

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1133-1134 OF 2009
[Arising out of SLP (Crl.) Nos. 1035-1036 of 2009]

Jeewan Kumar Raut & Anr.

...Appellants

Versus

Central Bureau of Investigation

...Respondent

JUDGMENT

S.B. SINHA, J :

1. Leave granted.
2. Applicability of Sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (for short “the Code”) in a case where cognizance has been taken under Section 22 of the Transplantation of Human Organs Act, 1994 (for short “TOHO”) on a complaint filed by the respondent herein is the question involved in this appeal.

It arises out of a judgment and order dated 29.01.2009 passed by a learned Single Judge of the Punjab and Haryana High Court in Criminal Revision Nos. 1007 and 1006 of 2008.

3. Appellants are medical practitioners. A First Information Report (FIR) was lodged against them under Section 420 of the Indian Penal Code and Sections 18 and 19 of TOHO at Police Station Palam Vihar, Gurgaon. The investigation was transferred to the Central Bureau of

Investigation, the respondent herein.

It registered another FIR on or about 8.02.2008 under Sections 420, 342, 326, 506 and 120-B of the Indian Penal Code and under Sections 18 and 19 of TOHO.

4. Appellant No. 2 was arrested on 10.02.2008 and he was produced before the learned Magistrate on 11.02.2008, whereas appellant No.1 surrendered on 17.02.2008 and produced before the learned Magistrate on 18.02.2008.

5. Respondent filed a complaint under Section 22 of TOHO before the Judicial Magistrate, CBI Cases, Ambala inter alia stating:

“51. That required authorization u/s 22 of TOHO Act 1994 has been accorded by the Govt. of Haryana vide order dated 11.4.08 in favour of undersigned IO of the case....

52. That as per provisions contained in TOHO Act, 1994, cognizance for the offences punishable under the provision of said Act can only be taken up on a complaint filed by prescribed authority or by a person duly authorized by competent authority. Ms. Firoza Mehrotra, Financial Commissioner & Principal Secretary to the Govt. of Haryana, Home Department being the competent authority has authorized the undersigned IO of this case to file the complaint for the violation of provisions of TOHO Act, 1994 by the said accused persons before a competent court of law. Since offences punishable under the provisions of Indian Penal Code committed by above said accused persons are pursuant to a criminal conspiracy in the same transaction, hence a composite complaint is being filed against all the said accused persons.”

(Emphasis supplied)

It was prayed:

“54. It is most respectfully prayed that cognizance under sections 120-B r/w 326, 342, 417, 465, 473, 506 and 307 IPC and Sec. 18, 19 & 20 of Transplantation of Human Organs Act, 1994 and substantive offences thereof may kindly be taken against accused A-1 to A-9 and they may be tried as per law. It is also prayed that permission to conduct further investigation against the arrested persons, namely, Smt. Pooja Kumar, Umesh Kumar and Harpal may kindly be given as also against the others whose names have emerged during investigation.”

6. Inter alia, contending that the period of 90 days from the date of detention expired on 7.05.2008, the appellant No. 2 filed application for grant of bail. By reason of an order dated 9.05.2008, the learned Magistrate opined:

“...For the purposes of taking cognizance of the offences punishable under TOHO Act, a written complaint is required to be filed by the competent authority or the authorized person as required by Section 22 of the aforesaid Act. Therefore, qua the offences under TOHO Act, it seems to be a complaint, but in the opinion of this Court qua the offences committed by the accused punishable under Section 120-B read with Sections 307, 326, 342, 417, 465, 473 and 506 of IPC, it seems to be police report. If period of custody is reckoned of both accused Ms. Linda and Dr. Amit, then it appears to me that this police report had been filed within the period of 90 days being filed on 29.4.2008...”

On the said reasoning, the learned Magistrate dismissed the said application.

7. The appellant No. 2 along with other accused also filed application for grant of bail, which was also dismissed by the learned Magistrate by an order dated 23.05.2008 holding that he had already taken a view while dealing with the application for grant of bail filed by the appellant No. 2.

