



2026:DHC:8774



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

Reserved on: 22.09.2026
Date of Decision: 06.10.2026
Uploaded on : 06.10.2026

CNR No. DLHC01011675026

+ **CRL.A. 289/2026**

ASHOK KUMAR AGGARWAL

.....Appellant

Through: Mr. Yashraj Singh Deora, Sr. Adv.,
along with Ms. Anupama Dhurve, and
Mr. Priyesh Mohan Srivastava, Advs

versus

SUSHIL DEWAN & ORS.

.....Respondents

Through: Mr. Atul Guleria, SPP along with Mr.
Aryan Rakesh, Mr. Vivek Maurya,
Ms. K.M. Swati, Mr. Manish, Advs.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been preferred under Section 380 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred to as 'BNSS'] [Corresponding with Section 341 of the Code of Criminal Procedure, 1973] [hereinafter referred to as 'CrPC'] against the order dated 25.10.2025 passed by the learned Special Judge (PC Act), CBI-02, Rouse Avenue Courts, New Delhi, in **Misc. DJ ASJ No. 194/2025**, whereby the appellant's application under Section 340 of CrPC [Corresponding with Section 379 of BNSS] seeking initiation of proceedings in respect of the statements contained in the reply dated 02.08.2016 filed by the Central Bureau of Investigation [hereinafter referred to as 'CBI'], was dismissed.



BACKGROUND

2. The appellant, an officer of the Indian Revenue Service [hereinafter referred to as 'IRS'], was prosecuted by the CBI in **RC No. S-19 E/0006/1999** for the offence punishable under Section 13(2), read with Section 13(1)(e), of the Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act']. The prosecution in this case rested on the allegation that he had acquired assets disproportionate to his known sources of income. The charge-sheet, proceeded on the basis of a sanction order dated 26.11.2002.

3. *Vide* a common judgment dated 13.01.2016 in **Criminal Revision Petition No. 338 of 2014** and a connected writ petition, a Coordinate Bench of this Court held the sanction that was given for prosecuting the appellant *vide* order dated 26.11.2002 to be invalid. Pursuant thereto, the learned Special Judge discharged the appellant *vide* an order dated 10.03.2016.

4. The CBI thereafter examined the question of challenging the said judgment dated 13.01.2016 before the Supreme Court of India. On a reference made by the CBI regarding the proposed challenge, the Ministry of Law and Justice [hereinafter referred to as 'MoLJ'] rendered an opinion dated 08.06.2016 that there appeared to be no reasonable ground to agitate the matter further before a higher forum. The relevant portion of the aforesaid opinion of MoLJ is as under:

*“8. Apart from above, the Supreme Court has also hammered upon the investigation in the DA case against Shri A. K. Aggarwal and observed about the wrong calculation of DA as mentioned above in para 6. **Moreover, the Department has not satisfactorily rebutted the observations of Hon'ble Court and admittedly accepted the fact of defective and invalid sanction order. It appears from record that the grounds proposed***



for SLP is more focused upon the restriction imposed upon CBI by Hon'ble High Court for securing a fresh sanction-order rather than merits of the case which may obviously pave the path to voyage a mistrustful investigation and thereby again wasting the precious time of the Courts.

9. In view of aforesaid facts and circumstances of the case, observations of the Apex Court in its judgment dated 22.11.2013 and the prolonged proceedings of about 18 years; there appears no reasonable ground to further agitate the matter in the higher forum. [Emphasis supplied]

5. The Department of Personnel and Training [hereinafter referred to as 'DoPT'] communicated the said opinion to the CBI by a letter dated 01.07.2016.

6. On 08.07.2016, the appellant applied to the learned Special Judge for release of documents that were seized during the investigation. The application covered the documents relied upon by the prosecution, the unrelayed-upon documents and the documents stated to belong to other persons or public authorities.

7. On 02.08.2016, the CBI filed a reply signed by Sushil Dewan and although the CBI expressed no objection to the return of the unrelayed-upon documents, it opposed the release of the other remaining documents. The reply stated, *inter alia*, that the correspondence with the administrative Ministry with respect to further legal action in the matter is “underway” and that it would not be prudent to return the seized documents as they might be required in further legal proceedings. As the crux of the present appeal revolves around the aforesaid reply, this Court considers it apposite to reproduce the relevant portions of the same herein:



“3. That in reply to the averments made in application, it is submitted that consequent to examination of the judgment of the High Court the correspondence with the administrative Ministry with respect to further legal action in the matter is under way. Thus it would not be prudent to return the seized documents as the same may be required during the further legal procedure, if any.

4. That if the final order from the Ministry is received to close the matter, CBI has no objection to return the documents/ articles out of Annexure-A seized from Shri Ashok Kumar Aggarwal during the course of investigation and so also to the other applicants. Similarly, CBI has no objection to return the documents/ articles out of Annexure -B, which were not relied upon, to the persons from whom the same were seized including the applicants. From the application it is not clear as to whether the request of return of documents has been made individually by the other private persons from whom the documents were seized by the CBI during the course of investigation.” [Emphasis supplied]

8. Finding that the reply did not disclose the precise status of the proposed challenge, the learned Special Judge directed the CBI to file a “clear cut reply” and to state whether any appeal or revision had been filed or was pending or not. The matter was thereafter adjourned to 09.08.2016.

9. Before the additional reply of CBI was filed, the appellant moved an application on 08.08.2016 under Section 340 of CrPC wherein he alleged, that the concerned statement made by the CBI that “correspondence with the administrative Ministry with respect to further legal action in the matter is underway” in the reply dated 02.08.2016 was factually incorrect as no actual correspondence with the administrative Ministry was then under way and that



the opinion of MoLJ with respect to the concerned proposed challenge dated 08.06.2016 had not been disclosed in the said reply. On that basis, he sought initiation of proceedings against respondent No. 1 and the other officers who had authorised the filing of the said reply.

10. On the very same day, the CBI forwarded a proposal to the DoPT seeking reconsideration of the matter and the opinion of senior law officers with respect to the proposed challenge to the judgment dated 13.01.2016. On 09.08.2016, the CBI filed an additional reply explaining that it had, in principle, decided to challenge the judgment dated 13.01.2016 and that the proposal for such had been forwarded to the DoPT on 08.08.2016. The CBI thereafter filed a reply dated 17.08.2016 opposing the application under Section 340 CrPC.

11. *Vide* an order dated 17.08.2016, the learned Special Judge allowed the application for release of the documents, whereafter, the CBI challenged these release directions before this Court in ***Criminal Miscellaneous Case No. 3816 of 2016***. In the meantime, it also instituted ***SLP (Crl.) No. 10112 of 2016*** against the judgment dated 13.01.2016, in which the Supreme Court issued notice on 16.12.2016. *Vide* an order dated 21.01.2019, a Coordinate Bench of this Court set aside the directions passed for release of the documents described in Annexures A, C, D and E to the application dated 08.07.2016, while leaving it open to the appellant to renew the request after the decision in the special leave petition [hereinafter referred to as 'SLP'] is made.

12. In the first round of proceedings under Section 340 of CrPC, the learned Special Judge, *vide* the order dated 29.05.2018, recorded a *prima facie* opinion that respondent No. 1 had made dishonest and false averments in the reply dated 02.08.2016 and had thereby committed offences under Sections 191 and 209 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'].



