



2026:AHC:143039

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 21070 of 2024

Pawan Kumar

.....Applicant(s)

Versus

Central Bureau Of Investigation And Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Alok Ranjan Mishra, Sr. Advocate
Counsel for Opposite Party(s)	:	G.A., Sanjay Kumar Yadav

Court No. - 89

HON'BLE RAJ BEER SINGH, J.

1. This application under Section 482 Cr.P.C. has been filed seeking following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash the impugned order dated 22.03.2024, passed by the Special Judge (Anti-Corruption), CBI Court No.-2, Ghaziabad in Criminal Misc. Case No. 01 of 2023 (CBI vs. Ajay Kumar Singh and others), arising out of RC-6(A)/2019/CBI/SC-III/New Delhi, Final Report No. 37/2022, dated 31.12.2022, under Sections 120-B & 420 IPC and Section 13(2) r/w. 13(1)(D) of the Prevention of Corruption Act, 1988 (prior to the amendment dated 27.07.2018), Police Station-CBI/SC-III/New Delhi.

It is further prayed that this Hon'ble Court may kindly be pleased to stay the effect and operation of the impugned order dated 22.03.2024 passed by the Special Judge (Anti-Corruption), CBI Court No.-2, Ghaziabad in Criminal Misc. Case No. 01 of 2023 (CBI vs. Ajay Kumar Singh and others), arising out of RC-6(A)/2019/CBI/SC-III/New Delhi, Final Report No. 37/2022, dated 31.12.2022 under Sections 120-B & 420 IPC and Section 13(2) r/w. 13(1)(D) of the Prevention of Corruption Act, 1988 (prior to the amendment dated 27.07.2018), Police Station- CBI/ SC-III/ New Delhi.

It is further prayed that this Hon'ble Court may kindly be pleased to quash the entire proceeding of Criminal Misc. Case No. 01 of 2023 (CBI vs. Ajay Kumar Singh and others), arising out of RC-6(A)/2019/CBI/SC-III/New Delhi, Final Report No. 37/2022, dated 31.12.2022 under Sections 120-B & 420 IPC and Section 13(2) r/w. 13(1)(D) of the Prevention of Corruption Act, It is further prayed that this Hon'ble Court may kindly be pleased to stay the further proceeding of Criminal Misc. Case No. 01 of 2023 (CBI vs. Ajay Kumar Singh and others), arising out of RC-6(A)/2019/CBI/SC-III/New Delhi, Final Report No. 37/2022, dated 31.12.2022 under Sections 120-B & 420 IPC and Section 13(2) r/w. 13(1)(D) of the Prevention of Corruption Act, 1988 (prior to the amendment dated 27.07.2018), Police Station- CBI/SC-III/ New Delhi, during the pendency of the present application before this Hon'ble Court."

2. Heard Sri G.S. Chaturvedi, learned Senior Advocate, assisted by Sri Alok Ranjan Mishra, learned counsel for the applicant and Sri Rahul Srivastava, learned counsel for the CBI.

3. Perusal of record shows that on 30.09.2019 Sri K.P. Sharma, Deputy SP (CBI), New Delhi has made a complaint to the Superintendent of Police/ CBI/SC/ 3rd New Delhi, which reads as under:-

“To,

The Superintendent of Police

CBI/SC-III,

New Delhi

Sub:- Registration of a Regular Case in respect of illegal renewals of sand mining leases by the District & State authorities in collusion with lease holders & unknown others regarding.

Sir,

Pursuant to the Order dated 28.07.2016 of Hon'ble High Court of Judicature at Allahabad, passed in PIL No. 22482/2016 (Amar Singh v/s State of UP & others), PIL No. 29115/2016 (Sonu Kumar v/s State of UP & others) and Order dated 08.08.2016 Writ Petition (Civil) No. 818/2015 (Ranvir Singh v/s Union of India), an enquiry on the aspect of illegal renewals of sand mining leases in District - Saharanpur U.P., was conducted.

Enquiry revealed that 13 bearing Lot Nos. 1, 4, 5, 12, 13, 17, 18, 21, 27, 29, 36, 37 & 40 sand mining leases located in Distt. Saharanpur, U.P., were renewed without following e-tendering procedure as mentioned in Govt. of U.P. Order dated 31.05.2012 duly upheld by the Hon'ble High Court of Allahabad vide its Order dated 29.01.2013 in Writ Petition (Civil) No.37725/2012 (Nar Narain Mishra & others v/s State of U.P. & others), as per details, in short, given below:-

(1) Enquiry revealed that initially 42 sand mining leases were granted by Shri Karn Singh Chauhan, the then Incharge DM, Saharanpur, U.P., on 31.03.2006 and the deeds of 40 out of 42 leases, were executed on 04/05.04.2006 in favour of lease holders for a period of three years.

(2) However, the grant/execution of 15 leases was challenged by the co-applicants before the Hon'ble High Court of Allahabad. Further, vide Order dated 22.12.2006, the Hon'ble High Court of Allahabad ordered the then DM, Saharanpur to reconsider grant of 15 leases afresh considering all the applications of all the petitioner co-applicants.

