

## Devyani Singh vs Cbi on 28 November, 2023

IN THE COURT OF MS. NEELOFER ABIDA PERVEEN:  
SPECIAL JUDGE (Prevention of Corruption Act, 1988)  
(CBI) ROUSE AVENUE COURTS COMPLEX, NEW  
DELHI.

Crl.Rev. No.29/2023  
Devyani Singh Vs. CBI  
&  
Crl.Rev. No.28/2023  
Sarabjot Singh Vs. CBI

Crl.Rev. No.29/2023  
Devyani Singh Vs. CBI

1. Devyani Singh  
aged about 53 years  
W/o Sh. Sarabjot Singh,  
R/o K-33, 1st Floor, Jungpura Extension,  
Delhi-14  
Vs.  
Central Bureau of Investigation,  
Lodhi Road, New Delhi.  
&  
Crl.Rev. No.28/2023  
Sarabjot Singh Vs. CBI

1. Sarabjot Singh  
aged about 53 years  
S/o Sh. Buta Singh,  
R/o K-33, 1st Floor, Jungpura Extension,  
Delhi-14  
Vs.  
Central Bureau of Investigation,  
Lodhi Road, New Delhi.

Date of institution: 09.05.2023  
Date of Judgment: 28.11.2023

### JUDGMENT

Vide this common judgment, I shall decide these two revision petitions, one instituted by Devyani Singh (Crl. Rev. No. 29/2023) and the other by Sarabjot Singh (Crl. Rev. No. 28/2023), under Sec. 399 Cr.P.C. r/w Sec. 397 of the Code of Criminal Procedure, 1973 (Act no.2 of 1974), both against the order dated 16.02.2023 passed by Ld. Additional Chief Metropolitan Magistrate-Cum-ACJ, Rouse Avenue District Court in CBI case No. 62/2019 whereby Ld. ACMM dismissed the applications u/Sec. 239 Cr.P.C. of the petitioners seeking discharge in FIR No. RC 1(S)/2010/SCU-IV. As a measure of convenience for the purposes of the present adjudication alone, the petitioner in Crl. Rev. No.29/2023 is hereinafter referred as petitioner no. 1 and the petitioner in Crl. Rev.28/2023 is addressed as petitioner no.2.

1. Ld. Counsel for the petitioners contended that the petitioner no.1 is arrayed as accused no.2 in CBI case no.62/2019 and petitioner no. 2, Mr. Sarabjot Singh, husband of the petitioner no.1 is accused no.1. That on 22.07.2009 a case was registered against the petitioner no.2, who is the son of erstwhile Union Home Minister Shri Buta Singh, by CBI/Mumbai/ACB u/Sec. 120-B of IPC r/w Section 9 of Prevention of Corruption Act. That as per the case of CBI, on 30.07.2009, a search was conducted at the premises owned by the petitioners at K-33, 1 st Floor, Jungpura Extn., New Delhi when the petitioner no.2 was in the custody of CBI, Mumbai, in connection with the said CBI case by a CBI team led by one Sh. Sham Datt, Inspector, CBI, ACB, Mumbai on an authorisation under 165(1) Cr.P.C. by a concerned senior officer in Mumbai, from 5:00P.M. to 8:00 P.M., and that there were fire arms and ammunition recovered from the aforesaid premises during the said search on 30.07.2009.

(i) That this alleged recovery is vitiated and tainted per se as no report as mandated u/Sec. 36 of the Arms Act, 1959, was made by Insp. Sham Datt who was authorised to conduct search during investigation of the said case under the Prevention of Corruption Act, against petitioner no.2. That a responsibility is cast on every person who is aware of the commission of offence under the Arms Act, 1959 to give information of the same to the officer-in- charge of the nearest police station or the Magistrate having jurisdiction. That Insp. Sham Datt when he became aware of the commission of alleged offence did not give any information from the premises where the alleged fire arms were allegedly recovered. That interestingly Insp. Sham Datt who was camping in Delhi after arriving from his office in Mumbai had taken the said fire arms and ammunitions which were seized vide the search list with him without intimating the local police from the spot of alleged recovery, and kept the alleged arms and ammunition with him during the entire night of 30.07.2009 and only produced it before the local police station, SHO, Hazrat Nizamuddin, at about 6:30 P.M. on the next day i.e. 31.07.2009, when the distance from the said joint family house to the PS:

Hazrat Nizamuddin is only 1.5 km.

(ii) That CBI has not even bothered to explain the reasons behind this failure on the part of Insp. Sham Datt to intimate local police immediately upon the alleged recovery from the premises, which only goes to show that the recovery is planted, otherwise there is no reason why Insp. Sham Datt could not have informed the local police station from the premises following the recovery when the police station was at such a short distance of less than 2 kms from the premises of the petitioners and Insp.

Sham Datt was authorized to search the premises and seize incriminating material pertaining to the case under the Prevention of Corruption Act, 1988, and had no authority to take into his possession the arms and ammunition. That the false implication is also clear from the own case of the prosecution that Sh. Sham Datt, Inspector, CBI, ACB, Mumbai, did not seal/seize the alleged recovered articles in the presence of the alleged public witnesses, he kept those alleged recovered

articles in unsealed condition with him for good more than 22 hours.

(iii) That possession of such incriminating material for over 22 hours has not been explained by the complainant. As per his own whims and wishes, Sh. Sham Datt, Insp. CBI, did not consider it fit to deposit the said alleged recovered articles in the Malkhana and decided to keep the said alleged recovered articles with him throughout the day and night and it was only on 31.07.2009 that he drafted the complaint in CBI, HO, after receiving instructions from seniors and visited PS- Hazrat Nizamuddin, New Delhi in the evening, when at about 18:00 hours, FIR No: 326/2009 was got registered in PS- Hazrat Nizamuddin, New Delhi against the petitioner no.2 on his written complaint. That it is only thereafter that the arms and ammunition alleged against the petitioners were sealed, seized and deposited in the Malkhana. That it, therefore, cannot be said that what was recovered in the presence of the CBI team members and independent witnesses during the search of premises of petitioners on 30.07.2009 were the same articles which were produced before the SHO concerned after a delay of 22 hours on 31.07.2009.

(iv) That the officials of the CBI Team, the record itself shows, had enough time to manipulate with the records/alleged recovered articles. There is no explanation nothing mentioned regarding the custody of the arms and ammunition during this long period, and there is no explanation for the failure of the Insp. Sham Datt to hand over/deposit the same in the malkhana following its recovery when the police station was at a distance of just 1.5 kms from the premises. That the investigating officer assigned in the FIR registered by the Delhi Police had started investigations regarding the legality of the arms seized, and also sent the seized arms and ammunitions to CFSL vide letter dated 29.09.2009.

(v) That the said IO of Delhi Police, Sh. Banay Singh Meena, then SI, PS. Hazrat Nizamuddin, stated in the evidence submitted alongwith the charge sheet that "The officials of CBI, ACB, Mumbai did not join the investigation inspite of notices", and that the accused had joined the investigation and he was in preparation to find out the source of the weapons. That it is not explained as to why the complainant and the independent witness from Delhi did not come forward to join the investigation. That surprisingly on 09.12.2009 the investigation which was being conducted by the Delhi Police was brought to an abrupt end and investigation was transferred to CBI without any justifiable reasons and basis in law only due to political reasons as the father of the petitioner no.2 was a seasoned Congressman and he had decided to contest as an independent candidate against the party's wishes, which caused a lot of in-party war of words and ideas.

(vi) That CBI lodged a new FIR bearing No. CBI/SCU. V2010RC.1 (S/2010 SC-II/New Delhi SC.V/SC.II) and appointed new investigation officer (IO)-Mr. Binay Kumar, Dy.

SP, CBI SC.II, New Delhi to take up the investigation, who submitted a charge sheet against the petitioners u/Sec. 25 Arms Act, 1959 r/w Sec. 120-B IPC on 25.08.2010 CBI without conducting any investigation whatsoever. That both the petitioners had filed separate applications u/Sec. 239 Cr.P.C. seeking discharge, which were dismissed vide the impugned order and charge u/Sec. 25 r/w Sec. 35 of the Arms Act, 1959, was ordered to be framed against both the petitioners. That the Ld. ACMM has proceeded to frame the charges on the sole ground that petitioners are co-owners of the

property from where the arms and ammunition have been seized without appreciating that there is no material connecting the petitioners with the alleged recovery, that the recovery is planted and the false implication is brought out from the record presented.