A formal complaint was consequently directed to be instituted before the Chief Metropolitan Magistrate [CMM] as a result of which, the complaint was instituted on 01.06.2018, and cognizance in it was taken on the next day i.e. 02.06.2018. The relevant portion of the said orders are reproduced hereinbelow:

Order dated 29.05.2018 passed by the learned Special Judge:

“29. On the basis of ratio of law as settled by above judgments, conclude that by making dishonest and false averments in the reply dated 02.08.2016, Inspector Sushil Dewan has prima-faciely committed offences u/s 191 IPC and 209 IPC.

30. I have also considered the question of expediency for proceeding u/s 340 CrPC. It is clear that it was conscious decision of IO to give misleading and false statement to the Court whereby material information has been withheld and misleading impression has been put across, IO Inspector Sushil Dewan is holding responsible position in the Premier Investigating Agency. He is a public servant himself and expected to conduct the proceedings in the Court on legal and ethical principles and to make truthful statements or claim. It cannot be ignored that he came out with false pleas and required the Court to believe that opinions have not been received from the Ministry and correspondence regarding the same was still underway.”

“32. The application for release of documents was moved on 08.07.2016 and the reply for the same was submitted on 02.08.2016 and it is clear that after deliberating on the issue, conscious decision was made to give an incorrect statement to the Court. I am therefore, of the opinion that complaint u/s 340 CrPC is required to be made against IO Inspector Sushil Dewan for proper



inquiry. Accordingly, I authorize reader of this court to file formal complaint annexing copy of this order before Chief Metropolitan Magistrate, Central District, Tis Hazari Court, Delhi.

33.IO Inspector Sushil Dewan is directed to furnish personal bond in the sum of Rs.10,000/- for appearance before the Court of CMM. He is directed to appear before CMM on 02.06.2018.”
[Emphasis supplied]

Order dated 02.06.2018 passed by the learned CMM whereby cognizance was taken against IO Sushil Dewan:

“I have perused the order dated 29.05.2018 of Ld. Special Judge, CBI (PC Act), Tis Hazari Court, Delhi wherein an application moved by applicant Ashok Kumar Aggarwal for proceeding against the IO had been allowed, with clear finding that IO of the case (accused herein) had made dishonest and false averments in the reply dated 02.08.2016 and thereby prima facie committed offences under Section 191/209 IPC.

In view of the said record, I hereby take cognizance of the offences against the accused herein.” [Emphasis supplied]

13. Respondent No. 1 thereafter challenged the orders dated 29.05.2018 and 02.06.2018 in ***Criminal Appeal No. 867 of 2018*** before a Coordinate Bench of this Court. In the course of proceedings in the aforesaid preferred criminal appeal, on 29.05.2024, the CBI was directed to produce the relevant correspondence and file-notings in a sealed cover, after the production and examination of which, the Court noticed, that officers other than respondent No. 1 had also been involved in the preparation and filing of the concerned reply dated 02.08.2016. So without expressing any opinion on the merits of the case, this Court on 11.07.2024 set aside the order dated 29.05.2018 passed



by the learned Special Judge to enable him to pass a fresh order after considering CBI's record and examining the role of the other involved officers as well. The relevant portion of the same is as under:

“10.The perusal of the record indicates that it was not only the appellant herein but also other officers of the CBI who were instrumental in filing the reply in the court regarding the application for release of document filed by respondent No.2.

11.Ld. Trial court has passed a very detailed order. However, the role of other officers possibly could not be examined on account of non-availability of the records. As now the record is available and is being sent to the Ld.Trial Court in sealed cover for the perusal. Ld.Trial Court shall be in a better position to examine the role of other officers in a wholesome manner. Ld.Trial court may also call the corresponding correspondence file from the CBI for perusal. Thus without making any comments on the merits of the case, the matter is remanded back to the Ld. Trial court for reconsideration and passing an appropriate order on the basis of the record produced by CBI.

12.For the purpose of completeness without going into the merits of the case the impugned order is set-aside only to enable the Ld. Trial Court to pass a fresh order taking into account the record produced by CBI.

13.Since the matter is already pending for the last six years. Ld. Trial shall conclude the hearing expeditiously. Ld. Trial Court shall return back the record the CBI after passing the fresh order.

14.In view of the above observations, the present appeal stands disposed of. However, no expression made herein shall tantamount to be an expression of the merits of the case. The Ld. Trial



*Court shall pass the order without being prejudiced by the order passed by this court.”
[Emphasis supplied]*

14. Consequently, on 18.09.2024, the complaint proceedings before the CJM were adjourned *sine die*, with liberty to revive them subject to a fresh order under Section 340 of CrPC.

15. Following the remand, the CBI placed the relevant administrative record before the learned Special Judge along with an affidavit dated 23.11.2024. The appellant was permitted to inspect the file-notings, the draft and the vetted and final versions of the replies.

16. Upon considering this material, the learned Special Judge passed the impugned order dated 25.10.2025 wherein he recorded, that respondent No. 1 had initially prepared a draft which did not oppose the application for release of documents and that a later draft expressly referred to the DoPT having declined the CBI's proposal to file an SLP. The learned Special Judge further recorded, that handwritten alterations to that draft introduced the statement that correspondence with the administrative Ministry was under way.

17. **The impugned order further stated that the final reply was prepared by Sushil Dewan, vetted by Special Public Prosecutor Md. Azad, routed through Superintendent of Police Raman Tyagi and Head of Branch Amit Kumar, and approved by Head of Zone Vineet Vinayak on 01.08.2016.** The learned Special Judge identified these officers, in addition to respondent No. 1, as having been instrumental in the preparation and filing of the reply dated 02.08.2016. The learned Special Judge found that, as on 02.08.2016, no correspondence concerning the proposed SLP was under way between the CBI and the DoPT and that what was actually pending was an internal process of deliberation within the CBI. Accordingly, the learned



Special Judge held that the reply dated 02.08.2016 conveyed an incorrect impression.

18. The Court however, concluded, that the concerned statement resulted from an imprecise choice of words rather than a deliberate attempt to mislead the Court, and further recorded that the CBI had corrected its mistake at the first available opportunity by filing the additional reply dated 09.08.2016. Having regard to the absence of prejudice to the appellant, the fact that the application for release of documents had initially been allowed, and the lapse of time, the learned Special Judge held that it was not expedient in the interest of justice to initiate proceedings against any serving or former officer of the CBI and dismissed the application filed by the appellant under Section 340 CrPC.

19. The aforesaid observations are reflected in the following portions of the impugned order:

“9. The very first issue that falls for consideration is ‘examination of the role of other officers of CBI in a wholesome manner’ in relation to CBI’s reply dt. 02.08.2016 qua release of documents. This issue arises inasmuch as there is a specific direction to this effect by Hon’ble Delhi High Court in its order dt. 11.07.2024. As regards Mr. Sushil Dewan’s role, there remains no ambiguity whatsoever; he was unmistakably the front man who had submitted the said reply dt. 02.08.2016, under his own signature. It goes without saying that the then Inspector Sushil Dewan lacked the authority and discretion to file such a reply of his own accord, and his actions must necessarily be viewed as having been carried out under the direction and command of his superior officers. And indeed, this formed the cornerstone of the arguments advanced by his counsel - that Mr.



Sushil Dewan had merely acted in accordance with the directives issued by his superior officers, to whom he was duty bound to adhere.

10. Perusal of CBI's administrative files show that, to begin with, Mr. Sushil Dewan had put up a draft reply not to oppose the application for release of documents. An image of the said draft reply (for short 'Draft 1') is below.