8. Aggrieved by and dissatisfied therewith, the appellants filed revision applications before the High Court wherein notice was issued on 29.05.2008. By reason of the impugned judgment dated 28.01.2009, the High Court dismissed the said revision applications. However, the High Court refused to go into the question raised by the appellants herein that a complaint is not a police report and cannot be treated as such, stating:

“...The cognizance of the offence under the TOHO Act in terms of Section 22 is to be taken on the basis of a complaint filed by an appropriate authority concerned. Conceded position is that the complaint against the petitioners under the TOHO Act was filed on 29.4.2008, which was within a period of 90 days in respect of all the petitioners. Once the complaint was filed within

a statutory period for a cognizable offence, which is nonbailable, of which cognizance was taken by the Magistrate, the petitioners would not be entitled to seek the protection of Section 167(2) Cr.P.C., even if it is construed for the sake of argument that a complaint is not a police report or cannot be treated as such. The net effect of the argument raised by counsel for the petitioners would be that even if the complaint is not treated as a police report for offences under I.P.C., still the petitioners would not be entitled to be released on bail by operation of Section 167(2) Cr.P.C. as complaint against them stood filed within a statutory period of 90 days. The petitioners could, thus, be denied the concession of said provision without going into the elaborate and detailed submissions made by counsel for the parties in regard to the status of complaint, being police report or not. I am, thus, not inclined to go further into the aspect whether this complaint can be treated as a police report for the purpose of offences under the IPC or not. The definition of ‘complaint’ as contained in Section 2(d) Cr.P.C., would prima – facie tend to indicate that complaint as such, would exclude the police report, though it is equally true that the police report need not be on any particular format...”

9. Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the appellants, would urge:

- (i) A “complaint” having been defined in Section 2(d) of the Code in terms whereof a police report is excluded, it was obligatory on the part of the respondent herein to proceed either in terms of Chapter XII of the Code or Chapter XV thereof and in view of the fact that the FIR was lodged, investigation was carried out only in terms of Chapter XII of the Code, the complaint petition was not maintainable.
- (ii) The investigating officer is required to file a police report as defined in Section 2(r) of the Code which would in turn attract the provisions of sub-section (2) of Section 173 of the Code, the officers of the CBI being police officers in terms of the provisions of the Delhi Special Police Establishment Act, 1946, the purported complaint should have been treated to be a police report and not a complaint petition.
- (iii) Appellants having been arrested by the respondent, which power could have been exercised by it under the Code, the only course open to it was to file a police report.
- (iv) An indefeasible right having been conferred on the accused in terms of sub-section (2) of Section 167 of the Code, the appellants could not have been denied the same only

because a purported complaint was filed.

10. Mr. Amarendra Sharan, learned Additional Solicitor General appearing on behalf of the respondent, on the other hand, urged:

- (i) The learned Magistrate having taken cognizance of the offences and having committed the case to the Court of Sessions, the application for bail filed in terms of Sub-section (2) of Section 167 of the Code has become infructuous.
- (ii) The appellant No. 2 having been arrested on 10.02.2008 and the appellant No. 1 having surrendered on 17.02.2008 as also a complaint petition having been filed on 29.04.2008, the requirements of Sub-section (2) of Section 167 of the Code stand complied with, as even assuming that the complaint petition is to be treated as a police report, the same was filed within a period of 90 days.

11. Before advertng to the rival contentions of the learned counsel, we may notice the relevant provisions of the Code as also of TOHO.

Section 2(d) of the Code defines “Complaint” to mean “any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report”.

Section 2(r) of the Code defines “police report” to mean “a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173”.

Chapter XII of the Code deals with information to the police and their powers to investigate. It begins with Section 154 providing for the mode and manner in which the information relating to commission of a cognizable offence if given orally to an officer incharge of the police

station is to be dealt with. Section 156 empowers the police officer to investigate cognizable cases. Section 160 empowers the police officer to require attendance of witnesses. Section 161 provides for examination of witnesses by police. Section 165 empowers the police officer to search any premises. It is in the aforementioned background, we may notice Sub-section (2) of Section 167 of the Code, which reads, thus:

“167. Procedure when investigation cannot be completed in twenty-four hours.

(1)

(2) The Magistrate to whom all accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) Sixty days, where the investigation relates to any other offence,

And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) No Magistrate of the second class, not specially empowered in this behalf by the high Court, shall authorize detention in the custody of the police.

Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.

Explanation II. If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.”

A report of a police officer on completion of investigation is required to be filed in terms of Section 173 of the Code; sub-section (2) whereof empowers the investigating officer to file a report disclosing:

“(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.”

Chapter XIII of the Code deals with jurisdiction of the criminal courts for inquiries and

trials. Chapter XIV provides for the conditions requisite for initiation of proceedings. Section 190 of the Code occurring in the said Chapter reads as under:

“190 - Cognizance of offences by Magistrates

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

Chapter XV of the Code deals with complaints to Magistrates. Section 201 of the Code reads as under:

“201 - Procedure by Magistrate not competent to take cognizance of the case

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.”