(3) SLP against the Order dated 22.12.2006 was filed by the holders of 15 leases, before the Hon'ble Supreme Court, which stands disposed off as withdrawn in the year 2008.

(4) Therefore, Shri Alok Kumar, the then DM, Saharanpur, U.P., re-granted 13, (bearing lot nos. 1, 4, 5, 12, 13, 17, 18, 21, 27, 29, 36, 37 & 40), out of 15 leases, on 23.05.2008, after considering all the available material, for a period of three years in favour of (i) Shri Mehmood Ali, (ii) Shri Dilshad, (iii) Mohd Inam, (iv) Shri Mehboob Alam (since expired), (v) Shri Naseem Ahmad, (vi) Shri Amit Jain, (vii) Shri Vikas Agarwal, (viii) Mohd Wajid, (ix) Shri Mukesh Jain, and (x) Shri Puneet Jain.

(5) On the applications of lease holders, Shri Chob Singh Verma, the then DM, Saharanpur, recommended the grant of first renewal of 13 aforesaid sand mining leases, which were re-granted on 23.05.2008, and sought approval of the Govt. of U.P.

(6) Shri Indrajeet Saroj, the then Mining Minister approved the recommendation for first renewal of 13 aforesaid sand mining leases for a period of three years, on 11.05.2011 and the orders were communicated to the then DM, Saharanpur vide letter dated 13.05.2011.

(7) On receipt of aforesaid Order dated 13.05.2011 from the Govt. of U.P., Shri Chob Singh Verma, the then DM, Saharanpur, granted his orders for the first renewal of 13 aforesaid sand mining leases with the condition that further action will be taken only after obtaining the Environmental Clearance Certificates.

(8) Vide Order dated 31.05.2012, the Govt. of U.P., cancelled all its orders prior to 31.05.2012 pertaining to the grant/renewal of sand mining leases under Chapter-II of U.P. Minor Minerals Concession Rules, 1963 and introduced e-tendering procedure under Chapter-IV for this purpose.

(9) However, on submission of respective Environmental Clearance Certificates, Shri Ajay Kumar Singh, the then DM, Saharanpur, U.P., in criminal conspiracy with the aforesaid holders of 13 sand mining leases and unknown others, by abusing his official position, dishonestly & fraudulently and executed aforesaid deeds of 13 sand mining leases (bearing lot Nos. 1, 4, 5, 12, 13, 17, 18, 21, 27, 29, 36, 37 & 40), for their first renewals under Chapter-II of the UPMMCR, 1963, during the months of August to November 2012, for a period of three years.

(10) Thereafter, the Govt. of U.P., vide 38th Amendment dated 14.07.2015, allowed 2nd renewal of the sand mining leases, where minor minerals are found in mixed state exclusively in the river-bed.

(11) It is further alleged that Shri Pawan Kumar, the then DM, Saharanpur in criminal conspiracy with the aforesaid holders of 13 sand mining leases and unknown others, recommended the 2nd renewal of sand mining leases vide his letter dated 08.10.2015 to the Govt. of

U.P., for orders.

(12) Shri Gendan Lal, the then Joint Secretary, D/o Geology & Mining, Govt. of U.P.. communicated vide his letter dated 23.11.2015 to the then DM, Saharanpur regarding the decision of the Govt. of U.P. regarding 2nd renewal in favour of lease holders.

(13) It is further alleged that Shri Pawan Kumar, the then DM, Saharanpur in criminal conspiracy with the aforesaid holders of 13 sand mining leases and unknown others, by abusing his official position, dishonestly & fraudulently and executed aforesaid 13 lease deeds (bearing lot Nos. 1, 4, 5, 12, 13, 17, 18, 21, 27, 29, 36, 37 & 40), for their 2nd renewal period for three years on 07.12.2015.

In view of the above, it is recommended to register a criminal case against (1) Shri Ajay Kumar Singh, the then District Magistrate, Saharanpur, U.P.; (2) Shri Pawan Kumar, the then District Magistrate, Saharanpur, U.P.; (3) Shri Mehmood Ali s/o late Abdul Wahid, r/o Village & PS Mirzapur Pole, Tehsil - Behat, Distt. Saharanpur, U.P.; (4) Shri Dilshad s/o late Maqsood, r/o Village & PS Mirzapur Pole, Tehsil - Behat, Distt. Saharanpur, U.P.; (5) Mohc Inam s/o late Abdul Wahid, r/o Village & PS Mirzapur Pole, Tehsil - Behat, Distt. Saharanpur U.P.; (6) Shri Mehboob Alam (since expired), (7) Shri Naseem Ahmad s/o late Abdul Gafoor r/o Village & PS Mirzapur Pole, Tehsil - Behat, Distt. Saharanpur, U.P.; (8) Shri Amit Jains/late Shri Narendra Kumar Jain, r/o 66, Mahavir Colony, Chilkana Road, Saharanpur, U.P.; (9) Shri Vikas Agarwal s/o late Shri Nahar Singh, r/o 12/10, Ashirwad Enclave, Chakrata Roac Dehradun, Uttarakhand; (10) Mohd Wajid s/o Haji Mohd Iqbal, r/o Village & PS Mirzapur Pole Tehsil - Behat, Distt. Saharanpur, U.P.; (11) Shri Mukesh Jain s/o late Shri Narendra Kumar Jain r/o Mahavir Colony, Chilkana Road, Saharanpur, U.P.; (12) Shri Puneet Jain s/o late Shri Narendra Kumar Jain, r/o New Krishna Nagar, Chilkana Road, Saharanpur, U.P.; & other unknown public servants and other unknown persons, under Section 120-B & 420 of IPC and Sec. 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988 (prior to amendment date 27.07.2018), for detailed investigation in the said matter.

