

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

% **Judgment delivered on: 29<sup>th</sup> July, 2019**

+ 1. **CRL.M.C. 4442/2015**

**DR. ANBUMANI RAMADOSS**

...Petitioners

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

versus

**SUPDT. OF POLICE,  
CENTRAL BUREAU OF INVESTIGATION,  
ACU.II, SPE, DELHI-1**

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 2. **CRL.M.C. 5003/2015**

**SURESH SINGH BHADORIA**

...Petitioner

Through: Mr. N. Hariharan, Sr. Advocate with  
Mr. Nitendra Kumar, Mr. Rakesh  
Samrendra, Mr. Aditya Vaibhav  
Singh & Ms. Rekha, Advocates.

versus

**CENTRAL BUREAU OF INVESTIGATION  
CGO COMPLEX  
LODHI ROAD, NEW DELHI**

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 3. CRL.M.C. 5005/2015

NITIN GOTHWAL

...Petitioner

Through: Ms. Rebecca M. John, Mr. N.  
Hariharan & Mr. Vikas Pahwa Sr.  
Advocates with Mr. Rakesh Kumar  
Samrendra, Mr. Kushdeep Gaur, Ms.  
Sakshi Arora and Ms. Oorjasvi  
Goswami, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION  
CGO COMPLEX  
LODHI ROAD, NEW DELHI

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 4. CRL.M.C. 5007/2015

PAWAN BHAMBANI

...Petitioner

Through: Ms. Rebecca M. John, Mr. N.  
Hariharan & Mr. Vikas Pahwa Sr.  
Advocates with Mr. Abdhesh  
Chaudhary, Mr. Rakesh Kumar  
Samrendra, Mr. Kushdeep Gaur, Ms.  
Sakshi Arora and Ms. Oorjasvi  
Goswami, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION  
CGO COMPLEX  
LODHI ROAD, NEW DELHI

...Respondents

Through: Mr. Prasanta Varma, SPP for CBI.

+ 5. CRL.M.C. 58/2017

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.

+ 6. CRL. REV. P. 38/2016

CBI THROUGH  
DESH DEEPAK, SUPERINTENDENT OF POLICE,  
CBI, AC-I, LODHI ROAD, NEW DELHI ...Petitioner

Through: Mr. Prasanta Varma, SPP for CBI.

versus

1. DR. J. S. DHUPIA
2. DR. D. K. GUPTA
3. SH. SUDERSHAN KUMAR
4. DR. K. K. SAXENA

5. DR. S. K. TONGIA

...Respondents

Through: Mr. N. Hariharan and Mr. Abhoy K. Singh, Sr. Advocates with Mr. Jugal Wadhwa, Mr. Rishabh Wadhwa and Mr. Raghav Goyal, Advocates for R-1 and R-2. Mr. Sanjeev Goyal with Mr. Amitesh, Advocate for R-5.

**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 Anbumani Ramadoss (Accused No. 1), K.V.S. Rao (Accused No. 2), Suresh Singh Bhadoria (Accused No. 6), Nitin Gothwal (Accused No. 9) and Dr. Pawan Bhambani (Accused No. 10) and Criminal Revision petition under Section 397 Cr.P.C. filed by CBI against accused persons Sudarshan Kumar (Accused No. 3), Dr. J. S. Dhupia (Accused No. 4), Dr. D. K. Gupta (Accused No. 5), S.K. Tongia (Accused No. 7) and Dr. K.K. Saxena (Accused No. 8). All these petitions are arising from impugned order dated 07.10.2015 in CBI Vs. Anbumani Ramadoss & Ors. vide CC No. 03/12 passed by Special Judge (P.C. ACT) CBI-01, Patiala House Court in FIR RC No. AC2-2010-A-0003/ACU-II, SPE/CBI/ND under Sections 120B, 420, 465, 468, 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 10 Accused persons and summoning them to face trial for the commission of the aforesaid offences.

2. Brief facts stated are CBI registered an FIR RC No. AC2-2010-A-0003/ACU-II, SPE/CBI/ND on following information:

*"Reliable source information has been received that Index Medical College hospital Research Centre, Indore under the management of Mayank's Welfare Society, Indore, applied for permission regarding admission of 2nd batch of MBBS students for academic year 2008-09. But inspection by Inspectors of Medical Council of India (MCI), conducted on 8 & 9th May, 2008, observed certain deficiencies regarding shortage of teaching faculty. Thus MCI asked college to submit a compliance report. Accordingly college authorities submitted compliance report claiming rectification of deficiencies. But in another inspection conducted on 27.5.2008, MCI team again found certain deficiencies which had been claimed to be rectified. Thereafter, another compliance verification inspection was carried out by the MCI Inspectors on 19.8.2008, in which again deficiencies were observed.*

*On 25.8.2008, in the meeting of the Executive Committee of MCI, including the adhoc members of the council appointed by Hon'ble Supreme Court of India, it was decided to recommend to Ministry of Health and Family Welfare not to renew the permission for admission of 2d batch of MBBS students for the academic year 2008-09 at Index Medical College Hospital & Research Centre Indore due to deficiencies observed during various inspections.*