Draft 1

IN THE HON'BLE COURT OF SHRI V.K. KHANNA, SPECIAL JUDGE, CBI, TIS
HAZARI COURT, DELHI.

3247

75

In the Matter of
RC S19 E/0006 1999/ (CC No. 55/2002)

CBI Vs Ashok Kumar Aggarwal & Others

MOST RESPECTFULLY SHOWETH,

1. That a case RC S19 E/0006 1999 was registered by CBI on 17.12.99 U/s. 13 (2) r/w 13(1) (e) P.C. Act. 1988 against accused Ashok Kumar Aggarwal & others on the basis of report of Preliminary Enquiry. After investigation a chargesheet was filed on 05.12.2002 against the accused persons.
2. That in light of the order of Hon'ble High Court of Delhi dated 13.01.2016, this Hon'ble court has discharged all the accused persons vide order dated 10.03.2016.
3. That accused/ applicant has filed an application for returning of relied and un-relied upon documents seized during the investigation of the above mentioned case.
4. That relied upon documents had been deposited alongwith the chargesheet filed in the court and presently in the custody of the court.

PRAYER

In view of the above, it is most humbly submitted that CBI has no objection in returning the relied and un-relied upon documents to the accused/ applicant.

(Sushil Dewan)
Inspector of Police
CBI/EOU-VII/New Delhi

11. The office notings further show that this draft reply (Draft 1) was then put up for approval of Mr. Prem Kumar Gautam, SP/EOU VII, who got it vetted by Special PP Mr. Md. Azad. Post- vetting, the file was placed before Mr. Amit Kumar, HOB/EO-III for approval with the following recommendation dt. 19.07.2016 of SP Mr. Prem Kumar Gautam.

“May kindly refer para 3776/N onwards. In view of DoPT turning down



the proposal of CBI for filing SLP in the matter but keeping in view the far reaching consequence it has, opinion of higher level officers may be obtained. We may request to DoPT to reconsider the matter of filing SLP. Regarding reply of petition, PO/PP may be asked to make oral submissions regarding the same.”

12. Thereafter, Mr. Amit Kumar sought permission of HoZ Mr. Vineet Vinayak with the very same recommendations. Relevant except of Mr. Amit Kumar’s recommendations dt. 19.07.2016 is as under.

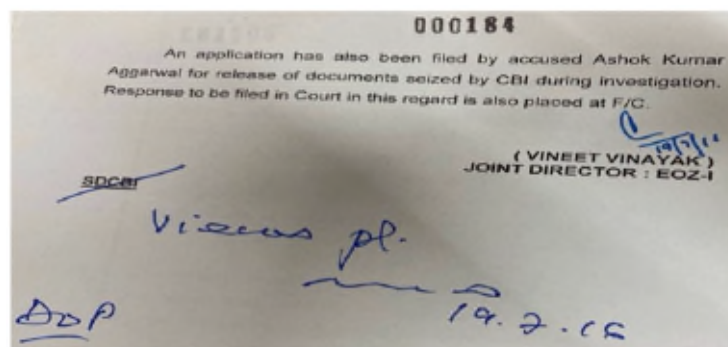
“May like to peruse pre-application filed by accused Ashok Kr. Aggarwal in the matter for release of documents-both relied/ unrelieved. The appln. Also mentions that SLP has not been filed within 90 days. The ref. of DoPT conveying Minutes of Law & Justice’s opinion for non-filing of SLP (F/A) may also be perused. There is no opinion of AG/SG/ASG in support of the same. The matter is important and has far reaching repercussions. Hence, it is proposed that MOLJ through DoPT may be requested to reconsider their view taking opinion of AG/SG. If above course of action is approved, oral submission may be made by counsel tomorrow in trial court that matter of filing/ not filing SLP is still to attain finality. A reply shall also be prepared parawise. Submitted for kind orders pls.”

(underlined for emphasis)

“13. File notings show that Mr. Amit Kumar, after discussing the matter with HoZ Mr. Vineet Vinayak, made the following noting dt.



19.07.2016, “Discussed with HoZ. Pl. put up with letter to DoPT requesting for reconsideration and also draft reply.” Accordingly, on 19.07.2016 itself Mr. Sushil Dewan submitted two drafts for approval, one being a letter addressed to DoPT, and the other a para-wise reply to the application for documents release. This second draft reply (for short ‘Draft 2’) prepared by Mr. Sushil Dewan reversed the tone and tenor of ‘Draft 1’ and sought to oppose the application for documents release. It (Draft 2) was then submitted to SP Mr. Prem Kumar Gautam, who had it vetted by Special PP Mr. Md. Azad. Thereupon, it was forwarded to HOB Mr. Amit Kumar and subsequently to HoZ Mr. Vineet Vinayak, who, in his notings dt. 19.07.2016, inter alia, wrote, “Undersigned is of the opinion that DoPT may be requested to approach Department of Legal Affairs accordingly. Draft communication in this regard is placed at F/B for approval.” His notings dt. 19.07.2016 concludes by saying that ‘response to application for release of documents seized by CBI is also placed at F/C’. An image of the last paragraph of HoZ Mr. Vineet Vinayak’s noting dt. 19.07.2016 is as under.



14. It is quite evident from the above image of the notings that the matter was then put up before SDCBI (Special Director of CBI), who then vide



his note dt. 19.07.2016 sought views of Director of Prosecution (DoP). Record shows that DoP in his note dt. 03.08.2016 gave his views qua the issue of re-examination of the matter vis-à-vis filing of SLP. DoP's note dt. 03.08.2016 is not exactly relevant for the present purpose, for the reply to the application for documents release had already been filed in the Court on 02.08.2016.

15. It may now be apposite to take a look at the said second draft reply (Draft 2) to the application for documents release. It is very much evident that this draft (Draft 2), prepared by Mr. Sushil Dewan, was reviewed and manually corrected by a CBI officer, senior in rank to him. An image of the said second draft (Draft 2), with the handwritten additions/corrections, is below.

Draft 2

(3248)

IN THE HONBLE COURT OF SHRI V.K. KHANNA, SPECIAL JUDGE, CBI, TIS HAZARI COURT, DELHI.

76 RC S19 E/0006 1999/ (CC No. 55/2002)

CBI Vs Ashok Kumar Aggarwal & Others

Sub:- Parawise reply of the petition filed by the accused for returning of the documents - Reg

MOST RESPECTFULLY SHOWETH,

1. That a case RC S19 E/0006 1999 was registered by CBI on 17.12.99 U/s. 13 (2) r/w 13(1) (a) P.C. Act. 1986 against accused Ashok Kumar Aggarwal & others on the basis of report of Preliminary Enquiry. After investigation a chargesheet was filed on 05.12.2002 against the accused persons.
2. That averments made in para 1 needs no comments being matter of record.
3. That in reply to the averments made in para 1, it is submitted that CBI had sought the permission of the DoPT for filing the SLP against the impugned order dated 13.01.2016 of the Honble High Court of Delhi. DoPT has turned down the proposal of CBI for the same. It is further submitted that CBI has again requested DoPT for reconsidering the matter for filing the SLP as it involves legal issues.
4. That averments made in para 3, 4, 5 & 6 needs no comments, being matter of record.
5. That in reply to the averments made in para 7, it is submitted that CBI has again requested DoPT for reconsideration for the proposal filed against the impugned order dated 13.01.2016 of Honble High Court of Delhi. The result of such reconsideration is awaited and in the meantime, the documents seized may be needed during the legal procedure, if any.