(vii) That as per the own case of CBI, on 30.07.2009, when the CBI Team which was led by Sh. Sham Datt, (PW-1) Inspector/CBI/ACB/ Mumbai, reached the premises owned by the petitioners at K-33, 1st Floor, Jungpura Extension, New Delhi in the evening hours at about 17:00 hours, the premises were found to be under renovation, which fact is mentioned in the search list itself. That since the said premises were under renovation and in an uninhabited condition, the same then was accessible to the labourers/contractors, persons other than the petitioners, who were working in the said house at that time. That the petitioners had presented evidence to show that the house was uninhabited during the relevant period, as the premises were under renovation, infact the petitioners were residing at another accommodation with the father of the petitioner no.2. That no investigation was carried by the IO into this aspect deliberately after the transfer of the case to CBI. That even otherwise as per the own case of the prosecution when the CBI team arrived there was no one present in the house, and petitioner no.1 arrived later at the premises.

(viii) That as the premises were under renovation, the premises were in unlocked condition, when the CBI team arrived even the petitioner no.1 was not present petitioner no.2 was already in the custody of ACB, Mumbai, there was sufficient time and opportunity to plant incriminating material. That the prosecution also failed to produce any evidence to show that the house was locked even. No keys or lock or pictures of the premises in locked /open condition are produced with the charge sheet. If indeed the premises under renovation were in locked condition and lock was opened by petitioner no.1 then why were the lock and key not taken into possession alongwith the alleged articles. In any case as per the own admitted case of CBI, petitioner no.2 was not staying with the family in the said premises as the said premises was under renovation. The petitioners cannot then be said to be in exclusive and effective possession of the premises or of any such incriminating article and to have power and control over the fire arm which is alleged to have been recovered from the first room at the entrance of the house of the accused.

(ix) That the prosecution has miserably failed to bring on record any evidence to show that the accused had intention, consciousness or knowledge of the firearm which is alleged to have been recovered from the premises under renovation. That it is the case set up of the prosecution that the said arms and ammunitions were recovered from a briefcase found in Room No.1 of the said premises under renovation on first floor situated on the left side while entering the premises. The said alleged brief case was locked, petitioner no.1, who had arrived later did not provide the key/combination number of the lock of the said alleged brief case, and the said alleged brief case was opened with the help of a locally available screw driver. No such Brief Case or any Screw Driver, so called locally procured, has been recovered from the premises. It has not been explained as to why and under what circumstances, due to what reasons the officials of CBI did not take the same into possession. No investigation has been carried into the alleged briefcase and the screw driver, both vital pieces of evidence connecting the recovery to the premises.

(x) Either the CBI team themselves destroyed material evidence or have only made up a false and concocted story to falsely implicate the petitioners to impress upon their senior police officials or to please the Political Masters for such implication of the petitioner no.2. Interestingly there is no mention of any suitcase/screwdriver in the search list dated 30.07.2009. Such facts as stated by complainant to implicate the petitioners in his statement before the IO after the investigation was assigned to CBI that a brief case was found locked in the room to the left of entrance and the demand was made for the keys from the petitioner no.1 herein and she was unable to provide the keys or the combination, are nowhere mentioned in the search list prepared by the complainant. All this clearly reflects that CBI has made up a false and concocted story to implicate the applicant/accused at the behest of their senior officials as well as political masters.

(xi) That as per the case of CBI the alleged recovery has been affected from the Room No. 1 of the said premises of first floor which was situated at left side while entering the premises but the CBI has failed to prove/show anything on record about the description of any of the rooms situated into the premises. That there is no site plan prepared of the premises to show that the locked briefcase was found in the first room on the left side, by what imagination the said room has been given the name as 'Room No.1' when there is no site plan of the premises. That from the search list it also appears as if there was selective search of one room alone. CBI is silent on this aspect that how many rooms were there whether any other room was searched or not. That the entire search proceedings are contrived and raid was conducted in order to falsely implicate the petitioners and nothing else that is why there are such gaping holes in this make- believe story of the prosecution.

(xii) That Delhi Police that was carrying on the investigation after the registration of the FIR on 31.7.2019 in respect of the alleged recovery effected on 30.7.2019, was asked to transfer the case to CBI all of a sudden without any valid reason or Court order. That the Hon'ble Supreme Court in a catena of cases has held that investigation can be directed to be transferred from the State Police to the CBI only in cases where such transfer is considered necessary to discover the truth and to meet the ends of justice or because of the complexity of the issues arising for examination or where the case involves national or international ramifications or where people holding high positions of power and influence or political clout are involved. That as per the CBI Manual an offence u/Sec. 25 of the Arms Act, 1959, without any international ramification is not to be investigated by CBI, the CBI thus took over the investigation from Delhi Police without any valid reason to do the same. That the second FIR launched by the CBI after transferring the case from Delhi Police is therefore not maintainable in law.

(xiii) That there was no proper authorization with Insp. Sham Datt to conduct search and seizure in the first instance. That the provisions of Sec.165 Cr.PC authorise an officer in charge of a police station or police officer making an investigation having reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence may be found in any place within the limits of the police station of which he is in charge, or to which he is attached after specifying in writing, so far as possible, the thing for which search is to be made, himself search, or cause search to be made, for such thing in any place within the limits of such station. The officer conducting a search under this section by virtue of Sec. 165 (3) is required to forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is

situated, and to also send with such notice a copy of the list (if any) prepared u/Sec. 100, copies of the records are also required to be sent to the nearest magistrate empowered to take cognizance of the offence. That there is complete violation of Section 165 Cr.PC, as the search by the CBI team from ACB, Mumbai, is not shown to be carried within the jurisdiction of the police officer concerned, further no intimation was sent to the local Police Station or to the Magistrate concerned.

(xiv) That the recovery is also in violation of Section 166 of the Code, dealing with searches made outside the limits of the police station concerned. That only where there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made might result in evidence of the commission of an offence being concealed or destroyed, it becomes lawful for an officer in charge of a police station or a police officer making any investigation to search, or cause to be searched, any place in the limits of another police station, as if such place were within the limits of his own police station. Notice of the search is also required to be sent to the officer in charge of the police station within the limits of which such place is situate, alongwith a copy of the list (if any) prepared u/Sec. 100 Cr.PC, with copies of record to the nearest Magistrate empowered to take cognizance of the offence. No such requirements have been complied with in respect of the search made by the Insp. Sham Datt in the instant case. It is not even the case of the prosecution that either information was given to local police station before raiding the house of the petitioners or after seizure of the fire arms/ammunition. That the failure to comply with the directions regulating searches casts doubt upon bona-fides of the alleged recovery.

(xv) That the independent witnesses relied upon by the prosecution, who allegedly witnessed the recovery of fire arms and ammunitions from the premises belonging to the petitioners were not qualified to be witnesses for the seizure of the alleged fire arms and ammunition. That section 100(4) mandates that two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search is to be joined in the search and seizure proceedings. That the premises K-33, First Floor Jungpura Extn. is located in a thickly populated area in Delhi and there could have been any number of independent and respectable inhabitants in the locality to be witness to the search. However, CBI tutored two officials of the excise Department Vikas Bhawan New Delhi to be the witness to the alleged search and recovery. The members of the CBI team including the two officials cited as independent witness, were not just witnesses to the search but they participated in the search and had been an active participant in the search and seizure operation. These two witnesses PW-4 and PW-5 then cannot be said to be independent witnesses for a search and seizure u/Sec. 100 Cr.PC. The evidence of a witness, who accompanied the police, cannot be believed. That Insp. Sham Datt made no efforts to secure the presence of the local mediators/ respectable persons of the locality.

(xvi) That the said alleged recovered articles do not belong to either of the petitioners. That there is no evidence of any Criminal Conspiracy u/Sec. 120-B IPC between the petitioners brought on record by the CBI. That there are several infirmities in the case of the prosecution. That there are contradictions in the quantity of the recovery. That as per CBI there were 5 Live cartridges of 9 mm recovered from the premises however when the seizure memo of the same was prepared, the CBI forgot as to how many cartridges have been mentioned and they mentioned vide their Receipt

Memo dated 24.05.2010 that 6 Live cartridges of 9 mm have been recovered, which further goes to show the ill- motivated conduct of the CBI officials. That such mistake cannot be brushed aside merely as a typographical mistake as the said has never been rectified by the CBI till date. That besides there is an inordinate delay of 39 days in the handing over of the arms to CFSL.

