

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

% **Judgment delivered on: 29th July, 2019**

+ 1. **CRL.M.C. 4443/2015**

DR. ANBUMANI RAMADOSS

...Petitioner

Through: Mr. Mukul Gupta, Sr. Advocate with
Promod Kumar Dubey, Mr. Vibhor
Garg, Mr. Tushar Gupta and Mr.
Sumit Kumar Mishra, Advocates.

versus

SUPDT. OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
ACB/LUCKNOW

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 2. **CRL.M.C. 4480/2015**

DR. KESHAV KUMAR AGARWAL

...Petitioner

Through: Mr. Abdhesh Chaudhary, Advocate
with Ms. Sakshi Arora & Ms. Apurva
Bhardwaj, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION (CBI)

Through the Superintendent of Police,
CGO Complex, New Delhi - 110003

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 3. CRL.M.C. 688/2017

K V S RAO

...Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Ms. Manvi Priya, Mr. Narender
Singh Bisht & Mr. Nishant Singh
Bisht, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS DIRECTOR, CBI HEADQUARTER,
CGO COMPLEX, LODHI ROAD, NEW DELHI

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 4. CRL. REV. P. 25/2016

CBI

...Petitioner

Through: Mr. Prasanta Varma, SPP for CBI.

versus

1. DR. VINDU AMITABH

2. DR. SANJEEV KUMAR RASANIA

...Respondents

Through: Mr. Ravi Agarwal, Ms. Kumud Lata
Das Advocates for R-1.
Mr. Kuldeep Sharma, Advocate for
R-2.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. Instant are quashing petitions under Section 482 Cr.P.C filed by accused persons Dr. Anbumani Ramadoss (Accused No. 3), Dr. K.K. Agarwal (Accused No. 1) and K.V.S. Rao (Accused No. 2) and Criminal Revision petitions under section 397 Cr.P.C. filed by CBI against accused persons Dr. Vindu Amitabh (Accused No. 4) and Dr. Sanjeev Kumar Rasania (Accused No. 5). All these petitions are arising from impugned order dated 07.10.2015 in CBI Vs. K.K. Agarwal & Ors. vide CC No. 03/14 passed by Special Judge (PC ACT) CBI-01, Patiala House Court arising out of FIR RC No. RC0062-2010-0A-0014 CBI/ACB/LUCKNOW under Sections 120B, 420, 471 Indian Penal Code and Section 13(2) read with 13(1)(d) Prevention of Corruption Act. The said FIR was registered for taking action against all the 5 Accused persons and summoning them to face trial for the commission of the aforesaid offences.

2. Brief facts stated are that the CBI registered an FIR RC No. RC0062-2010-0A-0014/CBI/ACB/Lucknow on following information : -

“An information has been received to the effect that some unknown officials of Ministry of Health & Family Welfare, Govt. Of India, New Delhi, during 2008-2009 entered into a criminal conspiracy with Shri Keshav Kumar Agarwal,

Chairman, Rohilkhand Medical College, Bareilly and others and in pursuance thereof accorded renewal of permission for admission of 100 MBBS students in the said medical college against all existing norms and in gross violation of Medical Council of India regulations in order to cause undue favour to the private college, namely Rohilkhand Medical College, Bareilly and its owner.

As per the regulations of Medical Council of India (MCI) permission for establishment of a medical College is granted by the Govt. of India initially for a period of one year only. It is to be renewed on annual inspections conducted by MCI. Each year the colleges are required to apply for permission well before the commencement of the next academic session. The next batch of students is not to be admitted unless renewal of permission is granted by the Central Govt. The process for renewal of permission continues till the medical college and hospital facilities are completed as per norms of MCI.

Rohilkhand Medical College, Bareilly under the management of Shri Keshav Kumar Agarwal, Chairman, Rohilkhand Educational Charitable Trust, Bareilly was granted permission by Ministry of Health & Family Welfare, Govt. Of India vide letter dated 14/02/2006 for admission of 1st batch of 100 MBBS students. The permission was renewed by Govt. of India on 17/08/2007 for admission of 2nd batch of 100 students for 2007-08.

However, in 2008-09, the Medical Council of India in inspections found that the college is not meeting the prescribed norms and is deficient in infrastructure faculty. A number of persons shown

to be regular faculty members of Rohilkhand Educational Charitable Trust, Bareilly in fact were not working there. In its inspection on 20/05/2008, the MCI Inspections observed that shortage in teaching staff is more than 182 (22 out of 116), A number of teachers were found to have been working at more than one place simultaneously and a number of teachers have shown false teaching experience particular Dr. S.M. Raju, Dr. Bimal Kumar Agarwal, Dr. Aftabuddin Ahmad were also working at some other medical colleges and Dr. R.D. Srivastava, Dr. H.S.Joshi have shown false experience certificates. The Executive Committee of MCI was of the view that the council should take steps to refer the matter to police authorities for registration of FIRs in all these cases. It was further decided that appropriate action be taken against these doctors and Deans Principals. Giving a chance to the college to rectify the deficiencies, another inspection was conducted by the MC on 19/08/2008 and it was observed that:

Shortage of Teaching faculty is 23,68% (37 out of 114)

Shortage of residents is 20.98% (17 out of 81)

Dr. Subrata Ghosh and Dr. Anjoo Yadav were found to be working at more than One Medical College simultaneously Clinical material is inadequate. The executive committee of MCI on 25/08/2008 recommended the Central Govt. Not to renew the permission for admission of 3rd batch of 100 students and it was communicated on 04/09/2008. Ministry of Health & Family Welfare, Govt. of India

agreed with MCI recommendations and vide letter dated 12/09/2008 communicated the orders to Rohilkhand Medical College, Bareilly for non renewal of the permission for admission of 3rd batch of MBBS students during 2008-09.

Rohilkhand Medical College, Bareilly approached the Hon'ble Supreme Court of India vide WP(C).426/2008 seeking intervention of the Apex Court in the matter. A number of other similarly affected colleges also brought their grievances before the Hon'ble Apex Court. All these petitions were heard simultaneously. On 22nd September, 2008, Shri Gopal Subramaniam, Additional Solicitor General of India (ASG) wrote to the Govt. of India that the Writ Petitions filed by the private medical colleges including Rohilkhand Medical College (WP 426/08) were heard before the Supreme Court of India. The petitioner institute acknowledged that there were deficiencies but requested that the Govt. and MCI may consider renewal for a reduced intake of students. The petitions were next listed on 26/09/2008. On 24th September 2008, Ministry of Health & Family Welfare forwarded a copy of the above letter of LD. ASG to MCI and requested MCI to furnish its recommendations with reduced intake in respect of Rohilkhand Medical College, Bareilly. The Medical Council of India furnished its recommendations on the same day informing the Govt. that as per the inspections carried out by MCI, the available facilities of Rohilkhand Medical College, Bareilly are not sufficient even for a reduced to MBBS admissions. Hon'ble Supreme Court of India after hearing the Counsels made the following order on 26th September, 2008

“Mr. Gopal Subramaniam, Ld. Additional Solicitor General appearing for Union of India stating that the inspection was also conducted but the percentage of the teaching staff in various departments and other facilities were inadequate and the petitioner institution cannot be given permission. The writ petition is accordingly disposed of without prejudice to their rights and to continue to get permission in the next calendar year!”

However, Ministry of Health & Family Welfare, Govt. Of India, New Delhi Issued an order on 26/09/2008 according to renewal of permission for admission of 3rd batch of 100 MBBS students for 2008-09 to the college stating that an inspection was conducted by a Central Team, constituted by Ministry of Health & Family Welfare on 25/09/2008 who noted that adequate facilities are available for renewal of the permission for admission of 3rd batch of 100 MBBS students for 2008-09.

On 25/09/2008, a team comprising Dr. Vindu Amitabh and Dr. S.K. Rasaniam, V.M. Medical College & Hospital, New Delhi conducted an inspection of the Rohilkhand Medical College, Bareilly and its Inspection Report noted that copies of the appointment letters of the faculty were not furnished and the position of the faculty was accepted on the basis of undertakings given by the college authorities. However, the inspection report was favourable to the college and the Hon'ble Minister of Health & Family Welfare was pleased to approve the renewal of the permission for admission of 3rd batch of 100 MBBS students for 2008-09.

The Ministry of Health & Family Welfare deputed a Central Team at their own with mala fide intention in order to obtain a favourable Inspection report and extend undue favour to the management of Rohilkhand Medical College, Bareilly knowing fully well that MCI inspectors did not find the college suitable for extension of permission. Ministry of health & Family Welfare was also well aware about the stand taken in the Hon'ble Supreme court and the orders passed by the Hon'ble Apex Court but willfully chose to ignore the same.

Another inspection was conducted by MCI on 1st October, 2008, i.e. after a lapse of only five days and found that the shortage of teaching staff was 65.51% (78 out of 116) and the shortage of Residents was 57.31 (47 out of 82). Accordingly, MCI vide its order dated 26/09/2008. However, no action was taken by the Govt. on the same.

Thus, the officers of Ministry of Health & Family Welfare connived with Shri Keshav Kumar Agarwal, Chairman, Rohilkhand Medical College, Bareilly and others with ulterior motive in granting permission for 2008-09. In furtherance of their criminal conspiracy officers of Ministry of Health & Family Welfare constituted a Central Team at their own in order to obtain a favourable inspection report. However, the report of Central Team constituted by the Ministry of Health & Family Welfare, Govt. of India was found baseless by the MCI inspection team only five days later.