PRAYER

In view of the above, it is most humbly submitted that relied upon documents may not be returned and the application of the accused may be dismissed in the interest of justice till the result of such request of reconsideration for filing of SLP pending with DoPT.

It is further submitted that documents may be returned to the person/ department from whom/ where the same have been seized.

(Sushil Dewan)
Inspector of Police
CBI/ECU-VII/New Delhi



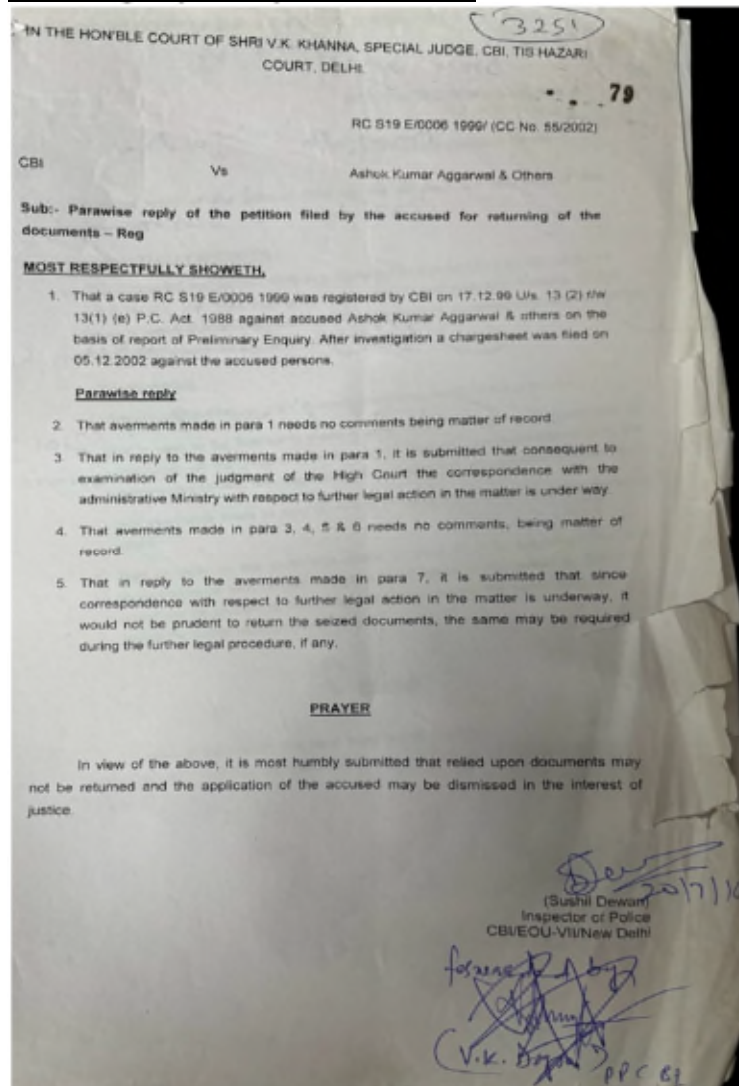
16. A reading of the image of 'Draft 2' reveals two key points: (a) Firstly, that in the typed draft prepared by Mr. Sushil Dewan there was explicit mention of 'DoPT turning down CBI's proposal for filing of SLP', and (b) Secondly, that for the first time, the claim that 'correspondence with the administrative Ministry with respect to further legal action in the matter is under way' was introduced, added manually by way of handwritten corrections, apparently by an officer senior to the rank of Mr. Sushil Dewan."

17. In my view, this handwritten addition in 'Draft 2' appears to have been done by HoZ Vineet Vinayak. I say so for at least two reasons. Firstly, the CBI in its parawise reply dt. 20.07.2025 filed in this Court at paragraph 37 thereof states that 'As per the records the corrections made appears to be in the handwriting of the then HoZ/EO Zone'. HoZ/EO Zone at the relevant time and the one who had actually dealt with this matter on the administrative side was none other than Mr. Vineet Vinayak. Secondly, it does appear to me that the ink (blue shade) used to make the handwritten corrections/additions in 'Draft 2' is the same as that used in appending the signature on the noting dt. 19.07.2016 by Mr. Vineet Vinayak. The similarity of the blue shade ink in these two may not be discernible and visible in black-and-white printouts. An image of Mr. Vineet Vinayak's noting dt. 19.07.2016 has been provided above.

18. Next, with the aforesaid findings vis-à-vis 'Draft 2', attention now turns to further action on CBI's part in relation to reply dt. 02.08.2016 to the application for documents release. It does appear from the record that Mr. Sushil Dewan incorporated the handwritten corrections/ additions made in 'Draft 2' in a fresh draft (for short 'Draft 3') that he prepared.



'Draft 3' adds nothing new, other than fully and faithfully incorporating the handwritten changes from 'Draft 2'. However, it is noticeable that 'Draft 3' was signed by Mr. Sushil Dewan on 20.07.2016 as also by Mr. V. K. Dogra, PP/CBI. This does suggest that 'Draft 3' had been brought to the Court in the hearing that took place on 20.07.2016, but not filed on Court record. It is unknown as to why this 'Draft 3' was not filed on 20.07.2016, for copy of Court order dt. 20.07.2016 is not available either in this Court file or in CBI's administrative files. An image of 'Draft 3' is below.



19. **CBI's office notings file show that Mr.**



Sushil Dewan then prepared yet another reply, that is, the fourth draft and which draft reply actually came to be filed in the Court on 02.08.2016. This reply had been put up to SP Mr. Raman Tyagi, who got it vetted by Special PP Mr. Md. Azad. Post-vetting, SP Mr. Raman Tyagi sent it to HOB Mr. Amit Kumar, who in turn sent it to HoZ Mr. Vineet Vinayak for approval. After HoZ Mr. Vineet Vinayak granted his approval on 01.08.2016, the reply, which was the fourth and the final draft, was filed in the Court on 02.08.2016 in response to the application for release of documents. The pertinent portion of CBI's reply dt. 02.08.2016 has already been set out in paragraph 4 (IV) hereinabove.

20. Thus, the aforesaid analysis would show that the officers, other than Mr. Sushil Dewan, who were instrumental in filing of the said reply dt. 02.08.2016 in the Court are: (a) HoZ Mr. Vineet Vinayak, (b) HoB Mr. Amit Kumar, (c) SP Mr. Raman Tyagi, and (d) Special PP Mr. Md. Azad."