(xvii) That sample seal "SK" neither has been put on the seizure memo nor on any letters/papers containing Fire Arms sent to CFSL Expert which, as per law, is mandatory as per the provision of Section 100 (6) of Cr.P.C. That the statement of Sh. Sham Datt (PW-1) was recorded after 4 months of registration of the FIR without giving any explanation for such delay in recording of the statement. That the alleged recovery is not admissible even u/Sec. 27 of the Indian Evidence Act, which provision is not complied by CBI in the present case. That over and above, there are pertinent overwriting and alterations in the search memo after the signatures of petitioner no.1. That in the said Search List dated 30.07.2009, the CBI team had explained about the true facts that nothing incriminating has been recovered during the search, but after obtaining the signatures over the said Search list, they realized that they will be left with no case to be presented before the Hon'ble Court, that's why the CBI team led by Sh. Sham Datt, Inspector (PW-1), CBI, ACB, Mumbai manipulated and tampered with records in order to bring the false evidence against the accused person.

(xviii) That when it had already been recorded in the search list that "No Incriminating Evidence/articles were recovered during the search" then how, when and by whom such words have been inserted i.e. "except mentioned at column 2 of this memo". This interpolation itself clearly shows the manner in which the manipulations have been done by the CBI team led under Sh. Sham Datt, Inspector, CBI, ACB, Mumbai. It is also pertinent that the signatures over the said insertions were not obtained of the petitioner no.1 in respect of the said interpolations. That record has been manipulated, evidence has been destroyed and recovery has been planted at the premises to falsely implicate the petitioners only for the reason that the father of the petitioner no.2 had elected to stand as an independent candidate against the wishes of the party in power at the relevant time.

(xix) That even otherwise there is no material to show that the petitioners were in exclusive possession of the premises at the given time, or that they had the necessary intention/ consciousness or knowledge of the alleged arms and ammunition. Ld. Counsel has relied upon the following judicial pronouncements in support of his submissions ie i.e. P. Vijayan Vs. State of Kerala and Another in Criminal Appeal No. 192 of 2010, decided on January 27, 2010 by H'ble the Supreme Court of India, Union of India Vs. Prafulla Kumar Samal & Anr. in Criminal Appeal No. 194 of 1977 decided on November 6, 1978 passed by H'ble the Supreme Court of India, Namanpreet S. Dhillon Vs. State in Crl. M.C. 1530/2022 & Crl. M.A. 6618/2022, decided by Hon'ble the High Court of Delhi on July 28, 2022, Preetam Singh Vs. State in Criminal Appeal No. 67/1994, decided on December, 3, 1997 by Hon'ble High Court of Delhi, Amar Chand Vs. State of Himachal Pradesh in Crl. Appeal No. 2035 of 2022 decided by H'ble the Supreme Court of India, Pabitar Singh Vs. State of Bihar in Crl. Appeal No. 128 of 1969, decided on March 22, 1972 by the Hon'ble Apex Court, Man Singh Vs. The State of Haryana, Crl. Appeal No. 182 of 1969, decided on March 17, 1972 by H'ble the Supreme Court of India, Mohmed Rafiq Abdul Rahim Shaikh Vs. State of Gujarat in Criminal Appeal no. 1979 of 2008 decided on September 13, 2018, Yogendra Kumar Ojha Vs. State of Jharkhand in Cr. Appeal No. 669 of 2007, decided on 07.11.2007 by Hon'ble High Court of Jharkhand.

2. Ld. PP for CBI on the other hand contented that there is no cause or reason to interfere with the impugned order directing for the framing of charge u/Sec. 25 r/w Sec. 35 of Arms Act, 1959, against the petitioners on the basis of the documents and material produced with the charge-sheet. That the present case is an offshoot of CBI case RC 30(A)/2009 registered in CBI, ACB, Mumbai on 22.07.2009 u/Sec. 120-B IPC r/w Section 9 of Prevention of Corruption Act, 1988, against Sh. Sarabjot Singh S/o Sh. Buta Singh and Ors. That in connection with investigation of the above mentioned case (RC30(A)/2009, CBI- ACB, Mumbai), a search of the residential premises of Sh. Sarabjot Singh at K-33, 1st Floor, Jungpura Extn., New Delhi was conducted on 30.07.2009 by a CBI team led by Sh. Sham Datt, Inspector, CBI, ACB-I, Mumbai, under Sec. 165(1) Cr.P.C., and during the house search, CBI team in presence of independent witnesses, recovered and seized certain fire arms and ammunitions from the premises of Sh. Sarabjot Singh on 30.07.2009.

(i) That since the accused persons being occupants could not provide any valid documents/license in respect of above fire arms and ammunitions, Sh. Sham Datt, Inspector, CBI lodged a written complaint with Hazrat Nizamuddin Police Station on 31.07.2009 and accordingly, FIR No.326/2009 was registered on 31.07.2009 against Sh. Sarabjot Singh u/Sec. 25 Arms Act, 1959, by the local police. That as per orders received from senior officers, Sh. Sham Datt, Inspector had lodged a written complaint with Hazrat Nizamuddin Police Station, New Delhi on 31.07.2009 at about 1800hrs and consequently the Hazrat Nizamuddin Police registered a criminal case No. 326/2009 u/Sec. 25 of Arms Act, 1959, the same was transferred to CBI for investigation vide endorsement 37319-21/C &T (AC-III)/PHQ dated 15.12.2009 of O/o the Commissioner of Police, Delhi Police duly approved by Lt. Governor of Delhi, and accordingly RC 01(S)/2010/CBI/SCU-V/SC-II/ New Delhi was registered on 14.01.2010 after taking over the FIR No.326/2009 of P.S. Hazrat Nizamuddin.

(ii) That CBI had filed charge sheet on 25.08.2010 after completion of investigation against Sh. Sarabjot Singh and his wife Smt. Devyani Singh u/Sec. 120-B IPC r/w Section 25 of Arms Act, 1959 and substantive offence u/Sec. 25 of Arms Act, 1959, as the accused were found to be joint owners of the said property and failed to produce any valid license for the fire arms and ammunition recovered at the premises, though further investigation u/Sec. 173(8) was kept open. That later CBI had filed an application before the designated Court requesting that further investigation may be treated as closed and may be allowed to rest as the same is not going to serve any fruitful purpose in the year 2011. That on 16.02.2023 the Ld. Court of Sh. Deepak Kumar, ACMM-2, RADC, New Delhi passed the order for framing of charges u/Sec. 25 r/w Sec. 35 of Arms Act, 1959, against both the accused persons namely Sh. Sarabjot Singh S/o Sh. Buta Singh and Smt. Devyani Singh W/o Sh. Sarabjot Singh, charge for the offences punishable u/Sec. 25 r/w section 35 of Arms Act, 1959, against both the accused persons was accordingly framed.

(iii) That the issues raised during arguments on behalf of the petitioners are all matter of trial. That sifting and weighing of evidence is not to be undertaken at the stage of charge what is to be seen is only whether prima facie case is made out for proceeding against the accused for the commission of the offences or not. That the premises from where the recovery was effected is in the joint names of both the petitioners, and this fact has been duly verified during investigation, the documents in respect thereof are also filed on record. Whether the premises were under renovation and whether



the same were accessible to the members of the public or not are all matter of trial. That the failure to prepare a site-plan of the site of recovery, does not render the statement of the complainant doubtful per se. That there is only a typographical error in the receipt memo, due to which the number of the ammunition comes across as incorrect/ contradictory version.

(iv) That if there are any defects or lapses in investigation the same would not vitiate the recovery so far as the satisfaction required for a prima facie case is concerned, such alleged defects/lapses are to be appreciated in the light of the entire evidence lead at the culmination of the trial for final adjudication, not at all warranted for the purposes of arriving at the level of satisfaction required for a prima facie test. That grave suspicion arises from the statements of the complainant, the public witnesses, alongwith other material filed with the chargesheet including the search list that arms and ammunition were recovered from the premises belonging to the petitioners during search of the premises carried by the CBI team headed by the complainant. That though the briefcase was not seized, it would still be a matter of trial as to whether any benefit accrues in favour of the accused from the non-seizure thereof.