The above facts reveal commission of offences by unknown officers of Ministry of Health & Family Welfare, Govt. Of India, Shri Keshav Kumar Agarwal, Chairman, Rohilkhand Medical College,

*Bareilly and others u/s 120B IPC 13(2) r/w 13(2)
r/w 13(1) (d) of PC Act, 1988. "*

3. CBI after completion of the investigation filed chargesheet on 31.01.2013 stating facts as below: -

A. Rohilkhand Charitable Trust, Bareilly, was formed in 1998, and this society established Rohilkhand Medical College and Hospital, Bareilly in 2006 after getting approval from the Ministry of Health and Family Welfare. Initially it was granted permission of one year and annual intake of 100 students of MBBS for academic session 2006-2007. At the relevant point of time, Mr. K.K. Agarwal (Accused No. 3) was the Chairman of the Rohilkhand Medical College.

B. In the instant case dispute pertains to the extension or renewal of permission for admission of third batch of 100 MBBS students for academic year 2008-2009. The college was inspected by the MCI on 01.04.2008 and 02.04.2008 for its first renewal of permission of 3rd batch. MCI found various deficiencies in teaching faculties, residents, OPD attendance and OPD bed occupancy etc. The executive committee of MCI in its meeting dated 14.04.2008 recommended the central government not to renew the permission of 3rd batch of students and communicated the same to the central govt. on 16.04.2008. After getting compliance report of the college another team inspected the college on 20.05.2008. in that inspection the MCI team found the deficiencies. After this report, the Executive Committee of MCI

in its meeting dated 13.06.2008 / 14.06.2008 recommended the central government not to renew the permission of 3rd batch of students, same was communicated to central govt. on 14.06.08.

- C. Thereafter, Dr. Keshav Kumar Agarwal, the Chairman of the Rohilkhand Medical College sent two letters on 01.07.2008 and 03.07.2008 requesting central govt. to grant permission for 3rd batch as the deficiencies pointed out by MCI inspections are of minor nature. In response to the above letters two doctors of central team inspected the college on 11.07.2008. In their report dated 12.07.2008 they also pointed out the deficiencies in teaching staff including faculty as well as residents, and further found that some of the faculty members holding the same posts were getting different salary, and some of the faculty doctors were getting less salary than resident doctors, and some of the junior residents presented with their declaration forms seemed specialists to be doing private practice.
- D. Thereafter, on the basis of aforesaid report of central team, the Ministry of Health and Family Welfare, New Delhi sent a letter dated 21.07.2008 to the chairman Rohilkhand Medical College requesting not to admit any fresh batch of MBBS students at Rohilkhand Medical college, Bareilly and the college was advised to rectify the deficiencies, and send compliance report for its consideration in next academic year.
- E. Consequently, aggrieved by the aforesaid decision of the Ministry a writ petition was filed by the college in the Hon'ble Supreme court of India which was clubbed with other writ petitions filed

by 12 other private Medical Colleges, and vide order dated 03.09.2008 Hon'ble Supreme court directed MCI to conduct inspection of the college. In compliance of the order MCI again conducted the inspection on 19.08.2008, and found deficiencies and recommended the central government not to renew the permission. The said decision of the executive Committee was communicated to central government vide letter dated 04.09.2008, and in compliance to order dated 03.09.2008 a letter dated 09.09.2008 was sent to Petitioner K.K. Agarwal to appear before the Deputy Secretary on 10.09.2008 alongwith compliance report. Thereafter, on 11.09.2008, Ministry decided not to grant renewal of permission for admission to 3rd batch of MBBS students and said order was communicated to the college vide letter dated 12.09.2008.

- F. Thereafter, on 12.09.2008 accused K.K. Agarwal wrote a letter to the secretary to grant permission for reduced intake i.e. 50 students which was received in the Ministry on 19.09.2008 recommending therein that Supreme Court order already been complied with and it was not possible to consider the matter afresh for 50 students. The said note was put up before accused K.V.S. Rao on 22.09.2008, however, he kept it with noting "case hearing is today. We may wait" and sent the file back to section.
- G. During hearing on 22.09.2008 before the Hon'ble Supreme court of India the college acknowledged deficiencies and requested reduced intake. Ld. ASG through written letter communicated to Ministry about plea of college for reduced intake and sought

opinion of MCI and Central Govt. On 24.09.2008, a letter was sent by fax to the MCI at around 1:30 PM to furnish the recommendation of reduced intake, however, MCI in its reply on the same day at 4:30 pm sent to Ministry intimated that college lacked facilities even for 50 admissions. However, even prior to receiving of the said intimation, accused K.V.S Rao called on the mobile phone of Medical Superintendent, Vardhman Medical College & Hospital, New Delhi at around 1:55 PM that Minister of Health and Family Welfare desired that the central team be sent immediately to inspect the college, and a written letter was also sent by fax to the Medical Superintendent at 2:19 PM pursuant to which accused Dr. Vindu Amitabh and Dr. S.K. Rasanian were deputed to inspect medical college on 25.09.2008. It is also directed to the Medical superintendent that the team should submit its report by 25.09.2008 positively as the matter is listed before Hon'ble Supreme Court on 26.09.2008. After inspection, the Central Team submitted its report on 26.09.2008 after lunch to the Superintendent Jagdish Prasad which was forwarded to the Ministry on the same day. The inspection report concluded that the facilities were adequate for pre/para clinical facilities, infrastructure etc. The inspection team found shortage of only two teaching faculty out of 114 (less than 2%).