*Subsequently during the hearing on 26.09.2008 of WP (C) 420 of 2008 (Mayank's Welfare Society & Ors Vs UOL & Ors) in Hon'ble Supreme Court, it was stated on behalf of Union of India that the percentage of teaching staff in*

*various departments and other facilities of the said college were inadequate and the petitioner institution can not be given permission. Therefore, the Writ petition was disposed off without prejudice to the right of the college to continue to get permission in next calendar year.*

*However, contrary to the orders of Hon'ble Supreme Court, 26.09.2008 itself Ministry of Health and Family Welfare, Government of India granted permission to Index Medical College and Research Center on the basis of an Inspection Report dated 25.09.2008 of the Central Team consisting of Dr. DK Gupta Specialist Gr.I and HOD Hematology, Safdarjung Hospital and Dr. J.S. Dhupia, Professor Consultant and HoD (Pathology). Vardhman Medical College, Delhi. This team claimed in their report that the signatures of the entire teaching faculty including Residents were taken to confirm the staff position.*

*It is also reliably learnt that on 01.10.2008, just after 6 days of the inspection by the Central team, another inspection by MCI team was conducted at Index Medical College and Research Centre. In this inspection it was observed that clinical material was grossly inadequate, bed occupancy shortage was 27.71 %, teaching faculty shortage was 65.11% and Residents shortage was 32.89%.*

*Thereafter, Secretary, MCI vide letter No. MCI-34(41)/2008-Med./27854 dated 06.10.2009 intimated to the Secretary, GOI, Ministry of Health and Family Welfare Department of Health) that the Executive Committee of the MCI had resolved to urge the Central Government to recall the letter of permission dated 26.09.2008 issued to Index medical College and Research Centre. Therein it was mentioned that it is not possible for the*

*college to rectify all the deficiencies within such a short period of about one month (from 19.08.2008 to 25.09.2008 and it appeared that Central Team did not carry out inspections properly, as MCI team again found the deficiencies within 6 days of the inspection by Central team.*

*It is reliably learnt that the signatures of various faculty members taken by the Central Team on 25.09.2008 were forged just to show the full strength of the faculty members.*

*Thus the aforesaid facts prima facie reveal commission of offences punishable u/s 120 B IPC r/w 13(1)(d) PC Act, sec. 464/465/466/468 & 471 IPC by Dr. DK Gupta, Specialist Grl and HOD Hematology, Safdarjung Hospital and Dr. J.S Dhupia, Professor Consultant and HoD (Pathology), Vardhman Medical College Delhi, the Unknown officers of Ministry of Health and Family Welfare, Government of India, New Delhi, unknown office bearers of Index medical College and Research Centre, Indore and other unknown persons. "*

3. CBI after completion of the investigation filed chargesheet on 12.06.2012 stating facts as below:

A. Mayank Welfare Society formed in the year 1996 was headed by Suresh Singh Bhadoria (Accused No. 6). The society proposed in 2005 to open a Medical college and established Index Medical College on 28.09.2007 after getting approval from the Ministry of Health and Family Welfare. Initially it was granted permission of one year and annual intake of 150 students.

- B. Medical Council of India (MCI) granted permission to establish a medical college and to admit students by issuing a notification. College may admit students initially for a period of one year that has to be reviewed on yearly basis subject to verification of achievements of annual targets for next four years. For renewal, college has to apply to MCI six months prior to expiry of initial permission. The process of renewing permission continues till the time establishment of medical college and expansion of hospital facilities are completed. Thereafter, formal recognition to medical college is granted. As per schedule prescribed by the MCI, application for new colleges and renewal should be received by Central Government from 1st to 31 August of any year and recommendation of MCI to Central Government for issue of letter of permission or otherwise should be given by 15th June of the ensuing year, and the letter of permission of central government is to be issued by 15th July.
- C. In the instant case dispute pertains to grant of admission of second batch (i.e., first renewal) of MBBS students for academic year 2008-09. The College was inspected by the MCI on 8th and 9th of May 2008 for its first renewal. MCI found various deficiencies and Executive Committee and the Adhoc Committee appointed by Hon'ble Supreme Court of India recommended to the MoHFW to not renew permission for admission of second batch of students. A compliance report was sought by the Ministry on recommendation of MCI which was submitted by the college on 20.05.2008 pursuant to which another team of MCI was deputed which conducted inspection on 27.05.2008, it found deficiency of teaching faculty and residents.

- D. After this inspection report, Adhoc committee appointed by the Hon'ble Supreme court and Executive committee of the MCI recommended the Ministry to not renew permission for second batch of 150 MBBS students. Thereafter, vide letter dated 18.06.2008 decision was communicated to chairman, then on 26.06.2008 accused Suresh Singh Bhadoria requested Secretary Ministry of Health and Family Welfare for further inspection. On this the then Secretary Health directed accused K.V.S. Rao (Accused No. 2) to examine the request. Accused K.V.S. Rao Deputy Secretary, Joint Secretary and the Secretary endorsed the notes for approval for Minister for re-inspection by the Central team. Thereafter, on 19.07.2008 accused Minister Anbumani Ramadoss (Accused No.1) called for a meeting for discussion but did not agree with this proposal for re-inspection, and agreed with the recommendation of MCI not to renew permission for second batch of 150 MBBS students in Index Medical college.
- E. Consequently, a writ petition was filed by the college in the Hon'ble Supreme Court of India. Hon'ble Supreme Court of India vide order dated 11.08.2008 advised MCI to conduct inspection of the college. In compliance of the order, MCI conducted the inspection on 19.08.2008 and found shortage in faculty as well as clinical material. Thereafter, Hon'ble Supreme Court of India on 03.09.2008 directed MCI to submit its recommendation to the Government of India within 2 days and directed MoHFW to consider the matter within a week whether permission has to be granted and interested party may also be given an opportunity of being heard in person by the Ministry.