(v) That the name of the petitioner Smt. Devyani Singh is not mentioned in the FIR, however, during the course of investigation the role of accused petitioner has been established and accordingly the charge sheet was filed. That the search list dated 30.07.2009 itself shows that the door of house No. K-33, First Floor, Jungpura Extn., New Delhi was found locked at about 1700hrs and at about 1735hrs Smt. Devyani Singh along with Sh. R.D.Singh and Smt. Gurkirat Kaur reached the spot, the purpose was explained and she had acknowledged the same. Thereafter, Smt. Devyani Singh opened the door and the search was started. That the search list was prepared on the spot and the search list is showing the recovery and seizure of the documents/articles including the fire arms and ammunitions and the same had been signed by Smt. Devyani Singh. That copy of same search list was given to the petitioner Smt. Devyani Singh wife of Sh. Sarabjot Singh under proper acknowledgment and may be tallied with that on the record.

(vi) That there is no basis to doubt the recovery as the fire arms and ammunitions were recovered and seized in the presence of panch (independent) witnesses as per the search list item No.8 to 12 for which the accused persons failed to produce the license/documents. That the arms and ammunition recovered were not mentioned in the license in favour of the petitioner no.2, and report in this regard was obtained during investigation from the authorities concerned and is part of chargesheet. That there is no delay on the part of the complainant to report the seizure. That the seized articles were handed over to the local police station within 24 hours i.e. on 31.07.2009 and also complaint/FIR has been registered on the very next day and the same has been sealed by the local police by marking as "SK" on the sealed articles. That even otherwise delay if any is no ground to discharge the accused, it is then a matter of trial if the delay is duly explained on the record or not. That there was valid authorization in favour of the complainant to carry out the search, the authorization u/Sec. 165 Cr.PC was faxed in favour of Sh. Sham Datt, Inspector, CBI, Mumbai on 30.07.2009 to conduct the search of the residential premises of Sh. Sarabjot Singh S/o Sh. Buta Singh located at K-33, First Floor, Jangpura Extn., New Delhi.

(vii) That there are sufficient material available on record to prosecute the accused petitioners and the same has been duly appreciated by the Ld. Trial Court. That as per investigation both the sons and the daughter of Sh. Buta Singh reside in the same house but on different floors, the ground floor is occupied by the elder son and his family, the petitioners reside on the first floor and the second floor belongs to the daughter. It is established that 1st floor ownership is in the name of Sh. Sarabjot Singh and Smt. Devyani Singh. That the search list dated 30.07.2009 (D-7) itself mentioned that the recovery was made from the 1st room which is situated on the left side at the entry gate of the alleged house. That CBI had seized the articles vide seizure list (D-7) dated 30.07.2009 and handed over the same to the local police vide seizure memo (D-4) dated 31.07.2009. After sealing the articles, the local police sent the said articles to CFSL and the CFSL vide letter No. CFSL-2009/F-826/4803 dated 22.09.2009 (D-10) forwarded the report and articles to SHO, P.S. Hazrat Nizamuddin, New Delhi. Vide the receipt memo dated 24.05.2010 (D-5) CBI received the fire arms and ammunitions from local police. That the petitioners are deliberately misreading the document.

(viii) That the material available on record in the form of oral and documentary clearly establish the criminal act of both the accused persons namely Sh. Sarabjot Singh and Smt. Devyani Singh and thus liable to be prosecuted. That even if there are lapses in investigation, or delay, the petitioners cannot be held entitled to discharge on such account, they cannot take the benefit of faulty investigation at this stage. Ld. PP for CBI has relied upon following judicial pronouncements i.e. State of MP Vs. S B Johri; C Muniappan & Others Vs. State of Tamilnadu and ME Shivalingamurthy Vs. CBI, Lalu Singh and Anr. vs. Emperor in Criminal Revision Application NO.41 of 1942 decided on May, 1, 1942, C. Muniappan and Ors. Vs. State of Tamil Nadu in CrI. Appeal No. 127-130 of 2008 decided on 30.08.2010 by the Hon'ble Apex Court, Sarita Bai Vs. State of Chhattisgarh in CRA No. 697 of 2008 & Sharad & Anr. Vs. State of Chhattisgarh in CRA No. 713 of 2008 decided on 18.01.2016 by H'ble the High Court of Chhattisgarh, Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau in CrI. A. No. 743 of 1999 decided on 06.08.1999 by Hon'ble Supreme Court of India, State of Bihar Vs. Ramesh Singh in CrI. A. No. 51 of 1977 decided on 02.08.1977 by Hon'ble the Supreme Court of India, Kallu Mal Gupta Vs. State in CrI. No. 273/99 decided on 29.10.1999 by H'ble The High Court of Delhi, Union of India (UOI) Vs. Prafull Kumar Samal and Ors. CrI. A. No. 194 of 1977 decided on 06.11.1978, Hema Vs. State Tr. Insp. Of Police Madras on 07.01.2013 in CrI. A. No. 31 of 2013 passed by H'ble Supreme Court of India and Emperor Vs. Sikhdar on 07.12.1931 passed by Allahabad High Court.

3. I have heard the Ld. Counsel for the petitioners and the Ld. PP for CBI, referred to the record, and perused the judicial pronouncements relied upon from both sides.

4. Record reflects that FIR No.126 dated 31.07.2009 was registered u/Sec. 25 of the Arms Act, 1959 at P.S. Hazrat Nizamuddin against petitioner no.2, in pursuance to a confidential letter/ complaint of Inspector, CBI, ACB, Mumbai Sh. Sham Datt, on the subject of handing over of firearm and ammunition seized during search in RC BA1/2009/A0030 detailing therein that the complainant, an Inspector CBI with ACB, Mumbai was endorsed an authorisation u/Sec. 165 (1) Cr.P.C for carrying out search at the residential premises of Sh. Sarabjot Singh, the petitioner no.2 herein, in RC BA1/2009/A0030, registered by ACB, Mumbai u/Sec. 120-B IPC & section 9 of Prevention of

Corruption Act, 1988 against the said accused and others. That, accordingly search was carried out at K-33, 1st floor, Jangpura Extn., Jangpura, New Delhi on 30.07.2009, and during search operation certain fire arms and ammunition were found and seized in the presence of panch witness as per search list for which the accused had failed to produce the licenses.

5. The handing over letter progresses to detail the Fire Arms and Ammunition as follows:

Fire Arms

1. One Revolver .32 Webly & Scot, Reg. No. B 74362, Made in England.
2. One Revolver .38 Smith & Wesson, Reg. No. 1K25355, Made in USA.
3. One Revolver Arminus Reg. No.1276871, Made in Germany of seven rounds Ammunition

1. One Packet containing 20 (twenty) live cartridges of Remington Kleanbore 375 Holland & Holland, Magnum having different inscriptions on the back of the round.
2. One packet containing 18 (Eighteen) live cartridges (Three cartridges of .38 Special lapua, 5 live cartridges of 9 MM and 10 miscellaneous cartridges whose description not legible).

6. The Fire Arms and Ammunition handed over by Insp. Sham Datt were converted into five sealed pullandas by the SHO, P.S. Hazrat Nizamuddin, with three separate pullandas each of the three fire arms/revolvers and one each for the two packets of ammunition, FSL form was filled, sample seal prepared and the fire arms and ammunition were deposited in the malkhana at the Hazrat Nizamuddin police station with the MHC(M) concerned, the relevant entry in the Malkhana Register, though, is not part of the chargesheet. Investigation in FIR No. 326/2009 u/Sec. 25 Arms Act, 1959, P.S. Hazrat Nizamuddin was transferred to CBI, as communicated vide letter dated 09.12.2009, CBI registered its own RC No. 1(S)/2010/SC.V/1SC.11 on the basis of FIR No. 326/2009 on 14.01.2010 and investigation was assigned to Sh. Binay Kumar, Dy. SP, CBI, the pullandas of the fire arms and ammunition seized in FIR no. 326/2019 were handed over to him, he recorded the statement of the witnesses including that of the complainant Insp. Sham Datt, obtained the requisite documents, information/statutory sanctions and authorisations and filed the charge-sheet in Court on 25.08.2010 against the present petitioners on the allegation, essentially, that fire arms and ammunition in contravention of the provisions of the Arms Act, 1959, were recovered by a CBI team kept in the premises belonging to both the petitioners.