H. During investigation, it is also found that the actual shortage of faculty was found around 17 i.e. about 15%. Furthermore, at least 5 doctors were shown as full timers whereas they were found part timers, and were called only for the purpose of inspection. During

inspection the bed occupancy was found at around 90% however it was found through postal communications on random basis that 9 out of 14 patients were found fake or nonexistent. The documents attached to the declaration forms like ration card etc. of some doctors were also found to be fake, said fact is also confirmed through District supply office etc. The said fake ration cards were used by the college to show that the said doctors were issued in their name by college authorities without their knowledge and the details of the appointment even do not bear signatures of the doctors/employees.

- I. It is further found during investigation, on 26.09.2008 that accused K.V.S. Rao telephoned Dr. Jagdish Prasad Medical Superintendent to send the report and the said inspection report was sent after lunch and the approval of the same was communicated to Chairman accused K.V.S. Rao by Mr. N. Barik on the same day. It is revealed that accused K.K. Agarwal met K.V.S Rao on 24.09.2008 and 26.09.2008 as per the register entry of the Nirman Bhawan reception office. It is also alleged that accused K.V.S Rao was the primary contact. It is further disclosed in investigation that the sending of central team and inspection on 25.09.2008 was not communicated to the Supreme Court during the hearing on 26.09.2008. Therefore, on the statement of ASG that the percentage of teaching staff in various departments and other faculties were inadequate and the petitioner institution cannot be given permission. The writ petitions were disposed off without prejudice to their rights and

to continue to get the permission in the next calendar year. Writ petition without informing Supreme Court and even the factum of sending of central team on 24.09.2008 was not formally recorded by the Ministry.

J. After knowledge of grant of permission, MCI sent another team for inspection to the college on 01.10.2008 which also pointed out deficiencies. However, accused K.V.S Rao vide letter dated 29.09.2008 communicated to Ld. ASG of constitution of central team and approval of the college, wherein also stated that Ministry was unaware of the orders of the Supreme Court. Thereafter, on the advice of Ld. ASG another central team was constituted which again inspected the college on 20.10.2008 and found facilities adequate. In view thereof, Hon'ble Supreme court observed the approval granted on 26.09.2008 may not be disturbed. It is further alleged that all the accused persons in conspiracy have committed the acts of not informing the ASG and Hon'ble Supreme Court of India, thereby able to get the approval for the admission of new batch at Rohilkhand Medical college vide order dated 26.09.2008.

K. On conclusion of investigation, the CBI charge-sheeted accused Dr. Keshav Kumar Agarwal (Accused No. 1), Dr. K.V.S. Rao (Accused No. 2), Dr. Anbumani Ramdoss (Accused No. 3), Dr. Vindu Amitabh (Accused No. 4) and Dr. Sanjeev Kumar Rasania (Accused No. 5) under Section 120-B read with 420/468/471 IPC and Section 13(2) read with 13 (1) (d) of PC Act, 1988.

4. On 25.02.2013 Ld. Special Judge took cognizance under Section 120-B read with 420/468/471 IPC and Section 13(2) read with 13(1)(d) of PC Act, 1988 against the aforesaid 5 Accused persons. Thereafter, on 10.03.2014 the aforesaid case was transferred to Special Judge, Patiala House Delhi.
5. Subsequently, Ld. Special Judge vide order dated 07.10.2015 framed charges against Dr. Anbumani , Dr. K.V.S. Rao and Dr. K.K. Agarwal under Section 120B IPC read with 13 (2) read with 13(1)(d) of PC Act and Section 420/468/471 IPC. Furthermore, Anbumani Ramadoss and K.V.S. Rao were also charged for committing substantive offence under Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act, 1988. Besides, Dr. K.K. Agarwal too was charged with substantive offence under Sections 420, 468 and 471 IPC. However, accused Dr. Vindu Amitabh and Dr. Sanjiv Kumar Rasanian were discharged.
6. Being aggrieved of the impugned order dated 7.10.2015, both the parties have preferred instant petitions.
7. Learned Counsel Mr. Abdhesh Chaudhary on behalf of petitioner/Accused No. 1 Dr. Keshav Kumar Agarwal submitted that petitioner have no role in inspection process of medical college conducted by Medical Council of India or Central Government. He further submitted that a bare perusal of Section 13(1)(d) and 13(2) of the P.C. Act, it is clear that the meaning and ambit of phraseology "*by corrupt or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage*" as mentioned therein contemplates the obtaining of any gratification other than legal

remuneration and CBI has nowhere averred in respect of obtaining of gratification by the public servants or any accused persons nor any sort of suspicion has been shown by it. There is no allegation in the entire charge-sheet or in the evidence collected by the Investigating Officer regarding demand, receipt, directly, indirectly, obtaining or giving any gratification or pecuniary gain or valuable thing so as to attract the provisions of Section 13(1)(d) and 13(2) of the P.C. Act, 1988. Moreover, petitioner is a private person and not a public authority so provisions of Prevention of Corruption act does not apply to him.