- F. Accordingly, MCI on 04.09.2008 on the basis of inspection report dated 19.08.2008 recommended Ministry not to renew the permission for second batch. Accused S.S. Bhadoria in compliance of the order dated 03.09.2008 appeared before accused K.V.S. Rao for personal hearing on 10.09.2008, thereafter vide note dated 11.09.2011 it was recommended that recommendations of MCI for not granting permission be accepted. It is also observed in the notes that MCI has pointed out serious deficiencies and the comments submitted by college authorities cannot be verified by 12.09.2008 the last date given by Hon'ble Supreme court of India, thus recommended that renewal of permission may not be granted. This note was approved by Joint Secretary, Secretary as well as the accused Minister Anbumani Ramadoss and decision in this regard was communicated to the Chairman Mayank's Welfare Society vide letter dated 12.09.2008.
- G. Thereafter, accused Suresh Singh Bhadoria again vide letter dated 16.09.2008 made a request to Secretary MoHFW to review the order dated 12.09.2008, and also requested for physical verification by team of Central Inspectors or to give permission for admission of 100 students, same was processed on 19.09.2008. However, accused K.V.S. Rao returned the file directing "to wait for the order of SC on 23.09.2008".
- H. During the hearing on 22.09.2008 before the Hon'ble Supreme Court of India, Index Medical College acknowledged the deficiencies and requested for considering reduced intake. Ld. ASG appeared on behalf of the Central Government, communicated the said submissions of the college to accused K.V.S. Rao vide letter dated 22.09.2008, and this

letter was received through fax on 23.09.2008 in the MoHFW. Thereafter, it was processed in the file on 24.09.2008, and on the basis of this communication, recommendation of MCI was sought. The MCI sent its recommendation on 24.09.2008 i.e., on same day by fax received in the office of K.V.S. Rao at 3:17 PM, and recommended that college could not be granted permission even for 50 students. However, even prior to receiving this report of MCI which was submitted in compliance of the order of Hon'ble Supreme court, accused K.V.S. Rao contacted Dr. Jagdish Prasad Medical Superintendent and Additional Director General, Safdarjung hospital on his mobile at around 1:50 PM on 24.09.2008 and conveyed the decision of Minister Anbumani Ramadoss for deputing Central team for inspection of Index Medical College, and the said communication was also sent in writing which was received at around 2:19 PM in the hospital on 24.09.2008. It was also mentioned in the said letter that the report should be submitted in the Ministry by 25.09.2008 positively within one day in view of the scheduled hearing in Hon'ble Supreme Court on 26.09.2008.

- I. Another writ petition was also pending in the High Court of M.P. at Jabalpur in this regard which was listed on 25.09.2008. However, it was informed to Standing counsel that MoHFW had not granted the permission to the college. This was done with the approval of K.V.S. Rao contrary to the fact that he was well aware about the sending of Central team on 24.09.2008 for inspection.
- J. Consequent to the direction of accused K.V.S. Rao to conduct inspection of Index Medical college. Dr. Jagdish Prasad Medical

Superintendent prepared a inspection team of accused Dr. J.S. Dhupia (Accused No.4) and accused Dr. D.K. Gupta (Accused No.5). Thereafter, both the doctors reached Indore at night and stayed at hotel Landmark Fortune booked on the direction of accused Suresh Singh Bhadoria. On the next day, they inspected the college and during inspection accused Nitin Gothwal (Accused No.9) submitted a list of faculty members and the said faculty members made to sign on the said list before the Inspectors. Nitin Gothwal (Accused No.9) and Dr. Pawan Bhambani (Accused No.10) prepared report containing information regarding bed occupancies. Thereafter, the said team of doctors prepared inspection report on 26.09.2008 opining adequate strength of faculty for admission of 100 MBBS students and other facilities for 150 students. This report was sent to accused K.V.S. Rao who received it at around 5 PM on 26.09.2008.

K. However, during the forenoon of 26.09.2008, accused K.V.S. Rao did not brief the Ld. ASG Sh. Gopal Subramaniam who on the instructions of MCI stated before the court that percentage of teaching staff and other Facilities were not adequate. Accordingly, Hon'ble Supreme Court of India disposed off the petition without prejudice to the rights to get permission in the next calendar year. This decision was communicated to accused K.V.S. Rao by A.N. Setalvad, Secretary MCI on telephone before lunch on 26.09.2008 itself. Thereafter, the formal communication of the outcome of petition was also received from the MCI office to the office of accused K.V.S. Rao at around 7:50 PM, however same was also not processed in the file.

