are to be respected. Otherwise, if action is ordered to be taken on the same set of facts it amounts to unnecessarily harassing the accused. 31. Various High Courts and the Supreme Court on the propriety of trying the case for the second time for the same offence on similar set of facts have held the same as improper. 32. In the case of The Assistant Collector of Customs, Bombay v. L. R. Melwani, the Supreme Court observed that the issue estoppel rule "is but a facet of the doctrine of autre fois acquit" and it is necessary for an accused person to establish that he had been tried by a court of 'competent jurisdiction' for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. Earlier to the present proceedings there was no such trial of the accused or conviction. But the finding of this Court in earlier writ proceedings on similar allegations were to the effect that the respondents failed to establish that the accused were manufacturing fire arms without licence. But what they were manufacturing were only 'dummy fire arms'. In the said writ proceedings the accused were absolved of charges. 33. In the case of Bhagat Ram v. State of Rajasthan, , the Supreme Court observed thus (at page 1506 (of AIR)) : The principle of res judicata is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. The plea of autre fois acquit as a bar to prosecution embodied in S. 403 of the Code of Criminal Procedure is based upon the same wholesome principle." 34. In the case of The State of Rajasthan v. Tarachand Jain, , while explaining the scope of proceedings and the binding nature of the judgment the Supreme Court held thus : "Where the earlier Division Bench of the High Court in revision, has accepted the position that the sanction under S. 6 of the Prevention of Corruption Act had, in fact, been accorded by the Chief Minister of the State and that he was competent to sanction for the prosecution of the accused and it remanded the case to the Special Judge, the High Court in subsequent appeal against the order of the Special Judge after remand, cannot go into the question as to whether the sanction had been accorded by the Chief Minister. The judgment of the earlier Bench is binding on the High Court in disposing of the appeal. and 1950 AC 458 Rel. on." Similar is the view of the Supreme Court in Pritam Singh's case, and in Thakur Ram v. The State of Bihar, . In T. V. Sharma v. R. Meeriah, , Full Bench of the Andhra Pradesh High Court held as follows (at page 229 (of AIR) : "Thus 'issue estoppel' or 'res judicata' applies to issues of fact and also of law which have been raised and settled once and for all between the parties even if the judgment is pronounced in criminal

proceedings. Where in proceedings arising in the very same sessions case under S. 120-B read with S. 201 and S. 120-B read with S. 500, IPC the High Court has held on a prior occasion that the accused 7 to 9 cannot be proceeded against for want of sanction under S. 197, Cr.P.C. and the prosecution against A-3 to A-5 is barred by limitation, such a decision would be final at least in so far as the same accused is concerned. The decision of the High Court though erroneous is binding on both the parties in subsequent proceedings and A-7 to A-9 and A-3 to A-5 cannot be proceeded against in respect of charge under S. 120-B read with S. 201 and S. 120-B read with S. 500 I.P.C." From the above discussion, it is clear that the trial Court was justified in arriving at a conclusion that the issues involved in the present proceedings are similar to the earlier writ proceedings and the benefit given by the Court to the accused in the earlier writ proceedings has to be extended in these proceedings. It is appropriate to conclude this point by again quoting a portion in the judgment of the Supreme Court rendered in the case of State of Rajasthan v. Tarachand Jain, wherein it is held as follows (at page 1402 (of Cri LJ)) : "There is no question in the present case also of a previous trial and acquittal. This fact would not, however, detract from the binding force of the earlier decision of the High Court. All that we are concerned with is as to whether the judgment of the High Court in revision is binding in the subsequent proceedings in the case. So far as this question is concerned, we have no doubt in our minds that the judgment of the High Court in revision is binding in the subsequent proceedings in the case." 35. The second point to be considered is whether as and when a request is made for further investigation is it proper on the part of the leaned Magistrate to extend such a benefit ? The scope of S. 173(3) and (8), Cr.P.C. is to see that an offender shall not be acquitted for want of procedural defect. If S. 173 is understood properly it envisages that in spite of taking cognizance of an offence still the power of the Magistrate to order for further investigation is not barred, as such a right for further investigation by police officer is not exhaustive and it can be exercised as and when fresh material is found. This position has been explained by the Supreme Court in Om Prakash Narangh v. State (Delhi Admn.), thus (at page 1357 (of Cri LJ)) : "Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under section 173 of the 1898 Code, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. There was no provision in the Code of Criminal Procedure (1898) which, expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither S. 173 nor S. 190 lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permits repeated investigations on discovery of fresh facts." Further in the case of Resham Lal Yadav v. The State of Bihar, 1981 Cri LJ 976 on the scope of S. 173(8) the Supreme Court held that even after filing a charge sheet, the same can be reopened and a supplementary charge-sheet be submitted on the basis of such materials which did not come to the knowledge of the Investigating Officer during investigation and not as a