8. Learned counsel further submitted that the story of conspiracy was re-written by the Ld. Special Judge at paragraph 51, same is ill-founded and extraneous of the records filed in the present case. The Ld. Judge has tried to weave 9 instances to form a criminal conspiracy. However, each of them are interpolation of facts and the personal view of the Ld. Judge. There is absolutely no material to support his view and infact the contrary is readily available from records. It seems the Ld. Trial Judge does not know either the implication of the Time Schedule for inspection of Medical Colleges for permission or the supremacy of the Central Government over MCI, who is merely a recommendatory body. He further submitted that there is no evidence to show that there was any conversation, collusion or conspiracy between the petitioner and other accused persons. There is no allegation of meeting of minds. There is no allegation that other accused persons ever demanded or delivered any gratification, pecuniary gain or valuable things and as such allegations or offences under Prevention of Corruption Act is not made out. He relied

on Allahabad High Court, Lucknow Bench judgment in *Dr. Ketan Desai v. CBI* 2015 SCC ONLINE ALL 4755.

9. Learned counsel further submitted that admittedly in the present case it is available from the charge sheet that as nobody has been deceived or induced to deliver any property to anyone and nobody has been deceived to do anything, which he would not ordinarily do in terms of Section 415 IPC. The word 'whoever' means a person. There are no allegations that the petitioner has made any representation to any one or has induced or deceived anyone to pass the approval order on 26.09.2008. Since the approval given by the Union Health Ministry on 24.09.2008 has been accepted by government and the college concluded the course for the year 2008 on the basis of this approval, there is no question of deceiving or inducing anyone for the grant this approval. The final approval issued by the accused persons on 24.09.2008 has been accepted by the government in terms of the legal advice given by Shri Gopal Subramaniam the then ASG. He further submitted that to establish the offence of cheating, the prosecution has to allege that the intention of the accused was to cheat the govt. right from the very inception. Thus, the essential ingredients of the offence of cheating are not present in the instant case. Most importantly, there is no complainant who has been cheated.
10. Learned counsel further submitted that by agitating the present matter by the CBI it gets the career of the students effected who have already re-enrolled in the Medical College and if this Court comes to the conclusion contrary that in such a situation all the students who were in the Medical College comes into glimpse of invalid procedure adopted by

the institution. It is because of this reason the CBI has chosen to file the contempt petition.

11. Learned counsel further pointed out that present petition filed by the Petitioner Keshav Kumar Agarwal under Section 482 Cr.P.C. is so because nothing survives in the matter.
12. Learned Senior counsel, Mr. Dayan Krishnan on behalf of Petitioner/Accused No. 2 K.V.S. Rao has submitted that Mr. K.V.S. Rao was Deputy Secretary in Ministry of Home and Family Welfare and there was no illegality in the permission granted by the Ministry. Mere meeting with the owner of the college, that too on direction of the Apex Court and/or closeness to the then Home Minister or a wrong, inaccurate or incorrect decision will also not bring out criminality as such.
13. Learned Senior counsel has further submitted that Ld. Trial Court has also assumed that proposed defence of the petitioner and then proceeding to record a finding on its untenability, such concept is alien to proceedings under Section 227/228 Cr.P.C. The very approach of the Ld. Trial Court proceeds on wrong assumption, which is apparent from the reading of the impugned order.
14. Learned Senior counsel has further submitted that the Health Minister was the competent authority and has granted permission on the basis of note and recommendations put up by Section Officer, signed and recommended by Under Secretary, the Dy. Secretary, the Joint Secretary and the Secretary Health. None of these officers are said to have made any dissenting note on the file or briefed the Minister to the contrary. None of these officers have been made accused. Learned Senior Counsel

has relied upon the judgment of the Apex Court in ***Ram Narayan Popli v. CBI (2003) 3 SCC 641***.

15. Learned Senior counsel has further submitted that in the present case there is no evidence either showing any agreement of conspiracy or that any undue pecuniary advantage has flowed from the acts or omission of the Petitioner herein. Also, conspiracy cannot be inferred from the fact that the College authority met the Petitioner on 24.09.2008. Learned Senior Counsel relied upon the judgment of the Apex Court in ***Kehar Singh v. State* (1988) 3 SCC 609**, ***State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600**.
16. Learned Senior counsel Mohit Gupta on behalf of Petitioner/ Accused No. 3 Anbumani Ramadoss has submitted that the Court below while passing the impugned order on framing of charge skipped the relevance of videography conducted by Central Team, same was seized by CBI. He further submitted that there is no allegation against the petitioner Anbumani Ramadoss that he instructed anyone to commit any offence in the manner so prescribed.
17. Learned Senior counsel further submitted that proprietary demands that a junior officer must act strictly under the direction of his senior in any establishment. Therefore, inviting element of criminality is bad in law in absence of deliberate or conscious decision or act on the part of the petitioner. The petitioner is falsely implicated in the present case, he was competent to grant permission on the basis of the note put and signed by the recommending authority and there is no evidence to connect the petitioner in commission of conspiracy. Moreover, there is no allegation

against the petitioner for misusing his official position for pecuniary gain. The facts of the present case shows that permission for renewal of third batch was given by him on the basis of unanimous note placed before him and he has not done anything which is contrary to the law.