- L. But on the basis of inspection report dated 26.9.2008 conducted by Dr. J. S. Dhupia and Dr. D. K. Gupta, a note 38 dated 26.09.2008 put up by the accused Sudershan Kumar (Accused No.3) Section officer on the direction of accused K.V.S. Rao, and after processing the same both visited the office chamber of accused Dr. Anbumani Ramadoss. It is also alleged that in said note accused Sudershan Kumar manipulated the factual information of the report of central team and also the order of Supreme Court dated 22.09.2008 wherein there is no direction by Supreme Court to appoint the Central team, and in the late evening the approval was granted by accused Dr. Anbumani Ramadoss at his residence.
- M. It is also revealed in the investigation that accused Suresh Singh Bhadoria despite dismissal of his writ petition on 26.09.2008 was chasing the matter and visited the Ministry at around 4:30 PM, and received letter of permission on the same day from the Ministry.
- N. During investigation, it was found that list pertaining to departments given to the central team was authenticated by Dr. K.K. Saxena (Accused No.8) and Dr. S.K. Tongia (Accused No.7) knowing full well that some of the members of Faculty were not actual faculty members and even not present on the date of inspections and the signatures appended therein were forged only to show that the college had the actual strength as per MCI forms. The faculty members mentioned in the list were more than required and during investigation 49 faculty members who as per list were shown to be present on 25.09.2008 denied their signatures and also denied to be present in the college on 25.09.2008. And on the basis of that list the inspection

report dated 26.09.2008 was prepared by the inspection team of Dr. J. S. Dhupia and Dr. D. K. Gupta. After knowledge of the approval on the basis of inspection report dated 26.09.2008 MCI again inspected the college on 01.10.2008. During this inspection also MCI found deficiencies in the faculty as well as clinical material.

- O. During investigation it is also revealed that after coming to know about the granting of permission of Index Medical college by Ministry, a letter was written by Ld. ASG on 04.10.2008 advising Ministry to withdraw the permission, thereafter on processing the said letter on 06.10.2008 accused K.V.S. Rao took the responsibility of not briefing the ASG about the sending of central team on 24.09.2008. Thereafter, on the advice of Ld. ASG another central team inspected the college on 20.10.2008 and submitted its report on 22.10.2008, and this team found adequate facilities in the college for grant of permission to admit 150 students.
- P. On conclusion of investigation, CBI charge-sheeted accused Anbumani Ramadoss, K.V.S. Rao, Sudarshan Kumar, Dr. J.S. Dhupia, Dr. D.K. Gupta and accused S.S. Bhadoria for commission of offences under Section 120-B IPC read with Section 420/465/468/471 IPC read with section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. Furthermore, accused S.S. Bhadoria, S.K. Tongia, Dr. K.K. Saxena, Nitin Gothwal and Dr. Pawan Bhambani were also charged for committing offence under Section 120-B IPC read with 420/465/468/471 IPC and substantive offences thereof.

4. On 08.06.2012 Ld. Special Judge, CBI took cognizance under Section 120-B read with Section 420/465/468/471 IPC and Section 13(2) read with 13 (1) (d) of PC Act, 1988 against all the 10 Accused persons.
5. Subsequently, Ld. Special Judge vide order dated 07.10.2015 framed charges against Dr. Anbumani , Dr. K.V.S. Rao, S.S. Bhadoria, Nitin Gothwal and Dr. Pawan Bhambani under Section 120B r/w 13 (2) & 13(1)(d) of Prevention of Corruption Act and under Section 420/465/468/471 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 this Nitin Gothwal and Dr. Pawan Bhambani too were found to have committed substantive offence under Sections 420, 465, 468 and 471 IPC. However, accused Dr. J.S. Dhupia, Dr. D.K. Gupta, Sudershan Kumar, Dr. K.K. Saxena and Dr. S.K. Tongia were discharged.
6. Being aggrieved from the impugned order dated 7.10.2015, both parties i.e. Accused Persons as well as CBI preferred instant petitions.
7. The Learned Senior Counsel Mr. Mohit Gupta on behalf of Accused No.1 Anbumani Ramadoss has submitted that the court below while passing impugned order on framing of charge skipped the relevance of videography conducted by MCI, same was seized by CBI.
8. Learned Senior Counsel further submitted that court below has also omitted statement of Sh. Rajeev Verma PW14 and Sudershan Kumar PW4.
9. Learned Senior Counsel 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.

10. Learned Senior Counsel further submitted that the proprietary demands that a junior officer must act strictly under 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 to the conspiracy.
11. Learned Senior Counsel further submitted that there is no allegation against the present petitioner for misuse of his official position for pecuniary gain. The facts shows that the permission was given by the minister was on the basis of unanimous note placed before him and minister have not done anything which is contrary to the law.
12. Learned Senior Counsel further submitted that the Impugned Order is contrary to the Chargesheet. No one has been charged under substantive Sections 420, 465, 468, 471 IPC.
13. Learned Senior Counsel further submitted that the prosecution is unable to establish or bring on record the evidence related to pecuniary gain. In the absence of any allegation of pecuniary gain, the substance of conspiracy cannot be established.
14. Learned Senior Counsel further submitted that subsequently too such permission was granted pursuant to the advice of Learned 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.