Yours faithfully Sd/- (K.P. Sharma) DSP. CBI.SC-III.ND"

4. On the basis of said complaint, a RC / first information report was registered and investigation was taken up by the Central Bureau of Investigation (hereinafter referred as CBI). After investigation, CBI submitted final report/ closure report with conclusion that allegations made in the first information report regarding illegal mining could not be substantiated in as much as submissions of applications by the lease-holders, process of applications, approval of State Government of UP, issuance of approval order passed by the office of the District Magistrate, compliance of subsequent conditions by lease-holders etc. are in sequential manner. It was further mentioned that in the matter after approval of District Magistrate on 21.05.2011, other proceedings were dealt with by another set of officers/ officials, Sri Chaub Singh, the then District Magistrate at the time of processing of application till the issuance of approval orders to the lease-holders. The lease-holders after compliance of conditions approached District Magistrate, Saharanpur but their execution of lease deeds were kept pending without showing any reason. Therefore, the lease-holders filed writ petitions before the High Court on 31.05.2012 and matter was heard on several dates and finally writ petition was disposed of on the ground that the lease deeds of the said

applicants have been executed. It was further mentioned that Government of UP has issued G.O. dated 31.05.2012 and by that order the process of grant of mines was brought under Chapter IV of the Uttar Pradesh Minor Minerals (Concession) Rules 1963 (hereinafter referred as UPMPCR, 1963) and subsequent thereto grant or renewal of leases were required to be dealt with through E-tendering process and all pending applications as on 31.05.2012 were rejected. On 26.02.2013 the Government of UP has passed two contradictory orders. By Order No. 382(1)86-2013-278/2011 all the District Magistrates were asked to comply with Order dated 29.01.2013 passed in case of Nar Naraian Mishra Vs State of UP, whereas by order No. 561(A)(1)/86-2013-278/2011 of same date, all the District Magistrates were directed to renew sand mining leases for which consent of competent authority was given before 05.09.2012 but the renewed lease deeds should be executed only after obtaining ECC. The Government of UP vide order dated 22.10.2014 has withdrawn order dated 31.05.2012. It was further mentioned in the closure report that the applications of the accused/ lease holders for first renewal of their leases were processed by the then District Magistrate, Saharanpur and the same were recommended to the Government of UP and consequently order dated 13.05.2011 of approval was received by the District Magistrate, Saharanpur. Thereafter, office order dated 21.05.2011 was issued by Sri Chob Singh, the then District Magistrate, Saharanpur. The lease deeds of first renewal were executed between August 2012 to November 2012. It was further mentioned in the closure report that as the approval of renewal was conveyed by the Government of UP vide order dated 13.05.2011 and thus applications of the lease holders were not pending as on 31.05.2012.

Regarding second renewal of 12 leases in question, which were processed during posting of applicant Pawan Kumar as District Magistrate, Saharanpur, it was mentioned in the closure report that Sri Gendan Lal, Joint Secretary Government of UP through letter dated 23.11.2015

conveyed approval of the Government of UP for second renewal of the leases to District Magistrate, Saharanpur pertaining to 32 leases, including 12 leases in question. After receiving the approval / direction of Government of UP, the then District Magistrate, Saharanpur (Pawan Kumar) issued order on 07.12.2015 in compliance of directions issued by Sri Gendan Lal, Joint Secretary Government of UP. However, on 15.12.2015 High Court, Allahabad passed order in PIL No. 60922 of 2015 (Pradeep Vs State of UP) that no further second renewal shall be granted and therefore the directions issued by Sri Gendan Lal, Joint Secretary Government of UP could not be complied with and second renewal was not executed.

5. Learned Special Judge, Anti-Corruption CBI, Court No. 2, Ghaziabad did not accept the said closure report and cognizance was taken against accused Mahmood, Dilshad, Mohammed Inam, Naseem Ahmed, Amit Jain, Vikash Agrawal, Mohammad Wajid, Mukesh Jain and Puneet Jain for offence under Section 120B read with Section 420 of IPC and Section 13(2) read with Section 13(1)(D) of Prevention of Corruption Act vide order dated 22.03.2024, by observing that there is sufficient material available on record. Accordingly, summons were issued to the said accused persons.

6. Regarding applicant Pawan Kumar, learned Special Judge directed the CBI/ SC 3rd, New Delhi to ensure that sanction for prosecution of applicant Pawan Kumar, the then District Magistrate, Saharanpur, under the Prevention of Corruption Act is secured and filed in the court after obtaining the same from competent authority.