7. It transpires from a perusal of the chargesheet & the accompanying documents and material that RC 30 (A)/2009- Mumbai was registered against petitioner no.2 under the relevant provisions of the Prevention of Corruption Act, 1988 on the allegation that petitioner no.2 had demanded and accepted bribe from the complainant in the said case through another accused person in order to influence his father, a public servant. In order to recover incriminating documents /articles

connected with the crime/offences being investigated into under RC.30(A)/2009- Mumbai, a CBI team from ACB, Mumbai, headed by Inspector Sham Datt from CBI, ACB, Mumbai, armed with an authorization u/Sec. 165 Cr.PC, endorsed in his favour by Sh. M.V. Surti Asst. SP/CBI/ACB, Mumbai, for search of the residential premises of petitioner no.2 described as K-33, 1 st Floor, Jungpura, Extn., New Delhi, carried out the search of the premises at K-33, 1st Floor, Jungpura, Extn., New Delhi on 30.07.2009 in the evening hours from 5:00/5:30 P.M. to 8:00 P.M. In the course of search of the said premises conducted in the presence of public witnesses, besides petitioner no.1 alongwith her other relatives, Inspector Sham Datt stumbled upon three unlicensed arms and ammunition on the premises.

8. The fire arms and ammunition so fortuitously discovered were not evidence of the commission of the offences the subject matter of the case under the Prevention of Corruption Act, 1988 being investigated into by ACB, Mumbai in respect of which the authorization had been entrusted to Insp. Sham Datt, CBI to search the residential premises of petitioner no.2. For such reasons, the search list in RC 30 (A)/2009-Mumbai culminating the search proceedings while documenting the details and itemizing the property seized by Insp. Sham Datt acting under the provisions of Section 165 Cr.PC, ambivalently records at first, that "No incriminating documents/articles were recovered during search", and "except mentioned at column No.2 of this ..... (illegilble)", is found squeezed in between two lines by inserting a caret ^, before the punctuation mark. Insp. Sham Datt was issued the authorization u/Sec. 165 Cr.PC in RC 30 (A)/2009- Mumbai in respect of the residential premises of petitioner no.2 to search for incriminating documents/articles related to the commission of offence u/Sec. 9 of the Prevention of Corruption Act, 1988, and towards the same from the search carried at the premises he found that there were four bank accounts in the name of the petitioner no.2, and in connection therewith pass books, account statements, cheque leaves, insurance documents and bunch of papers in respect of mobile phone numbers, all pertaining to the petitioner no.2, were seized.

9. Besides, the three fire arms and cartridges observed/found during the search of the premises which certainly were not any incriminating article in respect of the offence under investigation, also came to be taken into possession by way of the search list drawn u/Sec. 165 Cr.P.C., by Inspector Sham Datt. Following the accidental recovery of arms and ammunition during search proceedings by the CBI team, apparently, Insp. Sham Datt, from the spot itself had not informed about the same to the local police within the jurisdictional limits of which unlicensed arms and ammunition were chanced upon, and proceeded to take the unlicensed arms and ammunition in his possession alongwith the passbooks and bank statements and other documents seized in connection with RC No.30(A)/2009-Mumbai even though the said articles had no relevance bearing connection qua the subject matter of RC No.30 (A)/2009-Mumbai. There were no proceedings carried at the spot to give any identification mark to the arms and ammunition in the presence of the other team members, the public witnesses, the petitioner no.2, nor the same were sealed in their presence.

10. Insp. Sham Datt on 31.7.2009 produced three Firearms and two packets of cartridges before the SHO, P.S. Hazrat Nizamuddin, in the evening hours, around 6 pm, informing the SHO of the said police station that such arms and ammunition were found during the search of premises described as K-33, 1 st Floor, Jungpura Extn., New Delhi, and seized on 30.7.2009 as per search list in the

presence of public witnesses, and handed over the same in unsealed condition to the SHO concerned. It does linger on the record that if Insp. Sham Datt in his wisdom did not consider it necessary to involve the local police in the search proceedings of CBI trap team following the discovery of material potentially incriminatory in nature but otherwise totally unconnected with the offence under investigation for which he was authorized to conduct search of the premises of petitioner no.2, there is no plausible reason set forth in the chargesheet as to why after the conclusion of the search proceedings the recovery could not be reported to the local police station having jurisdiction over the area and articles deposited therewith, to maintain the integrity of the proceedings as well as the incriminating articles, given that the search proceedings were concluded by 08:00 pm, not such an ungodly hour which could be taken as a somewhat self-explanatory circumstance.

11. The local police was informed of the recovery after a gap of over 22 hours, Insp. Sham Datt retained the possession of the unsealed unmarked fire arms and ammunition for over 22 hours. There is nothing to imply that Inspector Sham Datt had deposited the arms and ammunition so recovered during this period with the CBI, Malkhana at Delhi. There is no material on the record that describes, provides for, or vouches for the custody of these arms and ammunition during this period of over 22 hours, the where and how attending the custody of the incriminating firearms and ammunition during this long period has not been brought forth in any document or statement on the record. The circumstances attending the safe custody in a manner ensuring the sanctity and integrity of the recovered arms and ammunition after the conclusion of the search at around 08:00 o'clock on 30.7.2009 till the production of arms and ammunition in unsealed condition before SHO, P.S. Hazrat Nizamuddin, on 31.7.2009, at around 5-6 PM on 31.7.2009, are not borne from the record.

12. A Magistrate in a warrants triable case taking cognizance on a police report, as per section 240 CR.PC, may proceed to charge an accused before him for offence/s committed in his jurisdiction falling within his competence to try, where upon a consideration of the police report, the documents sent with it and on such examination of the accused as necessary, after hearing the prosecution and the accused he forms the opinion that there is ground for presuming that the accused before him has committed such an offence, and the accused is entitled to be discharged u/Sec. 239 Cr.PC if the Magistrate considers the charge to be groundless. The material before the Court must give rise to grounds for presuming that the accused is guilty of the offence, the Court at this stage proceeds on prima facies of the case. For a prima facie case the Court is only to assess if from the material presented it can be inferred that the accused may have committed the offence, as opposed to an appraisal of the evidence required towards final adjudication, for to secure a conviction the Court has to arrive at the categoric conclusion that the accused has committed the offence. The entire case of the prosecution set up against the accused sought to be arraigned emerging from the record is to be taken as it is and accepted as true, it is not a stage to dig deeper beyond the surface, assess the merits and make any final observation in respect thereof.

13. Sifting and weighing of the material is permissible only for the purposes of ascertaining that there is material on all the ingredients of the offence for the commission of which the accused is to be charged with and put to trial. The Court at this stage is not to comment on the credibility of the

evidence to be adduced, the veracity of the material collected or the sufficiency thereof, which is to be tested during the trial towards a final adjudication on the basis thereof. Though the broad probabilities of the prosecution's case may be reckoned, the total effect of the entire evidence may be gauged to measure if the material raises merely some suspicion or leads to grave suspicion against the accused, which is not capable of being explained away from the material produced before the Court, and towards such end material of sterling quality even if flowing from the defence side may also be considered. However, a roving enquiry into the pros and cons as would be called for to clinch a conviction is not warranted at this stage.

14. The ultimate outcome of the trial should not be the concern of the Court, it ought not engage the Court at this stage if the evidence when tested at the anvil of cross examination by the defence during trial whether it would decidedly result in conviction of the accused or not. Certain broad principles were enunciated by H'ble the Apex Court in *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 governing the exercise of the jurisdiction u/Sec. 227/228 by a Court of Session, applicable with equal force on a Magisterial Court, on the aspect of framing of charge against / discharge of, an accused, u/Sec. 239/240 Cr.PC, which are being reproduced below to inform and guide the present discussion:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/Sec. 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/Sec. 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15. The principles so authoritatively culled were reaffirmed, built upon and supplanted further by H'ble the Apex Court in Sajjan Kumar v. CBI, (2010) 9 SCC 368 as follows:

"Exercise of jurisdiction u/Sec.s 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges u/Sec. 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

16. In para 19 of the said judgment it is espoused as follows:

"19. It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves 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."

17. That the prima facie case test is equally relevant, and same parameters apply to a consideration of the material for the purposes of sections 239/240 Cr.PC, as amenable u/Sec. 227/228 Cr.PC, and the very same principles as propounded above would govern the exercise be it u/Sec. 239/240 Cr.PC or u/Sec. 227/228 Cr.PC, is abundantly explicit in the exposition rendered by H'ble the Supreme Court in *State v. S. Selvi*, (2018) 13 SCC 455. It has been elucidated upon as follows:

"6. It is well settled by this Court in a catena of judgments including *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi v.*

*Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and *Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge u/Sec. 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) (emphasis supplied) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.



.....

10. If on the basis of the material on record, the Court would form prima facie opinion that the accused might have committed the offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. (emphasis supplied) It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence."

