

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril.Petn. No.6 of 2009

1. Konthoujam Paka Singh, aged about 50 years, S/O K. Jatishwar Singh, resident of Konthoujam Mamang Leikai, P. O. Langjing, P.S. Patsoi, Imphal West District, Manipur.

... Petitioner

-Versus -

1. The State of Manipur
2. Sankar Sengupta, aged about 64 years, S/O (L) B.B. Sen of Pukhuria Village, Hura, Purulia District, West Bengal, P. O.& P.S. Hura, PIN 723130
3. Laishangbam Indrakumar Singh aged about 45 years S/O (L) L. Nilbira Singh, resident of Konthoujam Maning Leikai, P. O. Langjing – 795113, P.S. Patsoi, Imphal West District, Manipur.
4. Konthoujam Kunjaraj Singh, aged about 51 years S/O (L) Konthoujam Gulap Singh, resident of Konthoujam Nongraobung Leikai, P.O. Langjing 795113, P.S. Patsoi, Imphal West District, Manipur, and
5. Km. Konthoujam Angou Devi, alias Nevedita Sengupta, aged about 35 years D/O K. Leibakmachia Singh of Konthoujam Makha Leikai, P. O. Langjing – 795113, P.S. Patsoi, Imphal West District, Manipur presently C/O., Sankar Sengupta, aged about 64 of years (respondent No.2) of Pukhuria Village, P.O. & P.S, Hura, Purulia District, West Bengal, PIN 723130 (India).

... Respondents

B E F O R E

HON'BLE MR. JUSTICE MV MURALIDARAN

For the Petitioners	: Mr. N. Mahendra, Advocate.
For the respondents	: Mr.RK. Umakanta, PP & Mr. Ashinikumar, Advocate
Date of Hearing	: 05.10.2023
Date of Judgment & Order	: 30.10.2023

JUDGMENT & ORDER
CAV

[1] This petition has been filed by the petitioner under Section 482 Cr.P.C. to set aside the order dated 29.7.2009 passed by the learned Sessions Judge, Manipur East in Cril. Rev. Case No.7 of 2008 confirming the order dated 6.3.2008 passed by the learned Judicial Magistrate First Class, Imphal West in Cril. Misc. (FR) Case No.69 of 2007 and Cril. Misc. Case No.122 of 2007.

[2]. Cril. Misc. (FR) Case No.69 of 2007 is the FIR being No.25/IPS06 submitted by the Investigating Officer of FIR No.30(7)04 on the file of Patsoi Police Station, which was transformed into a final report on completion of the investigation. Cril. Misc. Case No.122 of 2007 is the application filed by the complainant praying for giving direction to the police to re-investigate the case.

[3]. By the common order dated 6.3.2008, the learned Judicial Magistrate First Class, Imphal West, accepting the final report, discharged the accused, namely (i) Sankar sen Gupta; (ii) Laishram Indrakumar; (iii) KonthoujamKunjarj Singh and (iv) Konthoujam Angou Devi @ Nivedita Sengupta.

[4]. Aggrieved by the discharge of the accused, the complainant Konthoujam Paka Singh has filed Criminal Revision Case No.7 of 2008 before the Sessions Judge, Manipur East. By the order dated 29.7.2009, the learned Sessions Judge dismissed the Criminal Revision Case thereby confirming the order of the learned Judicial Magistrate First Class, Imphal West. Challenging the same, the complainant has preferred the present Criminal Petition to set aside the orders of the Courts below.

[5]. The case of the prosecution is that Kongthoujam Paka Singh lodged a complaint on 23.6.2004 against the respondents 2 to 5, who are the Director, Secretary, Treasurer in charge of Free Progress Academy Centre No.1, Hura, West Bengal respectively alleging that in the first week of August, 1999, the respondents 2 to 3 requested the petitioner to allow admission of his daughter Sharmila Konthoujam and son Boris Konthoujam to their respective classes at Free Progress Academy after appearing for a selection test at Free Progress Academy Centre No.2 Konthoujam, Imphal West on their information of the Free Progress Academy Centre No.1, Hura, Purulia District to be a much better school than all the schools of Manipur. Having selected for admission in the same month after their admission test, forms of admission were issued by the third respondent and had taken away the petitioner's daughter and son from his house to be the students of Class IX and VI respectively at Free Progress Academy, Hura, Purulia. In