"22. This takes me to the merits of the application under section 340 of CrPC. The basic premise on this count of applicant Mr. Ashok rests on the averment made by CBI in its reply dt. 02.08.2016 wherein, while partially opposing the application for release of documents, it stated, "...it is submitted that consequent to examination of the judgment of the High Court the correspondence with the administrative Ministry with respect to further legal action in the matter is under way." Applicant Mr. Ashok avers that as on the date (02.08.2016) of filing of CBI's reply, the CBI actually had no correspondence under way with its administrative Ministry qua further legal action over the issue of filing of SLP against Delhi High Court's judgment dt. 13.01.2016. On this count, I find that there is



truth in what the applicant states to the Court. From the record, it does not even remotely appear that as on 02.08.2016 there was any correspondence under way inter se the CBI and any Ministry qua filing of SLP. It is an admitted fact that MoLJ's legal opinion dt. 08.06.2016 had already been received in CBI office on or about 01.07.2016 whereby and whereunder it was advised that 'there appears no reasonable ground to further agitate the matter in the higher forum.' It is an altogether different matter that after receiving the said MoLJ's legal opinion on or about 01.07.2016, the CBI officers were actively contemplating, as is evidenced by CBI's administrative files, to seek further legal opinion of country's senior most law officers over the issue of filing of SLP. To put it in simple terms, as on 02.08.2016 what was actually under way in the CBI office was an internal stage of deliberation or consideration to seek further legal opinion of country's senior most law officers. This, by no stretch of reasoning, can be construed as equivalent to an active or ongoing exchange of correspondence with any external authority or quarter. To treat the two as equivalent would be to misconstrue the plain and ordinary meaning of the English language. It was argued on CBI's behalf that its assertion before the Court on 02.08.2016 that correspondence with the DoPT was still under way was correct, as the proposal to send a request to DoPT was still being processed in the CBI office. I find this reasoning wholly unconvincing and devoid of any logic. To reiterate, in plain terms, a proposal to send a request to DoPT that is merely under active consideration cannot be equated with correspondence actually being under way. Therefore, I am of the view that the applicant is correct in stating that there actually was no



correspondence under way between the CBI and its administrative ministry i.e. DoPT as on 02.08.2016 when reply to the application for release of documents was filed.”

“28. It was argued on applicant’s behalf that CBI’s reply dt. 02.08.2016 sought to create a false impression in the mind of the Court that CBI was in correspondence with DoPT, whereas it was not. On this score, **I agree with the applicant that CBI’s reply dt. 02.08.2016 on its bare perusal does give away a wrong impression that correspondence with DoPT was under way as on 02.08.2016. However, the point is that this impression was removed at the earliest available opportunity on 09.08.2016 in the form of an ‘additional reply’. Further, the Court was certainly not carried away by the wrong impression in the final adjudication of the application for release of documents. Furthermore, this wrong impression made on 02.08.2016 did not ultimately prejudice the applicant, for the order for documents release was in his favour, but subsequently reversed on 21.01.2019. There was certainly no defeat of the ends of justice. Lastly, I am of the view that in assessment of the impression which the CBI sought to make in Court’s mind, its reply dt. 02.08.2016 and its ‘additional reply’ dt. 09.08.2016 ought to be read together, and not divorced from each other.**

29. The third point for determination, in considering whether the circumstances warrant initiation of proceedings under section 340 CrPC, is whether the averment in CBI’s reply dt. 02.08.2016 that correspondence with DoPT was under way was a deliberate ploy. On this crucial aspect, I am inclined to proceed with caution, for in my considered view proceedings under section 340 of CrPC must rest on firmer footings and a well-founded basis. There are judicial precedents



to hold that Courts should sanction prosecution for perjury only in those cases where conviction is reasonably probable or likely (see Chajoo Ram v. Radhey Shyam & Anr., AIR 1971 SC 1367 and Ashok Kumar Aggarwal v. Union of India & Ors., (2013) 15 SCC 539). Further, as held in Chajoo Ram (supra) starting prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material would defeat its very purpose. **It is my view that the averments in CBI's reply dt. 02.08.2016 was apparently an outcome of an imprecise choice of words and a misapplication of language. To put it differently, what was stated in the reply dt. 02.08.2016 appears to have arisen from a misapplication of semantics rather than deliberate intent to misguide and mislead the Court. The reasons why I say that apparently there was no deliberate ploy to mislead the Court, and rather it was a case of misapplication of language, are more than one.** Firstly, a reading of the notings of CBI's administrative files does not yield even the faintest suggestion that any misleading statement was conceived or strategised for presentation before the Court. Secondly, as already observed in the preceding paragraph, the Court was actually not misled by averments in CBI's reply dt. 02.08.2016. Thirdly, on 02.08.2016 after the reply was filed, the Court had called upon the CBI to file a 'clear cut reply' and to furnish 'the present status of appeal or revision filed/pending, if any'. Thereupon, the CBI came up with 'additional reply' dt. 09.08.2016 stating that in principle it had decided to file SLP and the process to re-submit the proposal to DoPT was under consideration. It bears repetition to state that in my considered view the reply dt. 02.08.2016 and the 'additional reply' dt. 09.08.2016 must be read together, in a



wholesome manner and not divorced from each other. Administrative files do actually bear out that as on 02.08.2016 the CBI was indeed actively contemplating to file SLP after seeking opinion of other senior law officers. Had there been a deliberate ploy to misguide the Court, I doubt if the CBI in its 'additional reply' dt. 09.08.2016 would have stated what it did state. In any case, it is significant to note that CBI corrected the mistake on 09.08.2016 which it had made on 02.08.2016. Fourthly, it is often said that to err is human, meaning that making mistakes is a natural part of human behavior. No individual is infallible, and even well-intentioned actions can sometimes result in unintended errors. Human shortcomings must be treated with fairness and a measure of understanding, especially when the lapse was promptly corrected, the adjudicating authority was in no manner misled in the final outcome, and no prejudice was occasioned to the applicant."

"38. I sum up my views on the question of expediency of proceedings under section 340 of CrPC: (a) The Court had in no manner been actually misled by CBI's reply dt. 02.08.2016 in its order(s). There was no defeat of the ends of justice. (b) The Court in its order directing release of documents had very much taken note of MoLJ's legal opinion dt. 08.06.2016. (c) Applicant's application for documents release had been allowed in its entirety by the Court, though later reversed in higher forum, and as such it cannot be said that any prejudice was caused to him. He had got the relief for which he had come to the Court, though it was later reversed. (d) CBI corrected its mistake at the first available opportunity by filing 'additional reply' dt. 09.08.2016. (e) It does not appear to me that there was any deliberate ploy on CBI's part to misguide the Court. Averments in CBI's reply



dt. 02.08.2016 ultimately caused no interference in administration of justice, for the relief which the applicant had sought from the Court was granted to him, though later reversed. (f) Given the peculiar facts of this case, it does appear to me that conviction is not reasonably probable or likely. (g) Lastly, the long lapse of time of nearly ten years since filing of the reply dt. 02.08.2016 too is factor weighing against the expediency of initiating prosecution for alleged perjury [see in this regard Apex Court's observations in Chajoo Ram (supra), and relevant excerpt whereof is extracted hereinabove].

39. Given the above, I reiterate that it is not at all 'expedient in the interest of justice' to initiate proceedings under section 340 of CrPC against any officer, past or present, of CBI. This Court is thus not inclined to launch any prosecution under section 340 of CrPC, as prayed for by applicant Mr. Ashok. Applicant's mere impression or perception that CBI deliberately suppressed material facts do not make its averments in its reply dt. 02.08.2016 a deliberate and conscious ploy to misguide the Court. I reiterate that the reply dt. 02.08.2016 and the 'additional reply' dt. 09.08.2016 of the CBI must be read together, in a wholesome manner and not divorced from each other.

40. With this, the application of applicant Mr. Ashok Kumar Aggarwal under section 340 of CrPC stands dismissed."

20. Aggrieved by the aforesaid, the appellant has preferred the present criminal appeal.

SUBMISSIONS ADVANCED
On behalf of the appellant



21. Learned senior counsel appearing on behalf of the appellant submitted that, following the judgment of this Court dated 13.01.2016, the appellant sought release of the documents that were seized from him during investigation. It was further submitted that in its reply dated 02.08.2016, the CBI stated that correspondence with the administrative Ministry concerning further legal action to be taken with respect to the said judgment was “*underway*”, when in reality no such correspondence was underway as the MoLJ had already advised in their legal opinion that was rendered, against pursuing the matter before a higher forum.