7. Sri G.S. Chaturvedi, learned senior advocate appearing for applicant submitted that impugned order is against facts and law and the same has been passed without considering the findings of the CBI recorded during investigation of the case. It was submitted that by G.O. dated 31.05.2012 the Government of Uttar Pradesh introduced E-tendering for sand mining leases and withdrew the earlier renewal system under Chapter IIInd of the

UPMMCR, 1963, which was upheld by this Court vide order dated 29.01.2013 in case of Nar Naraian Mishra Vs State of UP.. Thereafter, vide Government order dated 22.10.2014, the State Government withdrew the e-tendering system with immediate effect and restored the renewal process under Chapter IIInd of UPMMCR, 1963. It was further stated that on 16.04.2015 the State Government issued Government Order No. 14/ 2015/ 1418/86 -2015 - 143/ 2014, directing District Magistrates to furnish point-wise report of pending applications for renewal of mining leases. By the 38th amendment dated 14.07.2015 in UPMMCR, 1963, the State Government was empowered under Rule 8 to allow second renewal of mining leases in river beds, where minor minerals are found in a mixed state. The applicant remained posted as District Magistrate from 21.07.2015 to 08.08.2016. During this period, on 05.08.2015 the Joint Secretary, Geology and Mining Department, Government of UP sought factual information from the applicant regarding 35 lease-holders for second renewal of the leases and thereafter a reminder was also issued. It was submitted that the applicant, acting in discharge of his official duty and under binding directions of the State Government, called for reports from the Mining officer, Mining clerk, SDM Behat, Additional District Magistrate (Finance and Revenue) and Senior Superintendent of Police, Saharanpur. Upon receipt of inputs from the said subordinate authorities, the applicant consolidated the same without any alteration, addition or opinion, forwarded the same to the State Government vide letters dated 01.09.2015 and 08.10.2015 with specific remark for necessary action. Learned Senior Advocate submitted that from the record it is apparent that in compliance of his official acts and in pursuant to the directions of the State Government, the applicant, being District Magistrate, Saharanpur, has merely collected the reports of concerned subordinate authorities and forwarded the same to the State Government for necessary action without any opinion or alteration and thus by no stretch of imagination, no incrimination or misconduct could be attributed to the applicant. It was pointed out that said forwarding letters of the applicant

did not contain any recommendation, endorsement, approval or opinion as the authority of final approval for second renewal vested exclusively with the State Government, leaving no discretion on the part of the District Magistrate.

8. It is further submitted that on 23.11.2015, the Joint Secretary to Government of UP conveyed the State Government's approval for second renewal of 32 mining leases for three years after careful consideration under Rule 8 of the UPMMCR, 1963. The said approval letter dated 23.11.2015 mentions the name of lease-holders and directed the District Magistrate, Saharanpur to take further action in accordance with Government's decision. In compliance of said binding direction, the applicant issued an office order dated 07.12.2015, reproducing the contents of aforesaid Government Order dated 23.11.2015, for compliance by concerned subordinate authorities. Learned Senior Advocate submitted that the said order dated 23.11.2015 was purely ministerial in nature and it was issued for the purpose of communication of the decision of the State Government to the concerned officials, including ADM (F & R) and Mining officer, to ensure compliance with the applicable statutory provisions and a copy of the said order was also forwarded to the Secretary, Geology and Mining, Government of Uttar Pradesh and the Director of Geology and Mining Department for necessary information. It is further submitted that before any lease could be executed or annual lease amount could be deposited, this Court has passed an interim order dated 15.12.2015 in PIL no. 60922/ 2015 (Pradeep Vs State of UP), directing that no further second renewal shall be granted and consequently the Government directions were never acted upon and no mining was undertaken and no lease deed regarding second renewal was executed.

9. Learned Senior Advocate submitted that the facts of the matter clearly show that the applicant being District Magistrate of District, Saharanpur has forwarded the report to concerned officials regarding second renewal

of leases to the State Government and after the Government has granted second renewal of 32 mining leases vide order dated 23.11.2015, the applicant has forwarded the said direction to the concerned subordinate authorities for necessary action and thus it is apparent that applicant was performing his duty in a bona-fide manner and he has not made any recommendation for renewal of second lease and after Government Order 23.11.2015, the same was forwarded to the concerned authorities for necessary action and thus there was absolutely nothing incriminating on the part of applicant. The CBI has thoroughly investigated the matter and in view of aforesaid facts and circumstances submitted closure report, as there was no material at all to show any criminal conspiracy or any cheating or misconduct on the part of applicant.

10. Learned Senior Advocate further submitted that the CBI has conducted thorough investigation and submitted closure report dated 31.12.2022 before the learned Special Judge but the learned Special Judge did not accept the same in an arbitrary manner. Referring to the material collected during investigation, it was submitted that there is absolutely no such evidence, which could indicate any criminal conspiracy on the part of applicant and there is absolutely no material to make out a case under Section 420 I.P.C. Similarly there was no material to show any misconduct on the part of applicant, so as to attract provisions of Prevention of Corruption Act against applicant. The observation made in the impugned order that applicant has executed lease deeds is contrary to the record in as much as applicant has only issued an order communicating the Government's decision to the concerned sub-ordinate authorities and in fact no lease deed was executed pursuant thereto. Referring to facts of the matter, it was submitted that the investigating agency did not find any dishonest intention or abuse of official position or misconduct and there was no material to show any wrongful gain or loss and thus, no case at all is made out against applicant.