the same way, in the month of December, 1999, the second respondent had taken away his son Dennis Konthoujam, aged 10 years, to be a student of Class IV in the same institution. The petitioner had believed them because of the advertisement made in Manipur daily papers. The petitioner has paid about Rs.2 lakh to the respondents 2 to 4 as admission fees, hostel fees, contingency fees, mess fees etc. at the houses of the respondents 3 and 4. The petitioner's daughter had passed Class X examination conducted by the Central Board of Secondary Education, New Delhi, being student of Panisheola Indira Smriti Vidyapith, Panisheola District, Hoogly, West Bengal, while the petitioner's son Boris Konthoujam also passed Class X being a student of Satyanarayan Academy Ramakrishna Nagar, P.O. Narrah, District Bankura, West Bengal though they were students of Free Progress Academy Centre No.1, Hura. The petitioner's another son Dennis Konthoujam had got reading certificate issued by Free Progress Academy Centre No.2 as a student of Class VIII though he was a student of Free Progress Academy Centre No.1. Being suspicious of the issuance of the certificates from unrelated schools for his children, the petitioner had enquired about the genuineness of the function and administration of the Free Progress Academy Centre No.1, Hura from 2002-2003 and it turned out to be a simple tutorial home without having academic calendar and the students are all from Manipur. The respondents 2 to 5 have collected money after cheating the guardians on

fraudulent documents and information to have an illegal act of earning. Neither the Government of West Bengal nor the Central Government recognized Free Progress Academy Centre No.1, Hura. It was a fake school/academy. The petitioner had expended Rs.2 lakh for his three children, but the respondents have issued receipts for Rs.1,48,310/- only. The respondents have produced a list of 98 students admitted up to 2002 and a list of 18 students claiming to have passed from the said Academy. Some of the students were from the Board of Secondary Education, Andhra Pradesh and the rest were from CBSE under different schools. Therefore, collecting fees, issuing advertisement and identity cards in the name of the Academy are illegal and the same are still continuing collectively. The Patsoi Police investigated the report of the petitioner and had submitted before the Court a final report under Section 173(2) Cr.P.C. stating that the case is civil in nature. Under the order dated 6.3.2008, the Judicial Magistrate First Class, Imphal West accepted the final report and discharged the accused. The petitioner has also filed protest petition challenging the correctness of the report submitted by the police, *inter lia*, on the ground that the case of the complainant to the police could not be said to be not entertainable in view of the maintainability of the civil case and also that the police did not collect required evidences in the case. Aggrieved by the order dated 6.3.2008, the complainant preferred Criminal Revision Case No.7 of 2008 under Section 397 Cr.P.C. before the learned

Sessions Judge, Manipur East. By the order dated 29.7.2009, the learned Sessions Judge dismissed the Criminal Revision Case thereby confirmed the order of the learned Judicial Magistrate First Class, Imphal West. Challenging the same, the present Criminal Petition is filed by the complainant.

[6]. Assailing the orders of the Courts below, Mr. N. Mahendra, the learned counsel for the petitioner submitted that the conclusion of the learned Sessions Judge that the complainant being a qualified Engineer is supposed to sign the admission forms after knowing the *pros* and *cons* of the concerned Free Progress Academy Centre No.1, Hura is perverse, inasmuch as the filled-up admission forms used for admitting the children of the complainant are not on record. The investigating officer has failed to seize the filled-up admission forms into possession and placed on record the dishonest concealment of the private respondents of the fact that Free Progress Academy Centre No.1 is not a school.

[7]. The learned counsel further submitted that the finding of the learned Sessions Judge is also perverse when the learned Sessions Judge mentions in the impugned order that the said Free Progress Academy Centre No.1, Hura is a tutorial home without having academic calendar and it is not recognized by the CBSE. It is not the case of the respondents that

the said Free Progress Academy Centre No.1 is a tutorial home, rather according to them, it is a private school.