22. The learned senior counsel drew the attention of this Court towards the impugned order, in which the learned Special Judge found that the CBI at the concerned time was engaged in internal deliberation about seeking further legal opinion, and that this could not be equated with correspondence with an external administrative authority. It was submitted, that this particular factual finding had not been challenged or disputed by the CBI at any stage. He further submits that CBI’s additional reply dated 09.08.2016, filed after the appellant’s application under Section 340 CrPC on 08.08.2016, could not make the earlier statement accurate or correct averments, which were deliberately falsified.

23. Learned senior counsel further submitted that the order dated 29.05.2018 had directed the filing/institution of a complaint under Section 340 CrPC before the court of the learned Magistrate after it had found that respondent no. 1 had *prima facie* deliberately made false averments in the reply dated 02.08.2016. According to him, the remand ordered by this Court on 11.07.2024 was for the purposes of examination of the role of other officers involved in preparing and approving of the concerned reply and that the learned Special Judge in his impugned order, having identified those officers,



ought not to have declined action by treating the absence of prejudice to the appellant as being decisive in nature.

24. Learned senior counsel further referred to the draft reply reproduced in the impugned order, to submit that the concerned officer had originally recorded that the opinion rendered by MoLJ had been received and that when the draft was placed before the higher officer, that concerned relevant portion was specifically struck out and the language was changed.

25. It is further submitted that the question under Section 340 CrPC was whether a statement known to be false was made in proceedings before the Court and was capable of affecting the administration of justice. It was submitted that the fact that the Court was ultimately not misled, or that the appellant's application for release of documents was initially allowed, did not answer that question. Reliance in this regard was placed on the decisions of the Supreme Court in ***R. Karuppan, Advocate, Suo Motu Proceedings against In re, (2001) 5 SCC 289, Mahila Vinod Kumari v. State of M.P., (2008) 8 SCC 34 and Dhananjay Sharma v. State of Haryana, (1995) 3 SCC 757.***

On behalf of the CBI

26. Learned SPP appearing for the CBI on the other hand supported the impugned order by submitting that it was for the Court concerned to determine whether any action under Section 340 CrPC was expedient or not. That the learned Special Judge had considered the record and found that the Court had not been misled by CBI's reply dated 02.08.2016.

27. Learned SPP submitted that the opinion of the MoLJ was advisory and that the CBI was under no obligation to disclose a legal opinion received by it. Referring to CBI's file notings, the learned SPP submitted that reconsideration of the proposed challenge and the obtaining of further opinion



were under consideration within the CBI by July 2016. He further submitted that the reply was incorrect rather than false, that the Court had not been misled, and that the question of misleading the Court or committing perjury did not arise.

28. Learned SPP further relied upon the additional reply dated 09.08.2016 filed by CBI before the learned Special Judge and the fact that the appellant's application for release of documents had been allowed in its entirety by the Trial Court, even though that order was subsequently reversed by the higher forum. He submitted that the CBI corrected its mistake at the first available opportunity, that neither the Court nor the appellant suffered prejudice in the adjudication of that application, and that the learned Special Judge was therefore justified in declining to initiate proceedings under Section 340 CrPC.

On behalf of the appellant in Rebuttal

29. Learned senior counsel for the appellant in rebuttal submitted that the issue was not merely whether the CBI was obliged to disclose the Ministry's opinion or not. It was submitted that the objection was to CBI's affirmative statement that correspondence with the Ministry was "*underway*" when even, as has also been recorded in the impugned order, only internal consideration was taking place. It was reiterated that the absence of actual prejudice or an adverse order against the appellant was not the test for rejecting the application under Section 340 CrPC.

ANALYSIS AND FINDINGS

30. This Court has heard the learned senior counsel appearing on behalf of the appellant as well as the learned SPP appearing for the CBI, and has also perused the material placed on record.



31. The controversy in the present appeal is whether the statement contained in CBI's reply dated 02.08.2016, when considered with the contemporaneous official record and the concerned officers role in its preparation and filing, *prima facie* discloses the commission of offences referred to in Section 195(1)(b) of CrPC which in the present case are Sections 191 read with 193 of IPC and Section 209 IPC, and further, whether it is expedient in the interests of justice to direct the making of a complaint under Section 340 of CrPC with respect to such offences.

Legal principles governing Section 340 CrPC

32. At the outset, it is necessary to distinguish the formation of an opinion under Section 340 CrPC that an offence has been committed, from the adjudication of guilt in the prosecution of it that may follow. The Court must be satisfied, on the basis of the material placed on record before it, that an offence falling within or referred to in Section 195(1)(b) of CrPC appears to have been committed in, or in relation to the proceedings before it. The Court must further consider, independently, whether an inquiry by the competent Magistrate into that offence is expedient in the interests of justice, as a complaint does not follow as a matter of course from every incorrect or contradictory statement.

33. In ***K. Karunakaran v. T.V. Eachara Warriar, (1978) 1 SCC 18***, the Apex Court held that, irrespective of what happened in the principal proceedings, the Court must examine whether the material placed before it discloses a *prima facie* case which has a reasonable likelihood of establishing the specified alleged offence, and whether action with respect to such is expedient in the interests of justice or not.

34. In ***Pritish v. State of Maharashtra, (2002) 1 SCC 253***, it was further clarified that the preliminary inquiry contemplated under Section 340 of CrPC



is directed to the question of expediency only and is not a trial to determine the guilt of the accused person. It was also stated that it is not mandatory for the Court to conduct this preliminary enquiry and that the opinion required to be formed, can be formed, even without conducting such a preliminary enquiry. It was further observed, that the concerned Court is not mandated to make a complaint even if it has formed a *prima facie* opinion that an offence that is alleged has been committed. But also, that if it does decide to make a complaint, it is necessary for it to establish that it is expedient in the interests of justice to make such a complaint.

35. In ***Iqbal Singh Marwah v. Meenakshi Marwah***, (2005) 4 SCC 370, the Constitution Bench of the Supreme Court explained, that expediency is ordinarily assessed with reference to the effect of the alleged offence upon the administration of justice, rather than the magnitude of the injury suffered by an individual litigant. Consequently, the absence of an adverse order against the applicant, though relevant to the overall assessment, cannot by itself be treated as sufficient to decline action where a material falsehood has *prima facie* been knowingly placed before the Court.

36. The principles discussed above require this Court to consider whether the contemporaneous record furnishes a *prima facie* basis for treating the assertion in the reply dated 02.08.2016 as a deliberate falsehood on a matter of substance as the reply filed by the CBI was capable of influencing the Court's decision in the application filed by the appellant. The aforesaid principles also require this Court to separately consider, whether an inquiry into such deliberate falsehood which if *prima facie* established, is expedient in the interests of justice or not.

37. Before proceeding further, it is necessary to clarify the scope of the order dated 11.07.2024. The Coordinate Bench did not set aside the order



dated 29.05.2018 on merits. The matter was remanded because the CBI's record had become available and disclosed the involvement of other officers whose roles had not been examined earlier. The earlier order was set aside only to enable the learned Special Judge to consider that record and examine the roles of those officers as well. The Coordinate Bench did not hold that the *prima facie* findings against respondent No. 1 were erroneous or that the allegations against him were unfounded. The remand, therefore, cannot be treated as an exoneration of respondent No. 1. After examining the record and the roles of the other officers, the learned Special Judge dismissed the application under Section 340 CrPC. The correctness of that dismissal falls for consideration in the present appeal.