18. Learned Senior counsel further submitted that the impugned order is contrary to the chargesheet, as in the chargesheet no one has been charged on substantive offences under Sections 420, 468, 471 IPC.
19. Learned Senior counsel further submitted that the prosecution is unable to establish or bring on record the evidence related to pecuniary gain. Therefore, in absence of any allegation of pecuniary gain, the substance of conspiracy cannot be established.
20. Learned Senior counsel further submitted that subsequently the permission was granted pursuant to the advice of Ld. ASG appearing in the matter on 20.10.2008 in the apex Court with the observation that the inspection was duly videographed and no deficiency was found in the college. He further submitted that the permission so given was granted on the basis of unanimous note placed before him and signed by the recommending authority and there is no evidence to connect the Petitioner to the conspiracy. Therefore, there is no iota of evidence against the Petitioner and charges framed against the petitioner be set aside.
21. Learned SPP Mr. Prasanta Verma on behalf of the CBI has submitted that the dispute in general occasionally arises as the renewal of the permission for medical admission of new batches in the medical college lies with the Ministry, to which Medical Council of India (MCI) is one

of the inspecting body to recommend or not to recommend to the Central Government. The final authority is the Ministry who grants permission for renewal of the admission of the new batches.

22. Learned SPP further submits that the instant petition relates to Rohilkhand Medical College, a private Medical college in Barielly, Uttar Pradesh. He further submitted that the approval for the establishment of the medical college was granted by the Central Government under Section 10-A of the Indian Medical Council Act, 1956 on July, 2006. This approval was for a period of one year with an annual intake of 100 students for the academic session 2006-2007 and thereafter, the college will get its permission for admission of students, which is to be renewed yearly. For the renewal of permission for admission of the new batch the college is required to make an application to MCI for annual inspection and the decision to renew the permission is with the Central Government, i.e. the Ministry of Health & Family Welfare on the recommendation of MCI and the final approval is granted by the Ministry of Health & Family Welfare. The first inspection for renewal of permission for admission of batch of 100 students for the academic year 2008-2009 was carried out on 01.04.2008. There was an inspecting team consisting of three doctors who conducted the inspection. They submitted the report to the Secretary of MCI on 02.04.2008. This report has pointed out various deficiencies with medical college.
23. Learned SPP has further submitted that role of the Minister Dr. Ramadoss, besides that of Shri K.V.S. Rao is very prominent, as the latter, as per his claim, sent a letter dated 24.09.2008 to the Medical Superintendent, Safdarjung Hospital, to constitute a Central Team for

conducting the inspection of the said college, on the basis of the verbal direction of Dr. Ramadoss. Learned SPP has submitted that Dr. Keshav Kumar Agarwal, Chairman of Rohilkhand Medical College met with K.V.S. Rao on 24.09.2008, as per entry on page no. 175 at serial no. 13 on the visitor register no.76/2008-R) of the Reception Office (MHA) at Gate No. 5 of Nirman Bhawan, office complex of Ministry, New Delhi. Dr. Keshav Kumar Agarwal again met K.V.S. Rao on 26. 09.2008, as per entry at serial no. 237 on page no. 039 in the visitor register of the Ministry of Nirman Bhawan, New Delhi. Which shows that, firstly, K.V.S. Rao was the primary contact of Dr. Keshav Kumar Agarwal in the said ministry, and secondly, there was a tearing hurry to get favorable report and the same was communicated on the same day i.e. on 26.09.2008.

24. Learned SPP has further submitted that the Ministry has neither conveyed forming of any Central Team nor conveyed said inspection report to the Apex Court. Due to that reason the Supreme Court disposed of the petition on the basis of deception and fraud played upon it by the Ministry, which was party to the writ petition. As result, the Supreme Court rejected the prayer of the College and directed the college to try for next year. On the back of the order of the Apex Court, Ministry has given approval of renewal to the Medical College on the same day of the hearing i.e. 26.09.2008 which shows that a clear undue favour was granted by the Ministry in the criminal conspiracy with the accused college authorities.
25. Learned SPP has further submitted that Dr. Vindu Amitabh and and Dr. S.K. Rasania conducted inspection of Rohilkhand Medical College on

25.09.2008 and submitted their report on 26.09.2008. In their inspection report, they had concluded that the facilities were adequate for pre/para and clinical facilities infrastructure, medical and paramedical deficiencies of previous inspection had been filled as per the norms. They also concluded that there exists shortage of only 2 teaching faculty out of the required 114. The accused persons had given the above favourable report by clubbing together various sub-categories within the teaching faculty and by clubbing together various departments. Investigation revealed that there was an actual shortage of 15% in the teaching faculty. The accused persons in furtherance of the criminal conspiracy submitted their report without any verification of the documents which were submitted during the course of inspection. This fact proves that the report of the respondents was biased in favour of the medical college.