15. Learned Senior Counsel 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.
16. Learned Senior Counsel Mr. Hariharan on behalf of Accused No. 6 Suresh Singh Bhadoria has submitted that he was an elected chairman and not the nominated chairman of Mayank Welfare Society and Index Medical College and allegations of conspiracy against him are false.
17. Learned Senior Counsel further submitted that since the petitioner was elected chairman and acted as a coordinator so there was no occasion to get into the part of the conspiracy. The allegations start from the visit of the petitioner on 24.09.2008 to meet K.V.S. Rao, whereas the period of conspiracy alleged is from 24.09.2008 to 26.09.2008 and the object was to receive the approval for admission of students in relation to the second year program.
18. Learned Senior Counsel further submitted that prosecution tried its best to prove the presence of S.S. Bhadoria and therefore they have interpolated by inserting his name at serial. No. 66 whereas it should have been No. 56. There is nothing on record to show that the signature belongs to S.S. Bhadoria. Learned senior counsel placed reliance on Supreme Court Judgment *Union of India v. Prafulla Kumar* AIR 1979 SC 366 and *Mirza Akbar v. King Emperor* AIR 1940 PC 176.
19. Learned Senior Counsel has pointed out that in the present case the issue of Estoppel comes into operation as the Supreme Court has already considered

the plea of the CBI and passed the final order, therefore, the issue of Estoppel comes into operation. The petitioner had factually visited on 10.09.2008 and the note of the department institution also shows that he visited the Ministry on 10.09.2008, however, the prosecution shows signature in the register of 24.09.2008 which is a result of manipulation.

20. Learned Senior Counsel has further submitted that by agitating the present matter by the CBI it gets the effect to the career of the students who have already enrolled in the Medical College and if this Court comes to the conclusion contrary that in such a situation all of 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.
21. Learned Senior Counsel further pointed out that the present petition filed by Mr. Suresh Singh Bhadoria under Section 482 is so because nothing survives in the matter.
22. Learned Senior Counsel Ms. Rebecca M. John on behalf of Accused No. 9 Nitin Gothwal and Accused No. 10 Mr. Pawan Bhambhani has submitted that Mr. Nitin Gothwal was an Administrator and HR Manager and Mr. Pawan Bhambhani was Director Administrator of Index Medical College at the relevant point of time.
23. Learned Senior Counsel further submitted that MCI is falsely prosecuting the present petitioners. As Apex Court has not disturbed the status of the admission granted to the college which *ipso facto* makes it clear that nothing remains to be adjudicated further and the statement to this effect could be

seen from the statement of Rajiv Verma, Assistant, ME dated 08.08.2010 wherein the mentioning of the video cassette submitted is being maintained.

24. Learned Senior Counsel further submitted that the petitioners are charged under Section 464 IPC for forgery which manifestly is wrong, there cannot be forgery until and unless there is *prima facie* document to prove the allegation as made therein that such document is signed by doctors, subsequently, forged by the petitioner which *ipso facto* indicates that there is no indication in the eyes of the law and relied upon the judgment ***Sheila Sebastian v. R. Jawahar Raj*** 2018 SCC online SC 522.
25. Learned Senior Counsel further submitted that substantive charge has been framed against the petitioners under Section 420 IPC. There is no element and evidence on record coming forward which could show that the petitioners have induced or submitted to the committee. Therefore, allegation under Section 420 IPC be dismissed.
26. Learned Senior Counsel further submitted that there is no iota of evidence qua the present petitioners for its inducements by two Central teams of doctors. Whereas the Central Government itself is agreeing to the proposal. Therefore, the very purpose of framing of the charge under Section 420 IPC does not stand, also, Central Government has granted permission on the report of the two inspections and the Supreme Court has validated such report and Central Government's position then nothing survives under Section 420 IPC.
27. Learned Senior Counsel further submitted that generally the CBI comes with a plea that the information was received from a person which factually has no source but on the basis of their presumption and convenience comes out with allegations against the petitioners. The source of the said information

could be seen from Section 39 Cr.P.C which does not cover under Section 420 IPC to make a cognizable offence only a cheated person can be a complainant and there is no one else in the present case who claims that he has been cheated.

28. Learned Senior Counsel has further submitted that demand by a public servant while abuse of his duty are essential ingredients and demand is the primary requisite, in the present case there is no demand nor any allegation. When there is no demand and allegation the very purpose of framing of the charges under Section 13 (1) (d) read with Section 13 (2) does not arise. Learned Senior Counsel relied upon *A. Subair v. State of Kerala* 2009(6) SCC 587.
29. Learned Senior Counsel has further submitted that there are two versions coming into the existence one is favoring the prosecution in the form of MCI inspection reports and the other is favoring the accused persons in the form of two independent inspection reports, the one conducted by Doctors of Safdarjung Hospital and the other conducted by three independent Doctors of the best hospitals i.e. All India Institutes of Medical Sciences (AIIMS) Delhi, PGI Chandigarh and CMC Vellore. These two reports showed that there is no irregularity committed by the college with respect to its infrastructure and faculty whereas the four MCI reports find deficiency in the faculty as well as infrastructure. The Apex Court has rectified the stand of Central Government. Learned Senior Counsel has relied upon the judgment *Dilawar Balu Kurana v. State of Maharashtra* 2002 (2) SCC 135.
30. Learned Senior Counsel Mr. Dayan Krishnan on behalf of 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 directions 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.