18. Under Section 228 as well as Sec. 240, Cr.P.C., the Court, being the Court of Sessions in the former and the Magisterial Court in the latter case, shall proceed to frame the charge against the accused where there exist grounds for presuming that the accused has committed the offence. The Court is not desired by the Code to be reduced to a mouthpiece for the prosecution even at this initial stage, it is a very significant stage in the prosecution, for it gets settled here if the accused is exposed to the rigours of the arduous process of trial, necessitating the application of judicial mind, and where on a consideration of the material placed before it, the Court were to find that there were not sufficient grounds for proceeding against the accused, that the charge was groundless, the accused would be entitled to discharge u/Sec. 227, or section 239 as the case may be. H'ble the Apex Court explained the reason behind incorporation of section 227 Cr.P.C., which did not exist in the old code of 1898 in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 in the following words:

"9. Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged."

19. The ground for proceeding are derived from the material presented against the accused, founded in the satisfaction of the Court that prima facie the material discloses the commission of the offence at the hands of the accused and meets all the ingredients of the offence alleged to have been committed by the accused. The Court is to presume the veracity of the material presented and evaluate the same only for this limited purpose of ascertaining whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the offence alleged. Reverting to the case at hand, under the chargesheet presented by CBI, neither of

the two accused/ petitioners before this Court, is alleged to be in the exclusive conscious possession of the arms and ammunition in respect whereof FIR No.326/2009 and later RC1(S)/2010/SCV/1SC11 came to be registered against the petitioners. The investigation has not pinpointed which out of the two accused co-owners was in conscious possession, had effective control over the fire arms and ammunition found at their premises by the CBI Team during search of the premises on 30.7.2009.

20. At the relevant time petitioner no.2 was running in the custody of ACB Mumbai in connection with a case registered on 22.7.2009 against him under the Prevention of Corruption Act, 1988, and as per the search list, the petitioner no.1 was not present inside the premises when the CBI search team arrived at the premises, the CBI team lead by Insp. Sham Datt had waited for the presence of the petitioner no.1 at the premises for over half an hour. There is no material collected during investigation of CBI on the source, the acquisition, of, the arms and ammunition found at their premises. Inspector Baney Singh Meena had interrogated petitioner no.2 on the source of the weapons, but no clue as to the source of the weapons, the acquisition thereof could be gained from petitioner no.2. Following the recovery, as petitioner no.2 was in custody of ACB Mumbai in connection with RC No.30A2009, Mumbai, when the recovery of the arms and ammunition was put to him during his interrogation, he had offered to trace out his Arms licenses. It is also brought on record that the petitioner no.2 has two Arms licenses in his favour, and owns one 12 bore shotgun, one .38 Bore Sports Model Pistol endorsed against the same since 1987/1988.

21. The chargesheet does not allege the exclusive conscious possession of any one out of the two accused co-owners of the premises in question, it is not that the arms and ammunition were in the conscious possession and effective control of one and in the mere knowledge of the other. It is on account of their being the two co-owners of the premises where the unlicensed Fire arms and ammunition were found kept that the petitioners are sought to be proceeded against for commission of the offence of possession of unlicensed fire arms made punishable u/Sec. 25, by invoking Section 35 of the Arms Act, 1959, against them. The prerequisites for invoking section 35 for proceeding against the co-owners of a premises are etched thereunder as follows:

"35. Criminal responsibility of persons in occupation of premises in certain cases.--Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone."

22. The petitioners are sought to be held jointly culpable for the Fire arms and ammunition found during search of premises conducted in RC.No30A2009Mumbai, on the sole premise that they were the co-owners thereof, and in support of the accusation, material has been collated from the investigation carried first by Delhi Police and then by CBI that prima facie reveals the petitioners to be the joint owners of the premises described as K-33, First Floor, Jangpura Extn, Jangpura, New

Delhi, there is material to demonstrate that the arms in question are fire arms and the ammunition is live ammunition within the definition of the Arms Act, 1959, as well as to substantiate that the two co-owners of the said premises could not produce valid arms license in respect thereof, though the petitioner No.2 has in his name arms licenses/ two licensed arms. Over and above for proceeding against the two co-owners of the premises in question u/Sec. 35 of the Arms Act, 1959, as jointly liable for the arms and ammunition found at the premises, there is material required also on the aspect that the two co-owners were aware of the existence of the arms and ammunition in the premises.

23. In order to carve out a prima facie case sufficient for proceeding against the accused for commission of offence made punishable u/Sec. 25 r/w Sec. 35 of the Act there has to be some material to show that each of the petitioner co-owners were aware of the existence of the arms and ammunition in the premises. In any given case for proceeding against an accused co-owner of the premises, with the aid of section 35 of the Arms Act, 1959, the prima facies would have been satisfactorily covered with the proof of ownership itself, for ownership alone could suffice for the drawing of the inference necessary for proceeding against the accused co-owner that the accused was in possession of the premises, to the exclusion of all others, and everything present and situate therein. Material showing joint ownership and occupation would have sufficed to raise the grave suspicion for proceeding against the accused/ present petitioners in respect of unlicensed fire arms and ammunition found in their premises, however where the record goes to show that the premises in question were found in a state of renovation, the Court then is required to sift the circumstances attending the recovery to gather and garner the ground sufficient for proceeding against the owners of the property towards the knowledge to be imputed, that they were aware of the existence of the incriminating articles found at their premises.

24. The presumption of exclusive possession in respect of a premises under renovation cannot as readily be drawn even for a prima facie case against the present accused/petitioners, inferences on either side are equally capable of being read into such a circumstance appearing on the record, even if the premises under renovation were found at the time of the search to be under lock and key given that none of the petitioners were found physically present inside the premises when the search team had arrived at the premises. Where the material is somewhat ambiguous/ not sufficiently categorical on the aspect of exclusive possession of the premises at the given time and admits of inferences on both sides, it should manifest in the circumstances surrounding the recovery as to whether each of the accused as co-

owner of a premises under renovation can prima facie be taken to have knowledge of the existence of the arms and ammunition in the premises. The reason to believe that either of the accused co-owner was aware of the existence of the arms and ammunition would flow from the circumstances surrounding the recovery itself, the manner in which, the place from where, the incriminating material came to be discovered.

25. Sifting through the record for the purpose of deciphering this fundamental requisite of the accusation, the search list is the most contemporaneous record of the search, recovery and seizure. As chronicled, in compliance of the authorization issued in favour of Ins. Sham Datt, by Sh.

M.B.Surti Addl SP CBI ACB Mumbai, in RC No.30A2009, Mumbai under Prevention of Corruption Act, 1988 against petitioner no.2, conveyed over fax to CBI/HO/Delhi, Insp. Sham Datt alongwith CBI team members consisting of Sh. R.P. Sharma Inspector, CBI, ACB, Delhi and Nikhil Malhotra, PSI at the same Branch, alongwith subordinate staff, reached at the address of petitioner no.2 at about 1700hrs. The house was found locked, he made enquiries from the neighbors about the contact numbers of the house owners. In the meanwhile at about 17.35 hours, the petitioner no. 2 accompanied by her brother-in-law and sister-in-law arrived at the premises, who were explained about the purpose of the visit, the authorization was shown to the petitioner no.2, and she signed the same in acknowledgement, the search commenced at around 17.45 pm in the presence of independent witnesses as mentioned in column no.5 of the search list, as well as petitioner no.2 and the two relatives.

26. The independent witness had not accompanied the CBI team, were not present when the CBI team reached the premises at 17:00 hrs. and waited for the petitioner no.1, as per the search list, the search of the premises that commenced at 17.35 pm was carried in their presence. It is found clearly documented under the search list that no incriminating documents or articles were recovered during the search, the search list also attests to the fact that the house was in the process of renovation. The exception to this emphatic statement that no incriminating document/articles were recovered during the search of the premises is carved subsequently for it is scribbled in between the text already inscribed. This exception spaced betwixt the already written text only alludes to column no.2 of the search list, earmarked for a description of the articles seized, and the arms and ammunition are catalogued thereunder from serial no.8 to 12. The format of the search list requires a description of the place where seized article was found to be registered under its column no.3, and in respect of all the articles included in column number 2, the place of recovery in column 3 is disclosed as from the first room which is on the left side of the entry door.