26. The learned SPP further submitted that the accused persons in their reports had stated that they have conducted personal inspection of the wards and departments and in their inspection report, they mentioned that presence of patients in OPDs of all departments was good, the bed occupancy was about 90% and the ICU was full to its capacity. But investigation revealed that the details of many patients mentioned were fake and were found to be non-existent. From the above, a clear inference can be drawn that the respondents never did a proper inspection and in furtherance of the criminal conspiracy submitted a forged report in favour of the college.
27. The learned SPP further submitted that Respondents had given their inspection report on the basis of the photocopies of the declaration forms

submitted during the inspection. Declaration forms consist of details of the faculty members, their educational qualification, appointment letter, identification documents, documents in support of their residence in the medical college. Dr. Vindu Amitabh and Dr. S.K. Rasania failed to verify as to whether the faculty members who were present there for the inspection were full timers or part timers, as factually at least 5 doctors who have been shown as full time faculty members and residents in the record of college during 2008 were rather visiting faculty. This fact is proved by the statement of the 5 doctors namely Dr. Harbeer Singh Sodhi (PW5), Dr. Anil Madan (PW6), Dr. Birendra Kumar Sinha (PW8), Dr. Jamaludin (PW7) and Dr. Shiv Nath Banerjee (PW9), wherein all the doctors stated that they never remained as a full time faculty and declaration form were also not filed by them though having their signature. Therefore, The respondents failed to verify these declaration forms. They failed to verify the genuineness of the documents submitted along with the declaration forms.

28. Learned SPP has further submitted that during inspection on 20.05.2008 accused Dr. K.K. Agarwal came to them and asked to write that they are working as a full time faculty, though all 5 doctors in their statement stated that the allotment letter and the ration card annexed also do not belong to them. This clearly shows that respondents are involved in criminal conspiracy with other accused persons, as they submitted a favourable inspection report without conducting any proper inspection or proper verification of the documents during the inspection and in furtherance of the inspection report, permission for admission of third batch of MBBS students was granted on 26.09.2008.

29. Learned SPP further submitted that evidence on record connects all the chargesheeted accused persons and they are liable to be charged as mentioned in the chargesheet and prays to allow the present revision petition filed by the CBI in the interest of justice.
30. Learned Counsels Mr. Ravi Agarwal and Ms. Kumud Lata Das on Behalf of Accused No. 4 Dr. Vindu Amitabh and learned Counsel Kuldeep Sharma on behalf of Dr. S.K. Rasanias has submitted that Dr. Vindu Amitabh and Dr. S.K. Rasanias came to know from PW15 Dr. Jagdish Prasad that they have been selected to conduct the inspection of Rohilkhand Medical College on the next day itself and has to submit the report on same day, they both hired a private taxi and left at 8.00 PM on 24.09.2008 for Rohilkhand Medical College, Bareilly. They reached Bareilly at 5:00 AM on 25.09.2008 and stayed in a hotel hired by them. The expenses were paid by Safdarjung Hospital.
31. Learned Counsels further submitted that Dr. Vindu and Dr. S.K. Rasanias started inspection at 9 AM and inspected the College, Office, College Building, different departments of the college, laboratories, dissection hall of anatomy department, library, lecture theatres, OPDs, ICUs, Wards, hostels, registers of OPDs and wards, bank accounts, salary statements, physical verification of all doctors on the list, including Dr. Harbeer Singh Sodhi (PW5), Dr. Anil Madan (PW6), Dr. Birendra Kumar Sinha (PW8), Dr. Jamaluddin (PW7), and actual strength of the departments against the required strength was verified. It is pertinent to mention here that Dr. Shiv Nath Banerjee was not in the list of doctors

who were physically verified. However, his name appears in the list of witnesses in chargesheet and is examined as PW-9.

32. Learned Counsels further submitted that Dr. Vindu and Dr. S.K. Rasania conducted the inspection till 5 PM on 25.09.2008 and left Bareilly at 7 PM by taxi and reached Delhi around 4 AM on 26.09.2008. They then reached Safdarjung hospital at 9 AM and prepared the report and submitted the same to Dr. Jagdish Prasad (erstwhile) ADG MS Safdarjung Hospital (PW15). Thereafter, Dr. Vindu and Dr. S.K. Rasania were called by PW15 to write the conclusion of the report. Learned Counsels further submitted that Dr. Vindu and Dr. S.K. Rasania wrote the conclusion in the report in front of and in the room of PW15 and the report was thus completed in the afternoon of 26.09.2008. Thus, under no stretch of imagination it can be said that Dr. Vindu and Dr. S.K. Rasania was part of any conspiracy as alleged by CBI. The Ld. Special Judge correctly analyzed the report and documents submitted by CBI and inter alia on the strength of those said documents the Ld. Special Judge correctly concluded that prima facie no case is made out against Dr. Vindu and Dr. S.K. Rasania.
33. Learned Counsels has further prayed that revision petition filed by CBI has no ground as there is no evidence against the aforesaid accused persons and the Court below has rightly discharged the aforesaid accused persons.
34. Both the parties i.e. CBI as well as petitioner dissatisfied on merit filed their respective petitions, CBI filed Revision petition under Section 397

Cr.P.C. and accused persons filed quashing of the impugned order dated 07.10.2015 under Section 482 Cr.P.C.