11. It was next submitted that the direction of the learned Special Judge to

the CBI to secure sanction of prosecution in respect of applicant, is wholly arbitrary and the same is against law. Learned Senior Advocate has referred case of Mansukh Lal Bitthal Das Chauhan Vs. State of Gujarat (1997) 7 SCC 622, wherein Hon'ble Apex Court has held that the sanctioning authority can not be compelled to grant sanction as it amounts to usurping statutory discretion. Similarly, the said direction violates the law laid down in case of State of Punjab Vs. Mohd. Iqbal Bhatti (2009) 17 SCC 92, which mandates that sanction requires serious application of mind to the material collected during investigation, whereas in the present case, the CBI has not collected any incriminating material against applicant. It was stated that even the first information report was lodged without appreciating the fact that E-tendering system stood withdrawn by the G.O. dated 22.10.2014 and renewal powers were vested in the State Government and thus, applicant being District Magistrate has merely discharged his official duty by forwarding the reports called for by the State Government. The issuance of an order in compliance of directions of State Government cannot be construed as an abuse of official position or criminal conspiracy. The direction of the trial Court to the CBI to ensure that sanction of prosecution is secured from the concerned authority is ex-facie illegal and gross abuse of the process of Court.

12. It is further submitted that applicant has an unblemished service record and that in view of chronology of facts and events emerging from the record, no prima facie case is made out against applicant. In view of facts of the matter and position of law, the impugned order passed by learned Special Judge is wholly against facts and law and the same is quite arbitrary and that if the proceedings against applicant allowed to continue, the same would be gross abuse of the process of Court and thus, the same are liable to be quashed. Learned Senior Advocate has referred case of R.P. Kapoor Vs. State of Punjab AIR 1960 SC 866 and submitted that impugned order and proceedings qua the applicant are liable to be quashed and closure report filed by the CBI is liable to be accepted.

13. Sri Rahul Srivastava, learned counsel for CBI submitted that applicant has not been summoned so far and in respect of applicant only a direction was made by the learned Special Judge to the CBI to ensure that sanction for prosecution of applicant is obtained and filed before the Court and thus, this application under Section 482 Cr.P.C. is not maintainable.

14. It is further submitted that first information report of this case was lodged after conducting a preliminary inquiry and the matter was investigated by the CBI. After investigation, CBI has submitted final report / closure report before the Court of learned Special Judge. After applying its judicial mind, learned Special Judge did not accept the said closure report and took cognizance for aforesaid offences against accused Mahmood Ali, Dilshan, Mohammad Inam, Naseem Ahmad, Amit Jain, Vikas Agrawal, Mohammad Wazid, Mukesh Jain and Puneet Jain and directed the CBI to obtain sanction of prosecution against applicant. Learned counsel has referred the details of 13 mining lots and referred to the various Government orders. Referring to G.O. dated 16.10.2004, it was submitted that the State Government has conveyed that in the matters where lease rent is less than Rs. 5 lakhs, the concerned District Officer may sanction the grant of lease / renewal and inform the same to the Director, Geology and Mining and Secretary Geology and Mining, Government of U.P. In matters where annual lease rent is more than Rs. 5 lakhs, the concerned District Officer (D.M.) has to sent the same with his specific recommendation to the State Government. By G.O. dated 27.05.2005 it was conveyed by the State Government that District Magistrate may sanction lease as per earlier procedure but before passing formal order for sanctioning or renewing any mining lease, the concerned District Magistrate shall provide list of such matters to the Nodal Officer nominated for this purpose in Directorate of Geology and Mining. It was submitted that vide G.O. dated 01.11.2011, it was provided that grant / renewal of lease shall be done directly by the District Magistrate and all such matters sent by District Magistrates to State Government shall be

deemed to be returned back as it is. By G.O. dated 29.06.2011 it was provided that from 01.07.2011 the mining activities shall not be done in the area having 5 hectares or more till obtaining of environmental clearance certificate as per notification dated 14.09.2006. By G.O. dated 22.03.2012, it was directed that lease of mines and minerals including their renewal of less than 5 hectares may be granted by the States / Union Territories only after getting environmental clearance from MoEF. By Government Order dated 31.05.2012 the State Government has introduced E-tendering i.e. auction under Chapter IV of UPMMCR, 1963 and withdrawn the process mentioned under the provisions of Chapter II of UPMMCR, 1963, in which mining leases were granted and renewed. By G.O. dated 05.09.2012 the State Government directed that in public interest as and when period of existing lease reaches on completion the same have to be granted under E-tendering process as per Chapter IV of UPMMCR, 1963. By G.O. dated 26.02.2013, it was directed that all the applications pending for grant for renewal of mining lease as on 31.05.2012 shall stand rejected and the concerned area / space will be treated as vacant and they will have to be dealt with under Chapter IV of UPMMCR. By G.O. dated 26.02.2013, it was conveyed by the State Government that such mining leases, in which the competent authority has accorded its consent for renewal of mining lease prior to 05.09.2012, such mining lease shall complete full terms, however execution of such leases will be done only after receipt of environmental clearance. By G.O. dated 22.10.2014 withdrawal of G.O. dated 31.05.2012 was conveyed, restoring provisions of Chapter II of UPMMCR, 1963 for grant of sand mining leases.

