

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

Date of Order: April 26, 2019

(i) + **CRL.REV.P. 307/2017 & CRL.M.A. 6857/2017;
6858/2017 & 2128/2018**

HAMENDRA KUMAR Petitioner
Through: Mr. H.S. Phoolka, Senior
Advocate with Mr. Aproov
Malik & Ms. Shilpa Dewan,
Advocates

(ii) **CRL.REV.P. 600/2017 & CRL.M.A. 13095/2017**

RAJA RAMAN SHANKAR Petitioner
Through: Mr. Harsh K. Sharma,
Ms. Vaibhavi Sharma,
Mr. Rohit Gaur, Mr. Vivek
Punia & Mr. Pulkit Jain,
Advocates

(iii) + **CRL.M.C. 1977/2017 & CRL.M.A. 8124/2017**

RAJESH WADHWA Petitioner
Through: Mr. D.S. Kohli &
Mr. Raghav M., Advocates

(iv) + **CRL.M.C. 3149/2017 & CRL.M.As. 12999/2017 &
13000/2017**

MAHENDER KUMAR GUPTA Petitioner
Through: Mr. Tanveer A. Mir,
Advocate

(v) + **CRL.M.C. 4048/2017 & Crl.M.As. 16267-16268/2017**

SURAJ PRAKASH Petitioner
Through: Mr. D.S. Kohli &
Mr. Raghav M., Advocates

(vi) + **CRL.M.C. 1370/2017 & CRL.M.A. 5522/2017**

HAMENDRA KUMAR Petitioner
Through: Mr. H.S. Phoolka, Senior Advocate
with Mr. Aproov Malik &
Ms. Shilpa Dewan, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Ripu Daman Bhardwaj,
Special Public Prosecutor

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

Trial court vide impugned order of 16th August, 2016 has considered the final reports and other material on record and has taken cognizance against petitioners for the offences under Section 120B IPC read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*henceforth referred to as the "PC Act"*). Vide orders of 18th February, 2017 and 18th April, 2017, trial court has considered the issue of sanction under Section 19 of the PC Act.

In the above captioned six petitions, challenge is to the impugned order of 16th August, 2016, vide which cognizance for the aforesaid

offences has been taken and the orders of 18th February and 18th April, 2017, vide which issue of sanction has been considered by the trial court. Since the above captioned petitions arise out of one RC bearing No. ACI-2013-A-0004 and the submissions made are overlapping, therefore, with the consent of learned counsel for the parties, the above captioned petitions have been heard together and are being disposed of by this common order.

The challenge to the impugned order of 16th August, 2016 is on the ground that in RC bearing No. ACI-2013-A-0004 titled as '*CBI Vs Hamendra Kumar & Ors.*', the closure report was filed by CBI on 23rd September, 2014, which was not accepted by the trial court and further investigation was directed and thereafter, second closure report was filed on 28th May, 2015. It is submitted on behalf of petitioners that despite filing of the closure report, trial court has taken cognizance while ignoring the contents of the closure report, which do not incriminate petitioners. Reliance was placed upon Supreme Court's in *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat* (1997) 7 SCC 622 and *Vasanti Dubey Vs. State of Madhya Pradesh* (2012) 2 SCC 731 in support of above submissions and to submit that the Courts cannot direct the authorities afresh to grant sanction under Section 19 of PC Act.

Learned Special Public Prosecutor for respondent-CBI supports the closure reports filed by the CBI.

Upon hearing and on perusal of impugned order and the material

on record, I find that in operative paragraph No. 24 of impugned, trial court has observed as under:-

“In view of the above discussion, it can be said that the contents of the final reports and the other material placed before this court are sufficient to take cognizance and proceed further in the matter against all the above accused persons for the offence punishable under Section 120B IPC read with Section 13(1)(d) of the PC Act and also against all the public servant accused for the substantive offence punishable under Section 13(1)(d) of the PC Act. However, previous sanctions under Section 19 of the PC Act are required before this court can formally take cognizance of the above said offences and can proceed further against the above public servants made accused in this case as the CBI has not obtained these sanctions earlier for the apparent reason that it had filed a final report of closure in this case instead of a chargesheet. Hence, the CBI/IO is being directed to approach the concerned competent authorities of the aforesaid accused/public servants and to place all the relevant material collected during the investigation before them for obtaining sanctions under Section 19 of the said Act for their prosecution in this case”.

A bare perusal of impugned orders does not reveal as to what is the incriminating material on the basis of which cognizance for the offences in question has been taken against petitioners. Impugned order does take note of the fact that prior sanction under Section 19 of the PC Act is required but strangely directs the CBI to approach the competent authority for obtaining the sanction, without disclosing as to under which provision of law, such a direction can be issued. In somewhat similar case of *Vasanti Dubey (Supra)*, Supreme Court has quashed the order refusing to

accept the closure report, as no reasons were forthcoming for not accepting the closure report. In the facts of these cases also, I find that there was no valid justification for the trial court to not to accept the closure report, as I find that in the closure report it is categorically recorded that no material has come on record to justify the allegations levelled against petitioners. It is a matter of record that the first closure report was not accepted by the trial court in September, 2014 and further investigation was directed. Even after further investigation, respondent-CBI had filed the second closure report in May, 2015.

The crux of the case set up in RC bearing No. ACI-2013-A-0004 against petitioners was that petitioners, who are North Delhi Municipal Development (NDMC) officials, namely -*Hamendra Kumar*, Deputy Commissioner; *Rajesh Wadhwa*, Superintending Engineer; *Mahender Kumar Gupta* (Assistant Engineer) and *Suraj Prakash* (Assistant Engineer) with co-accused *Raja Raman Shankar*, Executive Vice President of Hotel Oberoi Maidens, entered into a criminal conspiracy to carry out construction on the pretext of 'repair works' in contravention of provision of clause 23.3(i) of Delhi Building Bye Laws, 1983, which prohibited any repair work in respect of Heritage Building without advice of Heritage Conversation Committee. Both the closure reports concluded that gross abuse of official position by NDMC officials/ petitioners remains unsubstantiated and the investigation has not disclosed any violation of orders of ATMCD by petitioners-accused.

Applying the ratio of Supreme Court's decision in *Mansukhlal Vithaldas Chauhan (Supra)* and *Vasanti Dubey (Supra)* to the facts of case in hand and upon scrutiny of impugned orders, I find that in the light of closure reports filed by respondent-CBI, impugned order of 16th August, 2016 cannot be sustained and is accordingly set aside. As a consequence thereof, orders of 18th February and 18th April, 2017 also do not survive for consideration and are hereby set aside.

With the aforesaid directions, these petitions and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

APRIL 26, 2019

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