35. The plea of the Petitioners/accused persons Anbumani Ramadoss, Dr. Keshav Kumar Agarwal and K.V.S. Rao is that there is no evidence against them and thus seeing invocation of Section 482 Cr.P.C. to which CBI disagrees due to existence of available evidence on the record.
36. The CBI too has filed a revision petition against the discharged accused persons Dr. Vindu Amitabh and Dr. Sanjeev Kumar Rasanian showing material evidence available on the record and thus charge them as well.
37. During the course of the arguments, Learned counsels has pointed out that the inspection team has carried out videography and the said set of videography is not supplied to the Petitioners/Accused persons and the factum of videography is not disputed in the statement of the witness. The CBI also has not disputed carrying out the videography during the inspection. However, it is submitted that it has not been made part of the chargesheet.

The said videography is a material evidence to reach to the conclusion, thus, the CD of the videography be supplied to the petitioners to show innocence on their part.

38. The perusal of the record shows that the videography was asked to be carried out in Letter from ASG Gopal Subramaniam to Anbumani Ramadoss dated 13.10.2008 which is at Page 235 (Annexure-P12) of the petition No. CRL. M.C 4443/2015. Relevant extract of the Letter is reproduced below:

“ ...I had pointed out that there is a serious concern of lack of transparency in the grant of

*recommendations by the Medical Council of India as well as the permissions granted by the Central Government in the setting up of medical colleges. I had expressed my very deep concern that standards in private medical colleges have to be firmly in order lest there be a serious threat to the lives of citizens who would require treatment at the hands of doctors. In my view, the public good and public health is the foremost and primary as well as overriding consideration. In my view, it is the Medical Council of India and the Central Government who are jointly responsible for the quality of medical education and consequent public health. However, I may make it clear that while there may be contest with reference to areas where one should have supremacy over the other, I am not persuaded to advise that the Central Government should reiterate the permission granted in favour of Ms Index Medical College, Indore as well as Rohilkhand Medical College, Up. As I said, the wide disparity between the MCI and the team deputed by the Central Government raise serious questions including the question which one is authentic for the purpose of according admission. I confirm that in a meeting with officers of the Ministry of Health Welfare at which meeting Health Secretary was present. I had advised in order to satisfy myself before advancing further submissions in respect of the said two colleges that a new team of senior and distinguished professors of medical/medical education in the All India Institute of Medical Science, PGI, Chandigarh and Christian Medical College, Vellore be constituted to conduct inspection and give a report for both the colleges. **I also insisted that the said inspection should be clearly video graphed including the interaction between the***

members of the inspection team and the teachers/faculty...”

39. The factum of carrying out of the videography is coming in the statement of Shri. Sudershan Kumar, Section Officer, Ministry of Health and Family Welfare, Government of India, New Delhi. His statement is at Page 183 of the petition No. CRL. M.C 4443/2015. Relevant extract from his statement is reproduced below: -

“..On dated 20.10.2008, the three members central team examined the Rohilkhand Medical College, Bareilly. They did not find of having any deficiency during inspection. This was mentioned on note sheet at S.No. 64(FR)p-7-74/cor. and submitted for approval. On this note sheet on dated 22.10.2008 Shri K.V.S. Rao (the then Dy. Secretary) has written a note that **“The inspection was videographed. The report is positive and we may accept the same.** Hence the Ministry decision to grant renewal of permission to the said college may remain unchanged. On dated 22.10.2008 Shri Devasheesh Panda (Joint Secretary), on dated 23.10.2008 Shri Naresh Dayal (the then Secretary), on dated 23.10.2008 Shri Ambumani Ramdas (the then Minister of Health and Family Welfare, Government of India) approved on which there are signatures of the above, which I am confirming”.

40. In presence of the above statements and arguments the impugned Order on Charge dated 07.10.2015 is set aside with a direction to the Trial Court to hear the parties on merit afresh after duly supplying the copy of videography, of inspection carried out by MCI on 20.10.2008 which was subsequently seized by CBI, to all the accused persons.

41. Parties are directed to appear before the concerned court on 19.08.2019. Court below is directed to proceed the matter in accordance with law.
42. The revision petition of CBI under Section 397 and petition of accused persons under Section 482 Cr.P.C. is disposed of accordingly. Applications, if any, are accordingly disposed of.
43. LCR file be sent back forthwith along with a copy of this judgment. Let one copy of this judgment be placed in all the connected cases.
- No order as to costs.

JULY 29, 2019

I.S.MEHTA, J



भारतमेव जयते