routine affair. However the Supreme Court in the case of R. P. Kapur v. State of Punjab, while interpreting the scope of S. 173, Cr.P.C. at para 9 on page 870 held as follows : "It is of utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with any ulterior motive." In the instant case, it is not the case of the prosecution that they have come in possession of fresh material or information which they were unable to find out earlier in spite of due deligence or the same was not within their knowledge. The ground alleged by the prosecution was that case was lodged against the accused without obtaining prior opinion of the Forensic expert, but by mistake based the case on the opinion furnished by the Ballistic expert who was not competent to give such an opinion. But this contention, in view of the letter of the Government of India which said that Ballistic Expert is competent to give opinion, has to be held as untenable. Apart from this, the statement of one Sudhakar, the Section Officer of the Central Government, the letter of the Superintendent of Police, C.O.D., Bangalore, and Nanaiah, Inspector, C.O.D., Bangalore, coupled with dropping the proceedings against the other accused the learned Magistrate held that the prosecution has not made out a prima facie case against the accused. He also observed that no case coming within the purview of the provisions of the Arms Act and S. 3 of the said Act has been made out. Hence, the conclusion is that the request of the prosecution that the records be returned to them for further investigation is neither warranted nor tenable as no satisfactory, convincing and fresh material produced to attract S. 173(3) and (8) Cr.P.C. 36. The next point to be considered is whether the learned Magistrate was justified in discharging the accused ? The learned Magistrate on the consideration of the material produced came to the conclusion that accusation made against the accused as groundless. On the basis of the same allegation, earlier the State had refused the request of Accused No. 1 to renew the licence. But when it was challenged before this Court in writ proceedings, this Court held such a refusal was bad and directed the State to renew the licence. 37. If S. 239 of Cr.P.C. is properly understood, it explains that if there are no sufficient grounds in the allegations to proceed against the accused, then the accused are to be discharged. Further before discharging the accused there is no obligation on the earned Magistrate to record the evidence. This position has been very well explained in the following decisions : Section 239, Cr.P.C. contemplates that before taking a decision regarding charge or discharge on the material available the Magistrate concerned shall consider the said material in a judicious manner as held by this Court in State of Karnataka v. Munivenkatappa 1978 (1) Kar LJ 41 thus : "S. 239 expressly authorises the usage of statements of witnesses examined by the police for considering the question of discharge or framing a charge. It cannot be said that the Magistrate at the stage of framing the charge, has not to apply his judicial mind for considering whether or not there is ground for presuming the commission of the offence by the accused." 38. Regarding the scope of discharge, in the case of Smt. Badamo Devi v. State, ILR 1980 HP 370 : (1980 Cri LJ 1143), the High court of Himachal Pradesh held as follows (at page

1144 of Cri LJ) : "The decision whether to discharge the accused or to frame a charge against him has not been left to the unfettered and unbridled discretion of the Magistrate and definite guidelines have been prescribed in S. 239 and 240 of the Code which the Magistrate must observe and comply with before arriving at his conclusion of discharging the accused or of framing a charge against him. These provisions demand that the Magistrate must consider the police report and all the documents furnished by the police along with such report and if need be, to examine the accused, hear the arguments of both the prosecution and the accused and then arrive at his conclusion, independent of and uninfluenced by the police opinion, whether the material placed before him, if accepted at its face value, would furnish a reasonable basis or foundation for the accusation. In doing so, the Magistrate is of course expected to apply his judicial mind to the facts of the case keeping throughout in view the essential ingredients of the offence for which the accused is sought to be discharged. If on such consideration of the aforesaid material and the provisions of the relevant law, the Magistrate comes to the conclusion that there is no ground to connect the accused with the offence and that there is no basis or foundation for the charge, the Magistrate would have no option but to discharge the accused." 39. In R. S. Nayak v. A. R. Antulay, the Supreme Court explaining the scope of S. 239, Cr.P.C. as follows (at page 1749 (of Cri LJ)) : "It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard." 40. In Shri Mahantaswamy v. State of Karnataka, , this Court held as follows (at page 500 (of Cri LJ)) : "S. 239, Cr.P.C. lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in my opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in S. 239, Cr.P.C. means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused. The learned author Shri Sarkar in his Criminal Procedure Code, 5th Edition, on page 427, has opined as :- 'The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S. 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all.' In short it means that if no prima facie case recording the commission of any offence is made out it would amount to a charge being groundless. In Century Spinning and Manufacturing Co., Ltd. v. The State of Maharashtra - - the Supreme Court has stated about the ambit of S. 251(A)(2) of the Cr.P.C. 1898, which is in pari materia with the wordings used in S. 239, Cr.P.C. was follows :- 'It cannot be said that the Court at the stage of framing