31. Learned Senior Counsel has further submitted that Ld. Trial Court has also assumed the proposed defense of the petitioner and then proceeded to record a finding on its untenability which 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 para 32 of the order impugned.
32. 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 on Supreme Court judgment in ***Ram Narayan Popli v. CBI*** (2003) 3 SCC 641.
33. 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 omissions of the Petitioner herein. Also, Conspiracy cannot be inferred from the fact that the College authorities met the Petitioner on 24.9.2008. Learned Senior Counsel relied on Supreme Court judgment in ***Subramanian Swamy v. A. Raja*** (2012) 9 SCC 257.

34. Learned Senior Counsel has further submitted that the charge for conspiracy remains wholly unsubstantiated and relied on Supreme Court judgments in *Kehar Singh v. State* (1988) 3 SCC 609, *State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600.
35. Learned S.P.P. Mr. Prasanta Verma for CBI in Criminal Revision Petition CrI.R.P. No. 38/2016 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.
36. Learned S.P.P. has further submitted that the instant petition relates to Index Medical College, a private Medical College in Indore, Madhya Pradesh. Learned S.P.P. has 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 150 students for the academic session 2006-07 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.

37. Learned S.P.P. has further submitted that the first inspection for renewal of permission for admission of batch of 150 students for the academic year 2008-09 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.
38. Learned S.P.P. has submitted that Dr. J.S. Dhupia and Dr. D.K. Gupta has given the inspection report which pertains to Index Medical College. This fact has come on record in the statement of PW-79 (Arun Arora) who stated that "They reached Indore on 24.09.2008 and stayed at Hotel called Landmark Foundation which was booked by S.S. Bhadoria and the expenses were paid by S.S. Bhadoria and Rs.20,000/- each was paid to each individual to Dr. J.S. Dhupia and Dr. D.K. Gupta who went there for its inspection of Index Medical College."
39. Learned S.P.P. for CBI has further submitted that the aforesaid amount was given by the Government for making inspection and preparing reporting thereof of the facility available in the college. Learned S.P.P. has further submitted that once this amount was given by the Government, the aforesaid Doctors Dr. J.S. Dhupia and Dr. D.K. Gupta should not have accepted it in any favour from the College which they had gone to inspect and prepare the report thereof, Dr. J.S. Dhupia and Dr. D.K. Gupta visited the Index Medical College on 24.09.2008 and on 25.09.2008 they have conducted the inspection and they gave the report that the College has adequate facility to have admission of the second batch students without proper verification of faculty, teaching staff and other facility. Factually, the list of the faculty members was prepared by Nitin Gothwal and Pawan Bhambani as stated by

the PW-5 (Piyush Singh) Chief Coordinator of the Index Medical College and the said list was accepted without verifying if the persons are actual or dummy faculty members of Index Medical College. The list shows dummy medical faculty members who were brought for the purposes of this inspection only.

40. Learned S.P.P. has further submitted that the attendance sheets were prepared by accused Nitin Gothwal (Coordinator) and the same was signed by the Medical Dean and the Medical Superintendant of the Index Medical College and PW-5 (Piyush Singh) has stated this to CBI that the said attendance sheet was not verified by Dr. J.S. Dhupia and Dr. D.K. Gupta.
41. Learned S.P.P. has further submitted that lot of faculty members were not present at the time of inspection and PW-5 (Piyush Singh) has stated in his statement that there are eight faculty members who were not present on the aforesaid date and Piyush Singh again stated that few faculties were presented on 25.09.2008 who have signed the attendance sheet. The list of the faculties who were shown to be presented were factually not present and their signatures has been forged in the attendance register and placed before Dr. J.S. Dhupia and Dr. D.K. Gupta basing for his biased/incorrect report.
42. Learned S.P.P. has further submitted that both the Doctors Dr. J.S. Dhupia and Dr. D.K. Gupta did not verify the declaration form submitted by them and the faculty members and many of the documents declaration forms and documents submitted along with it were found to be forged. List of the forged declaration form were of PW-8, PW-36, PW-38, PW-39, PW-41, PW-42, PW-44, PW-45, PW-46, PW-47, PW-49, PW-50, PW-56, PW-65, PW-66, PW-69, PW-70, PW-99 and PW-103.