Assessment of contemporaneous record

38. The finding recorded in the impugned order that, as on 02.08.2016, no correspondence was under way between CBI and the DoPT is borne out by a bare perusal of the contemporaneous record placed before this court. The opinion rendered by the MoLJ dated 08.06.2016 had already been communicated to the CBI through the DoPT by a letter dated 01.07.2016, and what remained pending was an internal proposal to seek reconsideration and further legal opinion. The successive drafts show, that the disputed statement was not merely an imprecise description of that internal process. Draft 2 expressly stated that the DoPT had turned down the proposal for filing an SLP. That statement as can be clearly seen was deleted and was replaced by a handwritten assertion that correspondence with the administrative Ministry was under way when it is clear that at the time no such correspondence was underway. This concerned alteration changed the very factual position sought to be presented before the Court.



39. It is clear that Sushil Dewan prepared the successive drafts, incorporated the handwritten alteration into Draft 3, prepared the final reply and filed it under his signature. Since he had himself prepared the earlier draft recording the DoPT's decision, his subsequent incorporation and adoption of the altered statement *prima facie* indicate knowledge of the correct position.

40. The contemporaneous record also places Vineet Vinayak in a direct and material role. His noting dated 19.07.2016 shows awareness that the DoPT had already communicated its decision and that reconsideration was only being proposed. The impugned order further *prima facie* attributes to him the handwritten deletion of the correct position from Draft 2 and the introduction of the assertion that correspondence with the Ministry was under way. His subsequent approval of the final reply on 01.08.2016 *prima facie* indicates conscious adoption of the altered statement.

41. Prem Kumar Gautam's recommendation dated 19.07.2016 expressly recorded that the DoPT had turned down the proposal for filing an SLP. He dealt with Drafts 1 and 2, obtained their vetting from Md. Azad and forwarded the matter to Amit Kumar. Amit Kumar's own noting also referred to the DoPT's communication and proposed that reconsideration be sought. His subsequent routing of Draft 2 and the final reply for approval shows that both officers were aware of the actual position and participated in the decision-making process which preceded the filing of the reply.

42. Md. Azad vetted Draft 2, which disclosed the DoPT's decision, and subsequently vetted the final reply containing the altered statement. His participation at both stages *prima facie* shows familiarity with the change in the position presented before the Court. On the other hand, Raman Tyagi dealt with the final reply, obtained its vetting and forwarded it to Amit Kumar.



43. The contemporaneous record thus discloses different degrees of involvement. Sushil Dewan prepared, incorporated and filed the altered statement, Vineet Vinayak is *prima facie* connected with its handwritten introduction and final approval, Prem Kumar Gautam, Amit Kumar and Md. Azad possessed knowledge of the earlier position and participated in processing the draft whereas Raman Tyagi's recorded role is related to processing the final reply.

44. CBI's contention that the opinion of the MoLJ was advisory, also does not resolve the controversy. The CBI was entitled to seek reconsideration, obtain another opinion and pursue such remedy as was available in law. However, its right to do so did not permit an internal proposal awaiting approval to be represented as a correspondence already underway with the Ministry. The present finding is founded upon the affirmative factual statement made in Court, its inconsistency with the contemporaneous record, and the demonstrated knowledge of that record. It does not rest merely upon the non-disclosure of a legal opinion.

Subsequent replies and absence of prejudice

45. The disputed statement in itself is a matter of substance as it formed part of the explanation that was offered for retaining documents after the appellant's discharge and was expressly connected with the request that they should not be returned because they might be required in further proceedings. Whether a challenge had been initiated, whether a proposal had actually been forwarded, or whether the matter remained at the stage of internal consideration were all facts that were relevant to the Court's assessment of that request. So the statement was therefore, capable of influencing the decision on the very application filed by the appellant before the Court of the learned Special Judge.



46. The additional reply dated 09.08.2016 is required to be read in conjunction with the earlier reply of the CBI dated 02.08.2016. It records that an in-principle decision had been taken within the CBI and that the proposal was forwarded to the DoPT only on 08.08.2016, thereby drawing a clear distinction between internal consideration and the actual transmission of the proposal. Thus, even when both replies are read together, the inconsistency between the assertion made in the reply dated 02.08.2016 and the factual position as on that very date remains unexplained.

47. This Court even if accepts, that the additional reply was filed by the CBI in compliance with the earlier direction of the learned Special Judge to file a clear cut reply, it does not explain, why a draft acknowledging the DoPT's decision was altered so as to state that correspondence with the ministry was underway.

48. There is a further difficulty with treating the additional reply as an unqualified correction of an inadvertent mistake. In its reply dated 17.08.2016 to the application under Section 340 CrPC filed by the appellant, the CBI continued to maintain that there had been no misstatement and that its earlier assertion was correct because the proposal was being processed internally. That explanation has also itself been rejected by the learned Special Judge in the impugned order. The later clarification is a relevant circumstance, but it cannot be given the effect of conclusively negating the inference arises from the drafting record.

49. The learned Special Judge placed considerable reliance on the fact that the appellant's application for release of documents was initially allowed and that the Court was not ultimately misled by the reply dated 02.08.2016. The reasoning of the learned Special Judge that no injustice was caused to the appellant since his application had been initially allowed runs contrary to the



principle laid down by the Supreme Court in ***Iqbal Singh Marwah v. Meenakshi Marwah [Supra]***, that expediency under Section 340 of CrPC is to be judged by the effect or impact of the alleged offence upon the administration of justice and not by the magnitude of injury suffered by an individual litigant. It remained necessary to consider whether the incorrect assertion was *prima facie* made with knowledge of the true position and whether an inquiry into its use in the judicial proceeding was expedient in the interests of justice.

50. The subsequent institution of an SLP and the order dated 21.01.2019 setting aside certain directions for return of documents must be considered in their proper context. Those developments only bear upon the availability and outcome of further legal proceedings. They do not retrospectively establish that correspondence with the Ministry was underway on 02.08.2016. The truth of the statement made on that date must be assessed with reference to the position that existed at that particular time.

Applicability of Sections 191 read with 193 IPC and Section 209 IPC

51. Section 191 IPC applies where a person, legally bound to state the truth, makes a statement which he knows or believes to be false or does not believe to be true, while Section 193 IPC prescribes the punishment for intentionally giving false evidence in a judicial proceeding. In ***Perumal v. Janaki, (2014) 5 SCC 377***, the Supreme Court explained that the inquiry must address both the legal obligation to state the truth and the maker's knowledge or belief concerning the statement.

52. In ***Sanjeev Kumar Mittal v. State, 2010 SCC OnLine Del 4006***, a Coordinate Bench of this Court held that a knowingly false averment in a pleading required by law to be verified may attract Section 191 IPC upon its filing, even if its maker does not enter the witness box. Applying that



principle, the inquiry at this stage cannot be confined merely to the officer who signed the reply, where the record *prima facie* shows that other officers knowingly participated in making, adopting or causing the statement to be placed before the Court.

