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

Decided on: 4th May, 2017

+ **TR.P.(CRL.) 84/2016**

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..... Petitioner

Through: Mr. Narender Mann, Special
Public Prosecutor for CBI with
Mr. Manoj Pant, Advocate

versus

KAPIL WALIA & ANR

..... Respondents

Through: Mr. Rajshekhar Rao, Advocate
with Mr. Ayushman Kotwal,
Advocate for DHC

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The applicant Central Bureau of Investigation (CBI) had registered a case described as RC-DAI-2011-A-0014 Delhi for investigation into offences punishable under Sections 120-B read with Sections 420/467/468/471/477-A of Indian Penal Code, 1860 (IPC) and Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988. The investigation led to report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being submitted in the court of Special Judge (PC Act) - CBI at Saket Courts, New Delhi, seeking closure of the case on the ground that though case had been made out, the requisite sanction for prosecution of the public servants who were involved had been declined and,

therefore, the case had to be closed, such report having been described as closure report.

2. The report was considered by the Special Judge, who vide order dated 28.04.2015 directed the records of the case including the said closure report to be placed before the court of Chief Metropolitan Magistrate (CMM) of South District at Saket Court Complex, *inter alia*, observing that it would be for said court to consider the report and then to proceed with the matter in accordance with law in so far as it related to commission of offences punishable under IPC, leaving the subject of necessity of sanction under Section 197 Cr.P.C. also to be considered by said court.

3. The CMM (South) statedly was of the opinion that the court presided over by him was not competent to entertain the said case since closure reports submitted by the CBI disclosed commission of offences within the jurisdiction of Police Station R.K. Puram, which fell under the jurisdiction of a different District (New Delhi District).

4. The CBI then moved transfer applications before the court of Sessions Judge (South District) at Saket Courts, New Delhi but the said court by order dated 22.12.2015 declined any relief on the said transfer application stating that the court of Chief Metropolitan Magistrate, New Delhi was not the court within the Sessions division of District South as was requisite for purposes of exercise of power of transfer by her in terms of Section 408 (1) Cr.P.C.

5. It is against the above backdrop that the present petition seeking transfer of the closure report to the court of Chief Metropolitan Magistrate, New Delhi at Patiala House Courts Complex, New Delhi has been moved.

6. On 03.11.2016, the matter was heard and the submissions made on behalf of CBI (applicant) and the Govt. of NCT of Delhi (the respondent) were noted. It appears, the learned Special Public Prosecutor, representing the CBI, was not aware at that stage that after amendment of Code of Criminal Procedure, 1973 (Cr.P.C.), by subsequent notifications, Delhi presently stands divided into eleven metropolitan areas, each being a separate Sessions Division headed by an independent Sessions Judge. There are separate courts of Chief Metropolitan Magistrate functional in each of the said Sessions Division (metropolitan areas). The court, on the basis of deficient information available at that stage, had also issued notice to the High Court of Delhi for assistance. Pursuant to the said directions, Mr. Raj Shekhar Rao, Advocate has appeared to represent administrative side of this court.

7. Having heard the learned counsel on all sides, this court is of the opinion that since till date cognizance has not been taken and process has not been issued against any individual on the two closure reports in terms of Section 190 and 204 Cr.P.C. no notice to any individual who may in future come up to be summoned as accused is required in these proceedings.

8. Since orders passed by the court of Special Judge (PC Act) at South District of the court of Chief Metropolitan Magistrate (South), as also the order on the application for transfer passed by the Sessions Judge (South District) reveal that the offences appear to have been committed within the jurisdiction of Police Station R.K. Puram, the proper course would be to transfer the matter to the file of Chief Metropolitan Magistrate, New Delhi at Patiala House Courts Complex, in as much as the Police Station R.K.Puram is stated to fall within the jurisdiction of New Delhi District metropolitan area.

9. Ordered accordingly.

10. The file of the closure report shall accordingly be made over by the court presently holding the said record to the court of Chief Metropolitan Magistrate (New Delhi) at Patiala House Courts Complex, after securing the presence of the Public Prosecutor representing the CBI, and fixing an appropriate date of appearance before the transferee court. The Court of CMM (New Delhi) may, within his discretion, retain the matter on his board or allocate to any appropriate court of Metropolitan Magistrate under his control, subject to general or special orders, if any, presently in position to regulate the distribution of judicial business.

11. *Dasti.*

R.K.GAUBA, J.

MAY 04, 2017

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