43. Learned S.P.P. has further submitted that inspection team comprising of Dr. J.S. Dhupia and Dr. D.K. Gupta failed to verify as to whether the faculty members who were present there for the inspection whether they were full time members or whether they were part time members or whether they were procured only for the purposes of getting favourable inspection report in their favour. PWs-1, 2, 3, 4, 7, 8, 10, 12, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 76, 99, 103, 105, 107 were not regular faculty members and most of them were hired only for the purpose of inspection and some of them were not present even at the time of the inspection and their signatures were forged in the attendance sheet.
44. Learned S.P.P. has further submitted that PWs-2, 3 and 4 also have stated that Medical College does not have adequate teaching faculty and most of them were hired only for the purpose of inspection and were paid accordingly.
45. Learned S.P.P. has further submitted that PW-5 has stated that the faculties were procured before inspection of the MCI through faculty providers.
46. Learned S.P.P. has further submitted that Nitin Gothwal and Pawan Bhambani used to deal with the faculty providers and all the work of the appointment of the faculty in MCI inspection was done by Nitin Gothwal and Pawan Bhambani on the direction of S.S. Bhadoria who happened to be the Chairman of Index Medical College.
47. Learned S.P.P. has further submitted that PW-6 Satish Bhardwaj also supported prosecution version.
48. Learned S.P.P. has further submitted that inspection report of Dr. J.S. Dhupia and Dr. D.K. Gupta dated 25.09.2008 does not contain the proper

verification of the teaching facility and the infrastructure that was available in the College. PWs 37, 39, 42, 43, 45, 53, 56, 57, 75, 76, 103 say that there was no proper teaching facility available in College and the infrastructure was inadequate and the Doctors. Dr. J.S. Dhupia and Dr. D.K. Gupta did not verify bed occupancy report submitted by the Doctors.

49. Learned S.P.P. has further submitted that it was the duty of the inspection team Dr. J.S. Dhupia and Dr. D.K. Gupta, they were to verify contents of the form submitted to them and were also to physically verify the infrastructure, bed occupancy, teaching facility and other facilities which was required for running of the Medical College and that inspection was supposed to have the detail in the proper inspection as per the terms of the Medical Council of India.
50. Learned S.P.P. has further submitted that team of inspection was supposed to make the report of pre and para medical clinical departments, along with the infrastructure and equipments, hostel facilities for boys and girls, residents, interns, residential accommodation for the teaching staff non-teaching staff, college library, examination hall and various endorse wards. OPD along with the bed occupancy and casualty attendants and laboratories and radiological tests facilities, and the faculty verification is to be done by reviewing the declaration form submitted by each faculty. Nothing has been done by the inspection team in this manner. They were supposed to look at the radiological department with the various machines like X-Rays, UGI, CT Scan, MRI, Blood bank laboratories and Rural Health Training Centre and Urban Health Training Center, nothing was done by the inspecting team.
51. Learned S.P.P. has further submitted that respondent No.3 Sudarshan Kumar was then the Section Officer in the Ministry of Health and Family Welfare.

He blatantly misrepresented his noting that the Central team deputed for inspection in view of the order dated 22.09.2008, even though there was no order from the Hon'ble Supreme Court of India, he also prepared the note recommending sanctions for renewal of admission of the second batch of the MBBS students in the Index Medical College based on the report of the inspection team of Dr. J.S. Dhupia and Dr. D.K. Gupta dated 26.09.2008. The inspection report reveals that there is adequate faculty for admission of 100 students and other facilities for admission of 150 students. However, further to the contrary he accelerated the number from 100 to 150 saying that there is enough facility which clearly indicates his involvement of conspiracy in the matter. This allegation is based on the statement of PW-14 Rajiv Verma, Assistant Medical Education in the Ministry of Health and Family Welfare. In the similar way PW-94 has also stated that incorrect note was submitted to him who is the Joint secretary in the Ministry and Family Welfare.

52. Learned S.P.P. has further submitted that PW-32 N. Barik (Under Secretary, MoHFW) further stated that Sudershan Kumar along with K.V.S. Rao (Secretary to the Minister) visited the resident of the Minister with the inspection report and recommendation note and got the approval letter signed record. Thereafter, Sudershan Kumar and the K.V.S. Rao went to the Ministry and got the approval letter and came back office at 9:30 PM and handed over the approval letter to the Chairman (S.S. Bhadoria) of Index Medical College.
53. Learned S.P.P. further submitted that Dr. S.K. Tongia who is the dean and Dr. K.K. Saxena who is the director went at the time of the inspection and endorsed forged faculty list which they should not have done being Director

and Dean of the Index Medical College and they failed to show their *bona fide* on the strength of ignorance about the said faculty and as a whole it is the punch of conspiracy.

54. Learned S.P.P. has further submitted that PW-5 (Piyush Singh) categorically stated in his statement that Dr. K.K. Saxena and Dr. S.K. Tongia has signed the teaching attendance sheet of all the departments and the photocopies and they were aware of the fact that procurement of the teaching faculty is only by procuring the faculty members and they were aware of this fact and according to the Court of Law has wrongly discharged the accused persons in presence of the aforesaid evidence. Therefore, impugned order is bad in law and so is liable to be set aside.
55. Learned S.P.P. further submitted that evidence on record connects all the chargsheeted 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.
56. Learned Senior counsel, Mr. Hariharan on behalf of Accused No. 4 Dr. J.S. Dhupia, Accused No. 5 Dr. D.K. Gupta, Accused No. 3 Sudershan Kumar, Accused No. 7 Dr. S.K. Tongia and Accused No. 8 Dr. K.K. Saxena has submitted that the 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.
57. Both the parties i.e. CBI as well as the 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 under Section 482 Cr.P.C.