15. Learned counsel for CBI further submitted that the impugned order has been passed by the trial Court after applying judicial mind. Learned counsel for CBI was asked a specific question as to whether on the basis of material collected during investigation, the Government orders and position of law, he supports the impugned order or not, and in reply to

that query, learned counsel for CBI submitted that all the material has been brought on record and it is for this Court to consider whether on the basis of material on record the impugned order is justified or not.

16. I have considered rival submissions and perused the record, including the documents in the pen drive.

17. Perusal of record shows that after investigation, the CBI has submitted closure report with conclusions that allegations made in the first information report regarding illegal mining could not be substantiated in as much as submissions of applications by the lease-holders, process of applications, approval of State Government of UP, issuance of approval order passed by the office of the District Magistrate, compliance of subsequent conditions by lease-holders etc. are in sequential manner. The matter after approval of District Magistrate on 21.05.2011 was dealt with by another set of officers/ officials, Sri Chaub Singh, the then District Magistrate at the time of processing of application till the issuance of approval orders to the lease-holders. So far applicant is concerned, regarding alleged second renewal of leases of accused persons, it was mentioned in the closure report that the Joint Secretary, Government of U.P. has sought information from the District Magistrate, Saharanpur vide order dated 05.08.2015 regarding factual position of 35 lease-holders for second renewal. Pursuant to that direction, applicant, the District Magistrate, Saharanpur, called reports from the concerned sub-ordinate officials as well as from the S.P., Saharanpur and after consolidating the same, forwarded it to the government. Thereafter, Sri Gendan Lal, Joint Secretary, Government of U.P. conveyed approval for second renewal of 32 leases, including the leases in question. After receiving said approval, applicant Pawan Kumar, the then District Magistrate, Saharanpur, issued consequential order dated 07.12.2015 in compliance of said directions. The CBI did not find any fault, misuse or abuse of power on the part of applicant. However, learned Special Judge did not accept the said closure report and took cognizance against accused Mahmood Ali, Dilsad,

Mohammed Inam, Naseem Ahmed, Amit Jain, Vikash Agrawal, Mohammad Wajid, Mukesh Jain and Puneet Jain for offence under Section 120B read with Section 420 of IPC and Section 13(2) read with Section 13(1)(D) of Prevention of Corruption Act vide order dated 22.03.2024, by observing that there is sufficient material available on record and accordingly, summons were issued to the said accused persons. Regarding applicant Pawan Kumar, learned Special Judge directed the CBI to ensure that prosecution sanction for prosecution of Pawan Kumar, then District Magistrate, Saharanpur is filed in the court after obtaining the same from competent authority.

18. So far this contention, raised on behalf of CBI, that this application under Section 482 Cr.P.C. is not maintainable, is concerned, it may be stated that the trial court has observed that a prima facie case is made out against the applicant and consequently a direction was issued to the CBI to ensure that sanction for prosecution of applicant is secured and filed in Court and thus it is clear that the same adversely affects the applicant. Further, said direction of the trial court appears against law. In view of these facts and circumstances, it can not be accepted that this application on behalf of applicant under section 482 CrPC is not maintainable. Thus, the application filed by the applicant against impugned order is held to be maintainable.

19. First question that arises for consideration is whether the learned trial Court has power to make a direction to the CBI to ensure that sanction of prosecution in respect of applicant be secured and the same be filed before the Court? This direction virtually amounts a direction to the competent sanctioning authority to grant sanction of prosecution in respect of applicant. At this stage it would be relevant to mention the law down in case of **Mansukh Lal** (supra), wherein Hon'ble Apex Court held as under :-

"14. From a perusal of Section 6, it would appear that the Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that "public servant" is to be prosecuted or not. Since the Section clearly prohibits the Courts from taking cognizance of the offences specified therein, it envisages that

Central or the State Government or the "other authority" has not only the right to consider the question of grant of sanction, it has also the discretion to grant or not to grant sanction.

15. In *Gokulchand Dwarkadas Morarka V. The King*, AIR 1948 PC 82, it was pointed out that:-

"The sanction to prosecute is an important matter, it constitutes a condition precedent to the institution of the prosecution and the Government have an absolute discretion to grant or withhold their sanction. They are not, as the High Court seen to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted. They can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution of substance it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the case."

16. In *Basdeo Agarwalla v. Emperor*, AIR 1945 FC 16, it was pointed out that sanction under the Act is not intended to be, nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. This Court in *State through Anti- Corruption Bureau, Government of Maharashtra, Bombay vs. Krishanchand Khushalchand Jagtiani*. (1996) 4 SCC 472, while considering the provisions of Section 6 of the Act held that one of the guiding principles for sanctioning authority would be the public interest and, therefore, the protection available under Section 6 cannot be said to be absolute.

17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: *Mohd. Iqbal Ahmed vs. State of Andhra Pradesh*, AIR 1979 SC677). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must *ex facie* disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: *Jaswant Singh vs. The State of Punjab*, 1958 SCR 762 = AIR 1958 SC 12; *State of Bihar & Anr. vs. P.P. Sharma*, 1991 Cr.L.J. 1438 (SC)).