[8]. The learned counsel would submit that the finding of the learned Sessions Judge that the students of the tutorial home have got passed their Class X examination by attaching to other schools like Panisheola Indira Smriti Vidyapith, Panisheola, West Bengal etc. and this fact was known by the guardians of the students prior to their admission into this tutorial home of Hura as reflected in the resolutions adopted by the Guardians Association of the Academy are perverse, as there is nothing on record to show that the guardians of the students knew the fact prior to their admission into the tutorial home of Hura. Assuming the alleged resolutions were adopted, although not admitting the adoption of the resolutions, imputation of knowledge by the guardians of the students of that fact prior to their admission into the tutorial home of Hura is not a possibility because of the alleged admission in the year 1999, whereas the alleged resolutions are dated 3.12.2000. Moreover, the alleged resolutions are written and signed by Sankar Sengupta and the signatures of other members are not found in the said resolutions.

[9]. The learned counsel submitted that the conclusion of the learned Sessions Judge that the expenditure of Rs.2 lakh given to the private respondents to defray the expenditure of tuition fee, hostel fee and

contingent fee of the three children of the complainant as it is a fact that the complainant's children were admitted into the tutorial home in the year 1999 is erroneous. According to the learned counsel, the complainant has paid the amount to respondents 2 to 4 based on the representation made by them that Free Progress Academy Centre No.1, Hura is a school. This deceiving act on the part of the respondents 2 to 4 amounting to a dishonest concealment of facts, inasmuch as there is not at all in existence of school as understood generally.

[10]. The learned counsel for the petitioner next submitted that the finding of the learned Sessions Judge that FIR Case No.30(7)2004 of Patsoi Police Station was registered in the year 2004 and none of the other guardians have come before the Court or the Police to raise allegation of cheating against the private respondents except the complainant whose wife Rasheswori Devi is also an Assistant Teachers in Free Progress Academy-2, Konthoujam and that they were ignorant of Free Progress Academy-1 to be unrecognized school is also perverse. The learned Sessions Judge ought not to have arrived at a finding that the learned Judicial Magistrate First Class after going through the relevant materials arrived at a conclusion that no prima facie case has been made out against the private respondents under Sections 418/419/420 IPC.

[11]. The learned counsel for the petitioner then submitted that the learned Sessions Judge erred in arriving at a finding that there arises no case of causing wrongful loss to the complainant by depriving his children to get their education in a normal school environment for total personality development due to the deceiving acts of the private respondents and that it is surprising how the complainant kept silent for such long years of schooling of his children at Free Progress Academy-1 without filing any complaint against the respondents though the petitioner himself is a literate man is based on no evidence on record.

[12]. The learned counsel for the petitioner urged that Free Progress Academy Centre No.1, Hura is a tutorial home, which fact was concealed by the private respondents and, as such, when the complainant demanded transfer/reading certificate of his child, the private respondents could not issue such certificate from Free Progress Academy Centre No.1, Hura instead the certificate was issued from Free Progress Academy Centre No.2 where the child did not read/attend. The complaint has been lodged by the petitioner/complainant after dully coming to know that the Free Progress Academy Centre No.1 is a fake school and the private respondents have been continuing to commit the alleged offences on the date of lodging the complaint.

[13]. The learned counsel for the petitioner added that concealing the real facts while admitting the students and while collecting money in the name of tuition fee, hostel fee etc. the private respondents caused wrongful loss to the petitioner in terms of money as well as reputation. Hence, they are liable to be punished under the appropriate provisions of the Indian Penal Code. However, without looking into the factual aspects of the matter and thorough investigation not being done by the investigating officer, the learned Judicial Magistrate First Class has discharged the accused persons. Similarly, the learned Sessions Judge has also not properly analysed the matter and erred in confirming the order of discharge made by the learned Judicial Magistrate First Class. Since the petitioner/complainant has *prima facie* established the allegations made in the complaint, the respondent police ought to have prosecuted the case against the private respondents for cheating the petitioner/complainant. Thus, a prayer has been made to set aside the order of the learned Sessions Judge, Manipur East as also the order of the learned Judicial Magistrate First Class, Imphal West. To fortify his submissions, the learned counsel for the petitioner placed reliance upon the following decisions:

(i) *Vishnu Kumar Tiwari v. State of UP and another, (2019) 8 SCC 27*

(ii) *Zunaid v. State of UP and others, Criminal Appeal Nos.2628-2629 of 2023 dated 29.8.2023.*

[14]. Per contra, Mr. RK Umakanta, the learned Public Prosecutor appearing for the first respondent submitted that the investigating officer has examined good number of witnesses, including the guardians of the school students of Free Progress Academy-1. From the materials collected and the statements recorded from the witnesses, nothing could be highlighted to substantiate the charges against the accused persons. Upon concluding the investigation, the investigating officer has filed the final report under Section 173(2) Cr.P.C. and the learned Judicial Magistrate First Class upon receiving the final report, rightly discharged the accused person, which was also rightly affirmed by the learned Sessions Judge in the Criminal Revision Petition filed by the petitioner. Since the orders of the Courts below are based on the documentary evidence, the same need not be interfered with by the High Court exercising jurisdiction under Section 482 of Cr.P.C. In support, the learned Public Prosecutor relied upon the following decisions:

- (i) *K.G.Premshanker v. Inspector of Police and another, (2002) 8 SCC 87***
- (ii) *Vishnu Kumar Tiwari v. State of UP and another, (2019) 8 SCC 27***

**(iii) *Kishore Kumar Gyanchandani v. G.D.Mehrotra
and another, (2011) 15 SCC 513***

[15]. Supporting the orders of the Courts below, Mr. L. Ashinikumar, the learned counsel appearing for the private respondents submitted that earlier the petitioner has filed a civil suit bearing No.38 of 2022 before the Civil Judge, Senior Division, Manipur West against the respondents 2 to 4 on 25.11.2002 for compensation of Rs.2 lakh on the ground of cheating and conspiracy. While the said suit was pending, on 23.6.2004, the petitioner lodged a complaint before the Patsoi Police Station against the respondents 2 to 5 in connection with the offence of cheating under Sections 418, 419, 420 and 34 IPC. The Patsoi Police Station has registered the case against the respondents under FIR Case No.30(7)2004 under Sections 418, 419, 420 and 34 IPC. The respondents 2 to 5 have also subsequently obtained pre-arrest bail in connection with the said FIR Case.

[16]. The learned counsel for the private respondents further submitted that the respondents 3 and 4 have also filed a cross-complaint against the petitioner before the Patsoi Police Station under Sections 417, 418, 419 and 420 IPC, which was taken on file as FIR Case No.60(11)2004, wherein the petitioner had obtained pre-arrest bail. While pending criminal cases, the civil suit filed by the petitioner was decreed on

8.9.2006 on the ground of breach of contract under Section 73 of the Indian Contract Act and the defendants in the suit were directed to pay the compensation of Rs.1,48,310/- to the petitioner within a period of six months from the date of passing of the judgment.

[17]. The learned counsel further submitted that aggrieved by the judgment and decree dated 8.9.2006, the respondents 2 to 5 filed RFA No.17 of 2007 before this Court and pending RFA, a final report in connection with the FIR Case No.30(7)2022 has been filed by the investigating officer for closing the case, as the same is civil in nature. Upon receipt of the report and upon hearing the counsel for the complainant and the learned Additional Public Prosecutor, the learned Judicial Magistrate First Class, Imphal West turned down the prayer of the complainant by accepting the final report submitted by the investigating officer on the ground that the Court do not find any prima facie case to take cognizance of the offences under the order. Aggrieved by the same, the petitioner preferred Criminal Revision Petition No.7 of 2008 before the learned Sessions Judge, Manipur East and the learned Sessions Judge upon perusing the materials on record, confirmed the order of the learned Judicial Magistrate First Class, Imphal West.

[18]. According to the learned counsel, the petitioner has filed Cril. M.C.No.6 of 2009 before this Court for examination of the record of

proceedings and the impugned order passed by the learned Sessions Judge coupled with a prayer for further investigation. While pending disposal of the said Cril. Misc. Case, the RFA filed by the respondents 2 to 5 was allowed under order dated 28.4.2016 with an observation that the petitioners are not entitled to any compensation from the defendants. Consequently, the suit was dismissed. According to the learned counsel, as against the judgment passed in RFA, the petitioner has not filed any further appeal and allowed the said judgment to attain finality.