58. The plea of the Petitioners/Accused persons Anbumani Ramadoss, Suresh Singh Bhadoria, Nitin Gothwal, Pawan Bhambani and K.V.S. Rao is that there is no evidence against them and thus seeking invocation of Section 482 Cr.P.C. to which CBI disagrees evidence is available on record..
59. The CBI too has filed a revision petition against the discharged accused persons Dr. J.S. Dhupia, Dr. D.K. Gupta, Sh. Sudershan Kumar, Dr. K.K. Saxena and Dr. S.K. Tongia showing material evidence available on the record and thus to charge them as well.
60. During the course of the arguments, Learned senior 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. The factum of videography is not disputed in the statement of the witnesses as well as by CBI, still it was not made part of the chargesheet.

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

61. The perusal of the record shows that the videography was asked to be carried out in the Letter from ASG Gopal Subramaniam to Anbumani Ramadoss dated 13.10.2008 which is at Page 376 (Annexure-P10) of the petition No. CRL. M.C. 4442/2015. 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 M/s Index Medical College, Indore as well as Rohilkhand medical College, UP. As I said, the wide disparity between the findings of the team deputed by 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 the officers of the Ministry of Health and Family 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 Sciences, 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 videographed including the interaction between the members of the inspection team and the teachers/faculty. ...**"*

62. The factum of carrying out of the videography is also coming in the statement of Shri Rajeev Verma, Assistant, ME(P-11) Section, M/o Health & Family Welfare, Room No. 539-A, Nirman Bhawan, New Delhi. His statement is at Page 261 of the petition No. CRL. M.C. 4442/2015. Relevant extract from his statement is reproduced below:

*"... Now you have drawn my attention on the note dated 6.10.2008 submitted by Shri Sudershan Kumar, Section Officer available at page 42-43/N. Vide this note he submitted the letter dated 4.10.2008 of ASG, Shri Gopal Subramaniam available at page 682-683. Vide this note, Shri Sudershan Kumar, Section Officer submitted that as per the advice of ASG permission may be withdrawn or wait and submit the facts of the case to ASG who has directed for a detailed conference before the Hon'ble Supreme Court re-open. This note was submitted to US who endorsed the same to DS(ME). DS(ME), Shri KVS Rao submitted that he took personal responsibility for not briefing ASG. He further submitted that ASG also of view that the Ministry to withdraw the permission of the college to sustain the credibility of the Government and sent this file to JS on the same day. Then JS after seen it endorsed the file to secretary(HFW). The Secretary(HFW) Shri. Naresh Dayal submitted that in view of the withdrawal of permission and submitted that HFM may like to discuss the further course of action and how it is to be presented in the Hon'ble Supreme Court with ASG, Shri Gopal Subramaniam and marked the file to Hon'ble Minister on 06.10.2008. But this file was not seen by HFM. Thereafter, Shri. K.V.S. Rao, DS(ME) submitted a note dated 16.10.2008 that on the advice of ASG, another team was deputed to both the colleges.*

Now you have shown me note dated 22.10.2008 available at page 45-46/N submitted by Shri Sudarshan Kumar, Section Officer. After perusing the said note, I state that vide this note he put up inspection report of new special team deputed who conducted the inspection of Index Medical College on 20.10.2008. As per the report submitted by Dr. Rajvardhan Azad dated 22.10.2008, the team of Dr. Azad found that there is sufficient facilities of 150 students. He also videograph the inspection and submitted the cassette to this effect. This note was put up to US(ME), Shri N. Barik and DS(ME), Shri K.V.S. Rao. The DS(ME), Shri K.V.S. Rao submitted that **"The inspection has been videographed. The report has confirmed the adequacy of teaching faculty. We may accept the report. This Ministry's decision to grant renewal of permission to the said medical college may remain unchanged. Submitted for approval of HFM"** After this file was seen by JS(DP-Shri Debasish Panda) on 22.10.2008. Secretary(HFW), Shri Naresh Dayal on 23.10.2008 and finally approved by Union Health Minister Shri A. Ramdoss on 23.10.2008 I identify their signatures.

**The video-cassettes submitted by Dr. Rajvardhan Azad along with his report dated 22-10-2008 was with the custody of Shri Sudarshan Kumar. Section Officer who handed over the said video-cassettes on 30.08.2010 which you had seized vide Production cum Seizure Memo dated 30.08.2010 in my presence. The said seizure memo having my signatures as witness and signatures of Shri Sudarshan Kumar. Before seizing the same you also obtained our signatures of (on) each cassettes and sealed the same in separate envelopes.**

RO&AC

*Vipin Kumar*  
*(Inspector of Police)*  
*CBI ACU II/New Delhi "*

63. 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 the inspection carried out by MCI on 20.10.2008 which was subsequently seized by CBI to all the accused persons.
  64. 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.
  65. 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.
  66. 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.

न्यायमेव जयते

**I.S.MEHTA, J**  
**(JUDGE)**

**JULY 29, 2019**