53. In view of the individual roles discussed in the impugned order, the successive drafts and file-notings, considered cumulatively, *prima facie* indicate that each concerned officer, to the extent attributed to him, participated in the preparation, alteration, vetting, processing, approval or filing of the reply dated 02.08.2016 with knowledge of the actual position. The difference in the nature and degree of their respective participation does not warrant the exclusion of any officer at the stage of directing a complaint, their precise knowledge and culpability are matters for determination by the competent Court.

54. Since the altered assertion was material to the relief sought from the Court, the contemporaneous record provides a reasonable foundation for the allegations under Section 191 read with Section 193 IPC against all the concerned officers.

55. Now section 209 of IPC on the other hand concerns itself with the making, fraudulently, dishonestly, or with intent to injure or annoy any person, of a claim in a Court of law which the maker knows to be false. In ***HS Bedi v. National Highway Authority of India, 2016 SCC OnLine Del 432***, a Coordinate Bench of this Court explained that a claim includes the factual basis upon which a party seeks an outcome from the Court and may also arise in a reply or defence. The provision is also not confined to the party instituting the concerned proceedings.

56. In the present case, the assertion concerning ongoing correspondence was used as a factual ground to oppose the appellant's request and to seek



continued retention of his documents. The respective acts of preparing, altering, vetting, processing, approving and filing the reply, read with the knowledge disclosed by the preceding drafts and file-notings, furnish a reasonable basis for the *prima facie* inference that the concerned officers participated in advancing a claim which was known to be inconsistent with the existing position. These circumstances disclose substantially more than the mere failure of a party to establish a contention. They *prima facie* attract Section 209 IPC against all the concerned officers, subject to proof of their respective knowledge, intention and participation before the competent Magistrate.

57. The decisions of the concerned respective Coordinate Benches of this Court in ***Walmark Holdings Ltd. v. Fortis Healthcare Ltd.***, 2026 SCC OnLine Del 679 and ***Deepika Prashar v. Suman Singh Virk***, 2024 SCC OnLine Del 6893 [upheld by a Division Bench of this Court in ***Suman Singh Virk v. Deepika Prashar***, 2025 SCC OnLine Del 5492] also illustrate the application of the aforesaid principles where the record supplies a concrete basis for alleging a conscious falsehood. Their facts are distinct but they do not dispense with the requirement of establishing the ingredients of the offences alleged. And at the same time, they reinforce the need to assess the demonstrated conduct and the documentary material, rather than to treat a subsequent explanation or change of stand as an automatic answer to the earlier statement.

Reasoning of Delay in the Impugned Order

58. The learned Special Judge also relied on the lapse of nearly a decade in declining to direct a complaint under Section 340 of CrPC. That circumstance must be considered in the procedural history of the case as the appellant moved the concerned application on 08.08.2016, shortly after the reply filed



by CBI dated 02.08.2016. The order dated 29.05.2018 passed by the learned Special Judge directing the institution of a complaint under Section 340 of CrPC remained under challenge until a Coordinate Bench of this Court set it aside and remanded the matter back on 11.07.2024 which led to the application being decided afresh in 2025, which further led to the present impugned order dated 25.10.2025 which is the subject matter of the present proceedings. The allegation was, therefore, raised promptly and has remained the subject of judicial proceedings throughout. Further, the relevant material is principally documentary, comprising preserved official drafts, file notings and court filings. The impugned order identifies no loss of any such material that would render a fair inquiry into the allegations against the concerned officers impracticable. In these circumstances, the passage of time does not, by itself, outweigh the reasons for directing a complaint under Section 340 CrPC.

Expediency in the interests of justice

59. On the separate question of expediency, this Court has considered the nature of the assertion made by the CBI in its reply dated 02.08.2016, its relevance to the relief sought by the appellant in the proceedings in which the aforesaid reply was filed, the official record demonstrating how it was introduced, *prima facie* inferences regarding the concerned officers' knowledge of it and participation therein, insufficiency of the explanation given later and the history of the proceedings. The concerned statement was made on behalf of the prosecuting agency concerning a matter within its own knowledge and was relied upon to secure an order against the appellant's request. Courts must be able to assess such representations on a truthful account of the existing position. A deliberate substitution of that account with a materially false claim directly affects the fairness of the adjudicatory



process. The justification for further proceedings accordingly extends beyond the appellant's individual grievance.

60. The threshold for directing a complaint under Section 340 of CrPC is therefore satisfied. There is a reasonable foundation in the contemporaneous record for the allegations levelled under Section 191 read with 193 of IPC and Section 209 of IPC against the concerned officers, and this Court is of the opinion that an inquiry into the aforesaid alleged offences is expedient in the interests of justice. A further preliminary inquiry is unnecessary for forming that opinion, since the successive drafts, the relevant file-notings and the signed reply [cumulatively the contemporaneous record] have already been examined.

61. The learned Special Judge, therefore, erred in treating the disputed statement as an imprecise choice of words and in placing determinative reliance upon the additional reply dated 09.08.2016, the absence of actual prejudice to the appellant and the passage of time. These considerations do not displace the *prima facie* inference arising from the successive drafts, the relevant file-notings and the concerned officers participation in preparing and filing the reply dated 02.08.2016. The material provides a reasonable foundation for the allegations under Section 191 read with Section 193 IPC and Section 209 IPC, and an inquiry into these alleged offences is thereby, expedient in the interests of justice.

CONCLUSION

62. Accordingly, the impugned order dated 25.10.2025 passed by the learned Special Judge (PC Act), CBI-02, Rouse Avenue Courts, New Delhi, in ***Misc. DJ ASJ No. 194/2025*** is set aside.

63. The appellant's application under Section 340 CrPC filed before the learned Special Judge is therefore, allowed by this Court in exercise of its



Appellate jurisdiction. The learned Special Judge is hereby directed to make a complaint in writing against Sushil Dewan, Vineet Vinayak, Amit Kumar, Raman Tyagi, Prem Kumar Gautam and Md. Azad for the alleged commission of offences punishable under Section 191 read with Section 193 IPC and Section 209 IPC, and to transmit the same to the concerned jurisdictional Magistrate within a period of four weeks from the date of receipt of this judgment.

64. Since **Court Complaint No. 5/2018**, titled “*Court Complaint v. Sushil Dewan*”, was adjourned *sine die* with liberty to revive it upon the passing of a fresh order under Section 340 CrPC, the complaint directed via this judgment shall be placed before the Court of the learned Chief Judicial Magistrate (Central), Tis Hazari Courts, Delhi, in the said proceedings. The learned Chief Judicial Magistrate shall pass appropriate orders regarding its revival and proceed further in accordance with law, while ensuring that parallel proceedings concerning the same allegations are not instituted.

65. The concerned competent Court shall proceed independently, on the basis of the material placed on record before it, without being influenced by any observation made herein for the purposes of directing the complaint.

66. The present criminal appeal therefore, stands *allowed* and is thereby, *disposed of*.

67. Pending application[s], if any, also stand[s] disposed of.

68. Interim order[s], if any, also stand[s] vacated.

69. A copy of this judgment be sent to the Court of the concerned learned Special Judge who shall while directing a complaint under Section 340 CrPC forward a copy of this judgment to the concerned learned Magistrate along with the complaint.



2026:DHC:8774



70. The judgment be uploaded on the website *forthwith*.

MADHU JAIN
[JUDGE]

OCTOBER 6, 2026/PG

Signature Not Verified

Signed By: BHARTI
Signing Date: 06.10.2026
20:57:41



CRL.A.289/2026

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