[19]. The learned counsel further submitted that since the finding and the decision of the learned Judicial Magistrate and the learned Sessions Judge and also this Court in RFA No.14 of 2007 are all valid and justified and that the learned Judicial Magistrate has rightly not taken the cognizance of the offence, which was also rightly affirmed by the learned Sessions Judge, there is no necessity to interfere with the orders of the Courts below.

[20]. Placing reliance upon the decision in the case of *Bhagawat Singh v. Commissioner of Police, (1985) 2 SCC 537*, the learned counsel submitted that the Court can accept the report of the investigating officer and drop the proceeding. According to the learned counsel, if the dispute is civil in nature, the ingredients of Sections 419 and 420 IPC would not be attracted and the criminal prosecution for the alleged offence amounted to

abuse of process of law and, therefore, the criminal proceedings are liable to be quashed. In support, he has placed reliance upon the decision in the cases of *George Zacharia @ Raju Karuvamplakka v. T.K.Varghese and another*, 1995 Suppl (1) SCC 267 and *B.Suresh Yadav v. Sharifa Bee and another*, (2007) 13 SCC 107. Thus, a prayer has been made to dismiss the present Criminal Petition.

[21]. This Court considered the rival submissions and also perused the materials on record.

[22]. The brief facts, as could be seen from the complaint, are that in the first week of August, 1999, the respondents 3 and 4 informed the petitioner at his house that there was a very good institution, namely Free Progress Academy Centre-1 at Hura, West Bengal, which was better than all the schools in Manipur and the same was a registered and recognized body. Believing their words, the petitioner had sent his son Boris Konthoujam and daughter Sharmila Konthoujam for admission. Necessary forms were issued by the third respondent from Free Progress Academy-2, Konthoujam, Manipur. Having selected for admission, the third respondent had taken away the petitioner's daughter and son from his residence to be the students of Class IX and VI respectively at Free Progress Academy-1, Hura. Thereafter, the second respondent had taken away his another son Dennis Konthoujam to be a student of Class-IV in the

same institution in the month of December 1999. The petitioner has also paid all the bills that were sent to him and, as such, the petitioner has paid about Rs.2 lakh to the private respondents as admission fees, hostel fees etc. During the year 2001, the petitioner's daughter passed Class X conducted by the CBSE being a student of Panisheola Indira Smriti Vidyapith. The petitioner's son Boris Konthoujam had also passed Class X in the year 2002 conducted by the CBSE being a student of Satyanarayan Academy. The petitioner's son Dennis Konthoujam got reading certificate issued by Free Progress Academy-2, Imphal West as a student of Class VIII . Suspecting the acts of the respondents 2 to 4, the petitioner enquired about the genuineness of the functioning of the Free Progress Academy-1 and the petitioner came to know that the same is a tutorial home without having academic calendar.

[23]. According to the petitioner, the respondents 2 to 5, based on the fraudulent documents and information, have collected huge money after cheating the guardians of the students. On 28.7.2003, the petitioner submitted a representation to the District Inspector of Schools, Government of West Bengal through the Director of Education(S), Manipur. The District Inspector of Schools, Government of West Bengal had sent a reply letter stating that neither the Government of West Bengal nor the Central Government recognized the Free Progress Academy Centre No.1, Hura and it was a fake school/academy.

[24]. The gist of the complaint of the petitioner is that the three children of the petitioner were admitted at Free Progress Academy-I, Hura by expending huge amount of Rs.2 lakh for studies. However, the certificates of the three children are issued from different schools without the knowledge of the petitioner and, as such, the respondents 2 to 5 have cheated the petitioner. Based on the complaint, a regular case under FIR Case No.20(7)2004 under Section 418/419/420 IPC was registered against the respondents 2 to 5 by the Patsoi Police Station.