the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities by relying on the documents referred to in S. 173 consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution.' In para 15 the Supreme Court has stated as :- 'Under sub-section (2), if upon consideration of all the documents referred to in S. 173, Criminal P.C. and examinating the accused, if considered necessary by the Magistrate and also after hearing both sides, the Magistrate considers the charge to be groundless, he must discharge the accused. This sub-section has to be read along with sub-section (3), according to which, if after considering the documents and hearing the accused, the Magistrate thinks that there is ground for presuming that the accused has committed an offence triable under Chapter XXI of the Code within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. Reading the two sub-sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges.' Thus the word 'groundless' as interpreted by the Supreme Court means that there is no ground for presuming that the accused has committed an offence. ..... 'If the evidence which the Prosecutor Proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.' " 41. In S. Bangarappa v. Ganesh Narayan Hegde, this Court held as under : "Before ordering for charge the approach of the Court to consider the evidence shall be one of judicious and honest approach and not a mechanical one as otherwise by framing such charge there will be a threat to person's liberty the object of discharge is to save the accused from unnecessary prolonged harassment which is a necessary concomitant of protracted trial. Thus, if there is no prima facie case or sufficient and strong grounds to proceed against the accused are not made out and the allegations are baseless or the proceedings are mainly aimed at harassing an accused, under such circumstances it is just and proper for the trial Court to discharge the accused and thus prevent abuse of the process of the Court. When grounds made out do not suggest any offence, it is proper to discharge an accused as otherwise it leads to unnecessary litigation and waste of public time and money." 42. From the above discussion it is clear that while framing charge the Magistrate has to consider the evidence of the experts instead of following a mechanical approach. Otherwise, if the charges framed are on insufficient material, the same would amount to depriving an individual's personal liberty. Further the object of discharging is to save the accused from unnecessary and prolonged harassment. Thus, when no prima facie case has

been made out and the allegations are baseless and do not suggest any offence or proceedings are mainly aimed to harass the accused, it is just and proper to discharge the accused as it avoids abuse of the process of the Court. 43. In view of the above legal position, it cannot be said that the learned Magistrate was not justified in discharging the accused. The reasons were (i) that the prosecution did not establish the offence alleged under S. 25 or 30 of the Arms Act, or under S. 379 or 411 or 120-B read with S. 34, IPC and 173(3) and (8) and 300 Cr.P.C.; (ii) that on the basis of same allegations, the authorities refused to renew the licence which action was held by this Court in writ proceedings as incorrect and illegal and directed them to renew the licence, (iii) that prosecution failed to establish that the offence alleged falls under S. 3 of the Official Secrets Act and not under S. 5 of the said Act; (iv) that number of contradictions and admissions and vagueness in the case made out (sic) adduce fresh material. Hence, the learned Magistrate was right in holding that if at this stage the prosecution is allowed to investigate further on the basis of the alleged fresh information received against the accused in the absence of new material, the same amounts to harass the accused unnecessarily which is not permissible. In view of the above discussion and the law on the questions involved, it has to be said that the order of the learned Magistrate rejecting I.As. 13 and 14 and discharging the accused under S. 239, Cr.P.C. for the offences alleged was quite just and proper. To attract Sections 397 and 401, Cr.P.C. the prosecution has not shown what is the manifest illegality in the order under challenge or the said order has resulted in serious miscarriage of justice and the circumstances explained or such that which compel this Court to interfere to examine the legality or propriety of the said order and necessity to correct the same. 44. For the reasons given above, there are no good grounds to interfere with the order of the learned Magistrate. 45. These revision petitions are dismissed. 46. Petitions dismissed.