TOHO was enacted to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected therewith or incidental thereto.

Section 2(b) of TOHO defines “appropriate authority” to mean “the Appropriate Authority appointed under Section 13”.

Chapter IV of TOHO deals with appropriate authority; Section 13 occurring therein reads, thus:

“13 - Appropriate Authority

(1) The Central Government shall appoint, by notification, one or more officers as Appropriate Authorities for each of the Union territories for the purposes of this Act.

(2) The State Government shall appoint, by notification, one or more officers as Appropriate Authorities for the purposes of this Act.

(3) The Appropriate Authority shall perform the following functions, namely :—

(i) to grant registration under sub-section (1) of section 15 or renew registration under sub-section (3) of that section;

(ii) to suspend or cancel registration under sub-section (2) of section 16;

(iii) to enforce such standards, as may be prescribed, for hospitals engaged in the removal, storage or transplantation of any human organ;

(iv) to investigate any complaint of breach of any of the provisions of this Act or any of the rules made thereunder and take appropriate action;

(v) to inspect hospitals periodically for examination of the quality of transplantation and the follow-up medical care to persons who have undergone transplantation and persons from whom organs are removed; and

(vi) to undertake such other measures as may be prescribed.”

Chapter VI of TOHO deals with offences and penalties. Sections 18, 19 and 22 thereof

read as under:

“18 - Punishment for removal of human organ without authority

(1) Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of two years for the first offence and permanently for the subsequent offence.

19 - Punishment for commercial dealings in human organs

Whoever—

(a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;

(b) seeks to find a person willing to supply for payment any human organ;

(c) offers to supply any human organ for payment;

(d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;

(e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or

(f) publishes or distributes or causes to be published or distributed any advertisement,--

- (a) inviting persons to supply for payment of any human organ;
- (b) offering to supply any human organ for payment; or
- (c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause
- (d) shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees :

Provided that the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.

22 - Cognizance of offences

(1) No Court shall take cognizance of an offence under this Act except on a complaint made by--

(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; or

(b) a person who has given notice of not less than sixty days, in such manner as may be prescribed, to the Appropriate Authority concerned, of the alleged offence and of his intention to make a complaint to the Court.

(2) No Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of sub-section (1), the Court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person.”

12. TOHO is a special Act. It deals with the subjects mentioned therein, viz., offences relating to removal of human organs, etc. Having regard to the importance of the subject only, enactment of the said regulatory statute was imperative. TOHO provides for appointment of an appropriate authority to deal with the matters specified in Sub-section (3) of Section 13 thereof. By reason of the aforementioned provision, an appropriate authority has specifically been authorized inter alia to investigate any complaint of the breach of any of the provisions of TOHO or any of the rules made thereunder and take appropriate action.

13. The Appropriate Authority, subject to exceptions provided for in TOHO, thus, is only authorized to investigate cases of breach of any of the provisions thereof, whether penal or otherwise.

Ordinarily, any person can set the criminal law in motion. The Parliament and the State Legislatures, however, keeping in view the sensitivity and/ or importance of the subject, have

carved out specific areas where violations of any of the provisions of a special statute like TOHO can be dealt with only by the authorities specified therein.

14. The FIR lodged before the officer incharge of the Gurgaon Police Station was by way of information. It disclosed not only commission of an offence under TOHO but also under various provisions of the Indian Penal Code. The officer incharge of the Police Station, however, was not authorized by the appropriate government to deal with the matter in relation to TOHO; but, the respondent was. In that view of the matter, the investigation of the said complaint was handed over to it.

15. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code.

16. The investigation in terms of Section 13(3)(iv) of TOHO, thus, must be conducted by an authorized officer. Nobody else could do it. For the aforementioned reasons, the officer incharge of the Gurgaon Police Station had no other option but to hand over the investigation to the appropriate authority.

17. The respondent has been constituted under the Delhi Special Police Establishment Act, 1946. In terms of the provisions of the said Act, the authorities specified therein could make investigation in connection with a complaint. The mode and manner in which the investigation

could be carried out have been laid down in the Act and/ or the manual framed thereunder.

18. It is for the aforementioned reason, upon receipt of the complaint from the officer incharge of the Gurgaon Police Station, it presumably having made a preliminary inquiry, lodged the FIR. Only because it lodged the FIR and proceeded in terms of the said Act and the manual, the same by itself would not mean that all the provisions of Chapter XII of TOHO vis-à-vis Chapter XV thereof could not be invoked.