27. It is the column no.4, the 'Remarks' column reserved for putting into black and white the proceedings of the search team of CBI. It is affirmed in the narration of the proceedings under the search list that all codal and legal formalities were observed during the search proceedings, the accounts observed in the name of the accused/petitioner no.2 against whom the ACB Mumbai was investigating the case under the Prevention of Corruption Act, 1988, are detailed, and in addition are furnished the details of the arms observed/ found during search. The search list goes on to certify that no other documents/ articles other than mentioned in column no.2 from serial no.1 to 12 were taken into police possession. Search memo was read over and explained and copy of the memo was given to petitioner no.1, at which the search proceedings stood concluded at 8:00 pm. There is nothing in the search list as such on the manner in which three firearms and two packets of cartridges were chanced upon during the proceedings of the CBI team at the premises, how these came to be recovered from the premises, who found these and from where in the said room.

28. Insp. Sham Datt in his confidential letter dated 31.7.2009 on the basis whereof FIR No. 326/2009 was registered u/Sec. 25 of the Arms Act, 1959, against petitioner no.2, while handing over the firearms and ammunition also did not elucidate on the manner of recovery of the fire arms and ammunition. The FIR accordingly refers to the place of recovery of the firearms and ammunition as the first room on entry on the left side, bearing no information on the manner of

recovery. Insp. Sham Datt was not available to join the investigation initiated at his instance on his compliant by the Delhi police into the arms and ammunition recovered from premises falling within the jurisdiction of P.S. Hazrat Nizamuddin in FIR No. 326/2009, till the investigation remained with Insp. Baney Singh Meena, despite notices. Some light came to be shed on the manner of recovery, the circumstances attending the recovery of such incriminating articles, after investigation had been handed over to CBI.

29. Some six and a half months after the search of the premises of the petitioners, Insp. Sham Datt joined investigation with Dy. SP Binay Kumar, CBI, ACB, Mumbai, and explicated that fire arms and ammunition were found kept in a briefcase kept in room no.1 of the premises of first floor which was situated at left side while entering the premises. The briefcase was opened with the help of a screwdriver as the house members were unable to provide the keys or to furnish the combination number of the lock of the briefcase, and the three fire arms and two packets of ammunition were recovered therefrom. No part of these proceedings is accounted for in the search list prepared by him, which is the only contemporaneous document recording the search of the premises, the incriminating articles discovered, recovery effected and seizure made. There is no mention of any briefcase in the entire search list, nor has it been so recorded in the search proceedings that the briefcase was opened in the presence of all concerned with a screwdriver. The briefcase, the receptacle in which the three firearms and two packets of ammunition were found kept was not seized when the firearms and ammunition were taken into possession vide the search list by Insp. Sham Datt.

30. The arms and ammunition it becomes apparent from the record are not seized in the same condition that these are stated to have been found in. The receptacle in which three firearms and two packets of ammunition were kept has not been described anywhere, and has not been seized even during investigation, it is not part of case property. It could never be ascertained for the purposes of the present proceedings as to what kind of a receptacle was the same in which the case property i.e. three firearms and two packets of ammunition were found, whether it was an ordinary briefcase, or some special contraption designed specifically for accommodating the case property that it contained. Some clue regarding the owner of the briefcase could have possibly been detected from the article itself, investigation into the same might have tied the fire arms and ammunition to any one of the petitioners or to some other for that matter. The record, however, reflects that the receptacle after it was broken open with a screwdriver was discarded and only the firearms and ammunition were taken into possession by Insp. Sham Datt, when the incriminating article is required under all circumstances to be seized in the condition that it is found in, and the receptacle in which it is contained is also to be produced before the Court, to substantiate all circumstances of the recovery set up against an accused.

31. The two public witnesses who took part in the search of the premises at K-33, First Floor, Jangpura Extn. Jangpura, in connection with RC No.30A/2009, Mumbai, registered against petitioner no.2, and the other members of the CBI team whose name appears in the search list, have also been joined in investigation, again after the investigation is transferred to CBI, though Insp. Baney Singh Meena so long as the investigation remained with him is also stated to have examined the public witnesses but no such statements are part of the chargesheet. In the statements recorded

of all the witnesses to the recovery so far as the manner of recovery is concerned, the only singular circumstance highlighted is that arms and ammunition were found kept in a briefcase kept in the first room to the left of the entrance, which was opened with a screwdriver as the house members were unable to provide the keys or to furnish the combination number of the lock of the briefcase. No further specifics on the manner/ circumstances of recovery are to be found on the record.

32. Apropos, the manner of recovery of the fire arms and ammunition from the premises of the petitioners, the facts set out on the face of the record are that there was a briefcase found kept in the first room on the left side of the entry door, the same was locked, the petitioner no.1 was unable to provide the combination or keys to the same, the briefcase was opened with a screwdriver, and three fire arms and two packets of ammunition were found kept inside the said briefcase. If the keys to the said briefcase containing the arms and ammunition had been made available by the petitioner no.1, or had been retrieved from the premises itself, either at the instance of the petitioners or otherwise found during the search operation, or if the combination to the briefcase had been attributed to the petitioners, again, the prima facie case would have been secured with all ingredients of the offence in place, leading to grave suspicion against the petitioners on account of their being the joint owners of the said premises under renovation, sufficient for proceeding against them u/Sec. 25 r/w Sec. 35 of the Arms Act, 1959. This is not, however, what the material demonstrates, neither the keys are found in the premises nor at the instance of the house owners.

33. Pertinently, all the members of the search team unanimously recount that the petitioner no.1 was unable to provide either the keys or the combination to the briefcase in which the firearms and ammunition were found kept. None asserts that the house owners did not furnish/provide the same. The material does not signify that petitioner no.1 who was present at the time of the search when asked to produce the keys/combination to the briefcase which was forced open to discover arms and ammunition kept therein, refused to provide the same. In a refusal may inhere the necessary intent sufficient to raise a grave suspicion that the incriminating contents of the said alleged briefcase were in the knowledge of the owners of the house. The inability of the house owners then again can generate inferences on either side, not necessarily against the house owners to lead to grave suspicion against the petitioners.

34. Where the briefcase / the contraption containing incriminating articles has to be forced open, there is no refusal to provide keys and combination registered, neither the keys come to be discovered from a search of the entire premises or at the instance of the house owners, then there has to be something more in the circumstances surrounding the recovery that could inspire the desired inference sufficient to impute knowledge of the contents of a locked briefcase kept in a premises under renovation on any of the owners of the premises. In the facts of the present case, as the premises are shown to be in the process of renovation, simplicitor that briefcase containing firearms and ammunition was found kept in the first room in itself is not sufficient for raising a prima facie case required for proceeding against the petitioners with the aid of section 35 of the Arms Act, 1959, where in this first room on the left of the entrance was this briefcase kept was also required to have been provided for. For it is one thing if the briefcase were kept concealed in any almirah or enclosed space available to the owners only, for example under the bed or any other piece of furniture any such place beyond the view of any third person accessing the first room on the left

of the premises, and a diametrically opposite inference is capable of being derived if the briefcase lay out there in plain sight for anyone to easily retrieve it in a premises under renovation.

35. There is no circumstance set forth that could indicate that there was an effort made to keep the briefcase containing unlicensed fire arms and ammunition hidden from the eyes of any third person other than the owners, considering that the premises were under renovation. The same inferences against the owners for a prima facie case would be difficult to be drawn for a premises under renovation if the briefcase containing unlicensed fire arms and ammunition is lying unattended in the open in plain sight, it then becomes equally amenable to an inference in favour of the owners of the house that they may not be aware of the existence of incriminating material inside the locked briefcase, for if they had knowledge of the contents thereof, they were in conscious possession and had effective control of the same, they would have made efforts to hide it from plain sight to conceal it in a manner that it cannot be easily extricated by any third person. Where was the briefcase found kept in the room is not evident from the record and in the circumstances of the present case, it is vital for generating a prima facie case sufficient for proceeding against the accused arraigned on the sole premise of their being co-owners of the premises.

36. There is fathomable a calculated silence, I would say, on the manner of the recovery. Where was the briefcase found kept in the first room on the left to the entrance of the premises under renovation is withheld, in the absence whereof, the material fails to give rise to a grave suspicion that the petitioners co-owners have committed the offence in respect of the firearms and ammunition discovered at their premises. The circumstances surrounding the recovery were required to have been lucidly borne on the face of the record for supplying the ground for proceeding against the petitioners, in order for the same to have been tested during trial. The circumstances surrounding the recovery as would be material to meet the essential ingredients of the offence are not to be discovered during trial, trial is not an opportunity to unearth, discover or create evidence but to test the evidence collected in support of the accusation, to assess the credibility and sufficiency thereof.