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows, that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

20. In case of **State of Punjab Vs. Mohd. Iqbal Bhatti** (supra), the question for consideration was whether the State has any power of review in the matter of grant of sanction in terms of section 197 of the Code of Criminal Procedure, the Hon'ble Apex Court held as under :-

"7. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. Validity of an order of sanction would depend upon application of mind on the part of the

authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidences collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidences may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See Mansukhlal vithaldas Chauhan v. State of Gujarat [(1997) 3 SCC 622].’’

21. From the aforesaid case laws, it is apparent that grant and validity of sanction requires application of mind by the sanctioning authority to the facts of the case as well as the material and evidence collected during investigation. It is settled view that sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of sanctioning authority cannot be kept under pressure from any quarter nor should any external force be acted upon it to take a decision in one way or the other. It was held that discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should not be shown to have been affected by any extraneous consideration. If it is shown that sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant sanction, such order will be bad for the reason that discretion of authority not to sanction was taken away and it was compelled to act mechanically to sanction the prosecution. From the aforesaid case laws, it is apparent that neither the Court nor any other authority can direct the sanctioning authority to grant or not to grant sanction of prosecution. Though, in the instant case learned Special Judge has made direction to the CBI to ensure that sanction of prosecution of applicant is obtained and filed before the Court but it implied that it is a direction to the sanctioning authority. In view of these facts and circumstances, the direction of the learned Special Judge to the CBI to ensure that sanction of prosecution of applicant is obtained and filed before the Court, is contrary to the law and thus, not sustainable. On this account alone the impugned order, so far as it relates to the applicant, is liable to be set aside.

22. So far merits of the matter are concerned, learned Special Judge has

not accepted the closure report submitted by the CBI after investigation and took cognizance against the above referred accused persons and made above referred direction in respect of applicant. Chapter XIV of Cr.P.C. deals with conditions requisite for initiation of proceedings and also the powers of cognizance of a Magistrate. Provisions of section 190 Cr.P.C. relevant for this case, are reproduced as under:

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

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

(b) upon a police report of such facts;

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

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

23. It is well-settled that if magistrate / Court finds that Police / CBI have not made proper investigation and submitted final report, it can direct to make further investigation in the matter, or, if there is sufficient material, he can pass order taking cognizance and summon accused. In case of **Tula Ram Vs. Kishore Singh** AIR 1977 SC 2401, the Hon'ble Apex court observed that Magistrate can ignore a final report submitted by Police including the conclusion and take cognizance of case under Section 190(1)(b) CrPC on the basis of material collected during investigation and issue process, or in the alternative, he may take cognizance of original complaint, examine the complainant and his witnesses and thereafter issue process to accused, if he is of opinion that case should be proceeded with. It is well settled that if Magistrate / Court is satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police and in such an event, if the Magistrate / Court decides to proceed against the persons accused, the same has to be done on the basis of the police report itself i.e. on the basis of material collected during investigation.

24. In **M/s India Carat Pvt. Ltd. Vs. State of Karnataka** 1989 (26) ACC 280 (SC), Hon'ble Supreme Court has observed that Magistrate can

take into account statements of witnesses examined by Police during investigation, take cognizance of offence complained of, order to issue a process to accused. Section 190(1)(b) Cr.P.C. does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion of making out a case against accused. Magistrate can ignore conclusion arrived at by Investigating Officer, independently applying his mind to the facts emergent from investigation and can take cognizance of case or in alternative he can take cognizance of original complaint and examine complainant and his witness and thereafter issue process to accused, if he is of opinion that the case should proceed. The observations made in *M/s India Carat Pvt. Ltd.(supra)*, make it very clear that Magistrate if proceeds to take cognizance on Police report, material which can be examined by him would be such which has been collected during investigation. If Magistrate finds that Police has not properly made investigation and appropriate material has not been collected, it is always open to him to direct Police for further investigation but if Magistrate finds fault with investigation made by Police and still finds justification to proceed with the matter taking into account complaint made by complainant, in such case he has to examine complainant and his witness and thereafter issue process.

25. In case of Minu Kumari and another Vs. State of Bihar and others 2006 (4) SCC 359, the Court held as under:

“When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating officer and independently apply his mind to the facts emerging

from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See M/s. India Carat Pvt. Ltd. v. State of Karnataka and another (AIR 1989 SC 885)]”

26. This Court has also followed a similar view and in this connection reference may be made to case of **Pakhando and others Vs. State of U.P.** 2001 (43) ACC 1096.

27. Thus, position of law is well settled that upon receipt of a police report under Section 173(2) CrPC, a Magistrate / court is entitled to take cognizance of an offence under Section 190(1)(b) Cr.P.C. even if the police report is to the effect that no case is made out against the accused but for that purpose the Magistrate has to take into account the statements of the witnesses examined by the Investigating officer during the investigation. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) CrPC and direct the issue of process to the accused but such satisfaction of Magistrate / Court must be based on material collected during investigation. In this connection the law laid down by the Hon'ble Apex Court in case of **Mohd. Yusuf and Others vs. State of U.P. & Anr** 2007 0 Supreme (All) 2080 is quite clear and categorical, wherein it was observed that when the magistrate decides to take cognizance under section 190 (1) (b) Cr.P.C. ignoring the conclusions reached at by the investigating officer and applying his mind independently, he can act only upon the statements of the witnesses recorded by the police in the case-diary and material collected during investigation. It is not permissible at that stage to consider any material other than that collected by the investigation Officer.