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

20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; Sub-section (2) of Section 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing

so by reason of the provisions contained in Section 22 of TOHO.

To put it differently, upon completion of the investigation, an authorized officer could only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.

21. It is one thing to say that the court could take recourse to the procedure laid down in Section 202 of the Code or even reject the complaint but then only because such a course of action could be resorted to by the learned Magistrate, the same, by itself, would not lead us to a conclusion that the complaint petition should have been treated to be a police report; the logical corollary whereof would be to invoke the provisions of Sub-section (2) of Section 167 of the Code.

22. Submission of Mr. Ranjit Kumar is that a complaint would not include a police report. No exception to the said submission can be taken having regard to the decision of this Court in Madhu Bala v. Suresh Kumar and Others [(1997) 8 SCC 476] and Dinesh Dalmia v. CBI [(2007) 8 SCC 770].

However, in view of our foregoing findings, the said decisions have no application in the instant case.

23. We may notice that a Division Bench of the High Court of Kerala in Moosakoya v. State of Kerala [2008 CrI. L.J. 2388] held as under:

“3. A plain reading of the above provision will show that even though by Section 24 all offences under the Act are made cognizable, no Court can

take cognizance of the offence except upon a written complaint made by a person authorised in this behalf by the Government of the District Collector or a Geologist of the Department of Mining and Geology. A 'complaint in writing' by the authorised officer etc. is the only condition for taking cognizance as provided in Section 25. If a police officer is authorised by the Government, he may also file a complaint on the basis of which the Court may take cognizance. But, the Court cannot take cognizance of any offence punishable under the Sand Act on a police report filed under Section 173(2) of the Cr.P.C. after investigation by police..."

We, with respect, agree with the said observations.

24. For the views we have taken, we are of the opinion that *stricto sensu* Sub-section (2) of Section 167 of the Code would not apply in a case of this nature.

Even assuming for the sake of argument that Sub-section (2) of Section 167 of the Code requires filing of a report within 90 days and the complaint petition having filed within the said period, the requirements thereof stand satisfied.

25. Appellant No. 2 having arrested on 10.02.2008 and Appellant No. 1 having surrendered on 17.02.2008 as also the complaint petition having been filed on 29.04.2008, the requirement of Sub-section (2) of Section 167 of the Code stands satisfied.

In Sanjay Dutt v. State Through C.B.I., Bombay (II) [(1994) 5 SCC 410], this Court held:

"53(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the CrPC in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the CrPC. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

Only because the court itself took a long time in taking cognizance of the offence, i.e., after the expiry of the period of 90 days, the same would not mean that any new right would be created in favour of the appellants thereby.

26. A distinction between a remand of an accused at pre-cognizance stage vis-à-vis the post-cognizance stage is apparent. Whereas the remand at a pre-cognizance stage is to be made in terms of Sub-section (2) of Section 167 of the Code, an order of remand of an accused at post-cognizance stage can be effected only in terms of Sub-section (2) of Section 309 thereof. This aspect of the matter has been considered by this Court recently in Mithabhai Pashabhai Patel and others v. State of Gujarat [2009 (7) SCALE 559].

27. Before parting, however, we must place on record that we have not been called upon to consider the constitutionality of the provisions of TOHO and in particular Section 22 thereof. Thus, fairness in procedure as adumbrated in Article 21 of the Constitution of India as also the restrictions on liberty imposed by reason of the statute having regard to the fact situation obtaining herein has neither been argued nor is required to be determined. We have made these observations keeping in view the dichotomy in the matter of application of TOHO vis-à-vis the provisions of the Code.

If a complaint petition is filed, the procedure laid down under Chapter XV of the Code can be taken recourse to despite the fact that the same has been filed after full investigation and upon obtaining the remand of the accused from time to time by reason of orders passed by a competent Magistrate.

28. We are, however, not oblivious of some decisions of this Court where some special statutory authorities like authorities under the Customs Act have been granted all the powers of the investigating officer under a special statute like the NDPS Act, but, this Court has held that they cannot file chargesheet and to that extent they would not be police officers. [See Ramesh Chandra Mehta v. The State of West Bengal AIR 1970 SC 940, Raj Kumar Karwal v. Union of India (1990)

29. In this case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a chargesheet is precluded from doing so only by reason of Section 22 of TOHO. It is doubtful as to whether in the event of authorization of an officer of the department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is police officer. We hope that the Parliament would take appropriate measures to suitably amend the law in the near future.

30. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly.

New Delhi;
July 07, 2009