37. There has to be some material on all aspects of the accusation before proceeding against the accused, and not merely on some of the aspects, there is no prima facie case if evidence on a material aspect of the accusation, essential ingredient of the offence, or a mandatory requirement of the statute, is missing. There is nothing for the Court to make any prima facie assessment of the place of recovery which in the circumstances of the present case is essential for the satisfaction of the Court if the material raises mere suspicion or grave suspicion against the petitioner co-owners that they were aware of the existence of the firearms and ammunition in the premises under renovation. There is not even a site plan of the place of recovery. Insp. Sham Datt when he proceeded to take possession of the firearms and ammunition had himself not prepared any sketch, site plan of the place of recovery, at no stage of the investigation was any such endeavour made either by Ins. Baney Singh Meena or by Dy.SP Binay Kumar.

38. For that matter, when the broad probabilities of the case are reckoned, the total effect of the evidence is seen, it cannot escape notice that certain infirmities are conspicuous on the record. The receptacle, the briefcase in which the firearms and ammunition was found kept was discarded, the

fire arms and ammunition were not sealed/ marked at the spot before its seizure, and are not seized in the condition that these are alleged to be found in. It emanates from the record itself that Insp. Sham Datt had neither found it opportune to inform from the spot the local police within the territorial limits of which the premises were situate about the recovery, and even after the conclusion of the proceedings, Insp. Sham Datt did not make it convenient to report the accidental recovery of fire arms at the premises and deposit the same with the local police station. It is after a delay of over 22 hours that he produced firearms and ammunition in unsealed condition before the SHO of the local police station alleging that the same were found during search of the said premises on 30.7.2009 conducted in RC No.30 (A)/2009- Mumbai, u/Sec. 9 of the Prevention of Corruption Act, 1988 against petitioner no.2, without accounting for the custody of the incriminatory articles during this period.

39. When the only evidence is the recovery of incriminating articles, settled rules and expected norms of procedure assume significance. If the record brings out the deviation therefrom, it should also speak for reasons therefor. Given the potentially incriminating nature of the articles alleged to have been discovered at the premises which otherwise had nothing to do with the offence under investigation in the case registered under the Prevention of Corruption Act, 1988, Insp. Sham Datt acting on the authorization u/Sec. 165 Cr.PC, alone, in RC No. 30 (A)/2009-Mumbai under the Prevention of Corruption Act, 1988, could have proceeded to immediately inform the SHO concerned of the local police station for proceedings in accordance with law, which could have ensured that the firearms come to be sealed and marked at the spot, sketch/site plan of the place of recovery is prepared, and all steps necessary to keep intact the sanctity and integrity of the case property are earnestly effected. There is no explanation supplied of assuming jurisdiction over the recovery in this manner by Insp. Sham Datt in the search list or in his statement recorded during investigation in present case, no such pressing urgency/circumstance is borne from the record.

40. More than that, no satisfaction can be recorded from the material and circumstances set up surrounding the recovery for a prima facie case either on the exclusivity of possession of the premises at the given point in time, nor for the reasons to believe that the petitioner co-owners were aware of the existence of the fire arms and ammunition in the premises. That firearms and ammunition were recovered during search of the premises kept in a briefcase kept in the first room to the left of the premises is the bare accusation. For a prima facie case sufficient for proceeding against the petitioners there has to be ground for presuming that the petitioners being co-owners had knowledge of the existence of the said incriminatory material in the premises given the circumstance flowing from the record that the premises were under renovation and such ground/ reasons to believe could only be inferred and raked from the circumstances surrounding the manner of recovery, for no other material except for the recovery of firearms during search of premises is alleged against the accused/ petitioners.

41. The Ld. Trial Court in the face of such facts and circumstances of the case as are emerging from the record, therefore, has erred in proceeding against the petitioners u/Sec.

25 r/w Sec. 35 of the Arms Act, 1959, in respect of the firearms and ammunition alleged to have been recovered from their premises on the basis alone of material to the effect that the petitioners



were co-owners thereof and failed to produce valid license in respect of the firearms alleged against them, without appreciating that the premises in question at the relevant time on the face of the record were being shown to be in the process of renovation, and without sifting the material to assess if there was any circumstance emerging on the record giving reason to believe that the petitioners were aware of the existence of the firearms in the premises, and thereby failing to satisfy itself that there was some material existing on all the ingredients constituting the offence. There is cause therefore to interfere with the order impugned, vide which the separate applications of the petitioners under section 239 Cr.PC came to be dismissed and the petitioners have been proceeded against u/Sec. 25 r/w Sec. 35 of the Arms Act, 1959.

42. Such circumstances of the recovery that could lead to the appropriate inferences that the petitioners were aware of the existence of the fire arms and ammunition kept in a briefcase kept in the first room on the left side of the premises under renovation, were required to have been clearly and explicitly spelt out, in the absence whereof, there is no basis for the Court to record its prima facie satisfaction that there is ground for presuming that the accused has committed the offence in respect of the firearm and ammunition alleged to have been recovered at the premises of the petitioners which were in a state of renovation at the relevant time, and are liable to be proceeded against under section 25 r/w Sec. 35 of the Arms Act, 1959. It is not warranted for the Court in the face of deficient material to proceed merely on some suspicion with the expectation that some incriminating circumstance of the recovery may come to be unearthed during the trial.

43. All facts essential to meet all ingredients of the offence are to be borne of the record, for the Court to proceed against the accused, the existence thereof cannot be presumed for raising a prima facie case, on the contrary, a prima facie case is only made out where material exists on all constituents of the offence. The Court is not to act as a mouthpiece of the prosecution, disregarding the infirmities, ignoring the improbabilities, supplying the defects, filling in the gaps, to cobble up and stitch together a prima facie case against the accused at the instance of the prosecution, when the material on record even if accepted in its entirety, unrebutted, would not make a conviction reasonably possible. Hon'ble the Apex Court has propounded this broad test in *Yogesh v. State of Maharashtra*, (2008) 10 SCC 394 as follows:

"16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction

reasonably possible. (See State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] and Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609].)"

44. Without there being material giving rise to reason to believe that the petitioners were aware of the existence of the unlicensed firearms and ammunition in the premises in the joint ownership of the petitioners, there is not sufficient ground for proceeding against the accused/petitioners u/Sec. 25 r/w Sec. 35 of the Arms Act, 1959, for possession of firearms and ammunition alleged to have been found by Insp. Sham Dutt on 30.7.2009 at the premises described as K-33, 1st Floor, Jungpura Extn. Jungpura, New Delhi in the light of the circumstance appearing on record that the said premises at the relevant time were in the process of renovation. Though, prima facie there is material to show that the petitioners are joint owners of premises described as K-33, 1st Floor, Jungpura Extn. Jungpura, New Delhi, which were subjected to search by a CBI team on an authorization issued u/s 165 Cr.PC in favour of Insp. Sham Dutt, and the CBI team found a briefcase kept in the first room on the left of the premises which was found containing 3 firearms and two packets of ammunition, however as the record also shows that the said premises were under renovation, and there is nothing in the manner of recovery described to supply reasons to believe that the petitioners joint owners were aware of the existence of the said arms and ammunition in the premises and when the broad probabilities and the total effect of the evidence is considered, the entire material set up against the petitioners accepted in its entirety, in such facts and circumstances as are emerging on the record therefore, merely raises some suspicion but not grave suspicion against the petitioners sufficient to presume that the petitioners have committed the offence.

44. In view thereof, prima facie case sufficient for proceeding against the petitioners u/Sec. 25 r/w Sec. 35 of the Arms Act, 1959, is not made out as the material does not meet all the constituents of the offence, the petitioners therefore are entitled to be discharged. As a consequence thereof, these two revision petitions against order dated 16.02.2023 passed by Ld. Additional Chief Metropolitan Magistrate-cum-ACJ, Rouse Avenue District Court in CBI case No.62/2019, are accepted, the order impugned is set aside, and the petitioners Devyani Singh and Sarabjot Singh both are accordingly discharged of the offences in FIR No. RC 1(S)/2010/SCU-IV.

Let two sets of this common judgment be prepared to be placed in the files of Crl. Rev. No. 28/2023 & 29/2023.

TCR be sent back to the Ld. Trial Court alongwith copy of the judgment. Revision file be consigned to Record Room.

Announced in open  
Court on 28.11.2023

(NEELOFER ABIDA PERVEEN)  
Special Judge (PC Act) CBI  
Rouse Avenue Courts,  
New Delhi 28.11.2023