28. In the instant matter, it appears from record that while the applicant was posted as District Magistrate, Saharanpur, on 05.08.2015 the Joint Secretary, Geology and Mining Department, Government of UP has

sought factual information from the applicant regarding 35 lease-holders for second renewal of the leases and thereafter a reminder was also issued. Pursuant to those directions, the applicant called for reports from the Mining officer, Mining clerk, SDM, Belhat, Additional District Magistrate (Finance and Revenue) and Senior Superintendent of Police, Saharanpur and upon receipt of said reports, the applicant consolidated the same without any alteration, addition or opinion forwarded the same to the State Government vide letters dated 01.09.2015 and 08.10.2015 with remark 'necessary action'. As referred above, by the 38th amendment dated 14.07.2015 in UPMMCR, 1963, the State Government was empowered under Rule 8 to allow second renewal of mining leases in river beds, where minor minerals are found in a mixed state. Thus, it is apparent that in compliance of his official acts and in pursuant to the directions of the State Government, the applicant being District Magistrate, Saharanpur has collected the reports of concerned subordinate authorities and forwarded the same to the State Government for necessary action. It was shown that said forwarding letters of the applicant did not contain any recommendation, approval or opinion for second renewal. There is nothing to indicate that applicant has submitted any false or misleading report or even recommended renewal of lease. There is no material to show any misconduct on the part of the applicant to impute any criminal conspiracy to him. It further appears from record that on 23.11.2014, the Joint Secretary of Government of UP conveyed the State Government's approval for second renewal of 32 mining leases for three years after consideration under Rule 8 of the UPMMCR, 1963. The said approval letter dated 23.11.2015 mentions the names of lease-holders and directed the District Magistrate, Saharanpur to take further action in accordance with Government's decision. In compliance of said direction, the applicant issued an office order dated 07.12.2015, reproducing the contents of aforesaid Government Order dated 23.11.2015, for compliance by subordinate authorities and a copy of the said order was also forwarded to the Secretary, Geology and Mining, Government of

Uttar Pradesh as well as to the Director of Geology and Mining Department for information. It was pointed out that before any lease could be executed or annual lease amount could be deposited, this Court has passed an interim order dated 15.12.2015 in PIL No. 60922/ 2015 (Pradeep Vs State of UP) directing that no further second renewal shall be granted and consequently the Government directions were never acted upon and no lease was executed. The observation of the trial court that lease deeds were executed for second renewal is factually incorrect. It appears that learned Trial Court has proceeded with assumption that second renewal of leases took place in conspiracy with the applicant, whereas the lease deeds for second renewal were never executed. Learned Special Judge has not indicated any such specific material, which may have collected during investigation, to show any misconduct or abuse of the power on the part of the applicant or to show that applicant was part of any criminal conspiracy with the lease holders/ accused persons, rather it appears that applicant was performing his duty in a bona-fide manner and he has not made any recommendation for renewal of second lease and after receipt of directions contained in order 23.11.2015, the same were merely forwarded to the concerned subordinate authorities vide office order dated 07.12.2015 for necessary action. Though, learned Special Judge has mentioned that there is sufficient material on record against the applicant and the co-accused persons but did not specify any incriminating material qua the applicant, which may have been collected by the CBI during investigation. Though Government of UP, by order dated 22.10.2014 has withdrawn order dated 31.05.2012 and thereby e-tendering system was withdrawn and re-newal process provided under Chapter II of UPMMCR, 1963 was restored but irrespective of that fact no misconduct or abuse of power could be imputed to the applicant. It appears from record that no incriminating material could be collected during investigation qua the applicant and accordingly the CBI has submitted closure report. There is no such evidence, which could indicate any criminal conspiracy on the part of applicant and similarly there is no

material to make out a case under Section 420 I.P.C. There is no material to show any abuse of the powers or any misconduct on the part of applicant, so as to attract provisions of Prevention of Corruption Act against applicant. It is not the case that the Trial Court has taken cognizance under Section 190(1)(a) Cr.P.C. or recorded any evidence under Section 200 / 202 Cr.P.C. In view of these facts and circumstances it is apparent that no prima facie case is made out against the applicant and there is no material to proceed further qua the applicant. Further, the direction made by the learned Special Judge to the CBI to ensure that sanction of prosecution of applicant is secured and filed in court is unwarranted and contrary to the law.

29. In view of aforesaid, it is clear that impugned order qua the applicant is against facts and law and thus, liable to be set aside and the closure report filed by the CBI under Section 173(2) Cr.P.C. qua the applicant is liable to be accepted. Accordingly, the impugned order so far it relates to the applicant is set aside and the impugned proceedings qua applicant are quashed and the closure report filed by the CBI qua the applicant stands accepted.

30. Application is **allowed** in above terms.

July 15, 2026
'SP'/-/ S Rawat

(Raj Beer Singh,J.)