[25]. According to the first respondent, in the course of investigation, the investigating officer visited Free Progress Academy-2 where the process of admission and alleged crime was done and examined the accused persons and their statements were recorded. During interrogation, the second respondent Sankar Sengupta denied the charges levelled against him and he stated that he had never persuaded the petitioner or anybody for admission of students at Free Progress Academy-1, Hura telling that it was registered and recognised body. He further stated that in any record maintained and published like prospectus, admission forms, declaration form and any other document, he does not say such words that Free Progress Academy-1, Hura is registered by the CBSE, New Delhi. He further disclosed that the wife of the petitioner who knows the history and functioning of the Academy was serving as Assistant Teachers at Free Progress Academy-2, Konthojam. He further stated that

there was guardians meeting for consultation regarding affiliation of Free Progress Academy-1, Hura students to some other recognised institutions by CBSE for Class X examination. The said meeting was held prior to the examination, in which the guardians including the petitioner and his wife participated and they knew that Free Progress Academy-1 was not recognised by CBSE. Hence, as per the consent given by the guardians, the Free Progress Academy-1, Hura was affiliated to Penisheola and Satyanarayan Academy for Class X CBSE examination. Therefore, there is no question of cheating and mis-utilization of money sent by the guardians for their children. According to the prosecution, the investigating officer also interrogated the other accused and they also denied the charges levelled by the complainant. They also disclosed that regarding the amount of Rs.2 lakh expended by the petitioner, a civil case is pending. After completing the investigation, the investigating officer found that the nature of the case became civil in nature and after discussion with the higher officials, the investigating officer decided to close the investigation.

[26]. The prospectus of Free Progress Academy has been placed on record before this Court. In the third page, it has been stated as under:

“FREE-PROGRESS-ACADEMY (FPA) is an Institution, dedicated to the promotion of AUROEDUCATION.

By “Auroeducation” is meant the educational ideas of Sri Aurobindo and the Mother in particular, and all other ideas of educational perfectionism in general.

It is sponsored by “Free-Progress-Academy-Society” in Manipur and by “Free-Progress-Academy-Trust” in Bengal, the later being the Apex-Body over the former. Its founder Sri Sankar Sen Gupta is an ardent follower of Auroeducation.”

[27]. Regarding the syllabus, in paragraph 11 of the said prospectus, it has been stated as under:

OUR SYLLABUS	Same as prescribed by Manipur Board (for Manipur) and C.B.S.E. (for Hura Centre)
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[28]. The learned Judicial Magistrate First Class, Imphal West, in his order dated 6.3.2008, observed as under:

“None of the proposed witnesses (persons) examined could state that the accused persons did any act which would be brought within the purview of cheating under the provisions of the aforesaid Sections of law. The documents seized instead of helping the informant clearly show that the informant had prior knowledge that FPA was not registered and recognised by the CBSE. This

fact must be known by the wife of the informant also who was an Asstt. Teacher of the FPA. Nothing in relation as to whether the FPA is a registered and recognised school of CBSE was mentioned in the Prospectus of FPA but it cannot be said that it is an dishonest concealment of facts. There is also no case of causing wrongful loss to the informant. Yes. The informant expended money for undergoing studies of his children but it is not the case of the informant that by concealing facts by the accused persons, his children lost valuable academic years of his children. His case is that his children passed out Class X in first divisions not losing any academic year from different Schools as managed by the FPA and not under the name of FPA to which he sent them from studying. Is this alleged acts of the accused persons actually caused wrongful loss to the informant? From the police papers so far placed before me, the answer is a No. The materials also do not disclose either about personation or alter or destroying any valuable security by the accused persons so as to bring home the offence/charge under Sec.418/419/420 I.P.C.”

[29]. Admittedly, the aforesaid observation of the learned Judicial Magistrate First Class made in the order dated 6.3.2008 is contrary to the prospectus of Free Progress Academy, wherein they have stated that their syllabus is as prescribed by Manipur Board for Manipur and CBSE for Hura Centre. The prospectus nowhere states that Free Progress Academy-1,

Hura was affiliated to Penisheola and Satyanarayan Academy for Class X CBSE examination.

[30]. As contended by the petitioner, Free Progress Academy-1, Hura is a simple tutorial home, which is not recognised and registered institute by the CBSE, New Delhi. It has been recorded in the order of the learned Judicial Magistrate First Class dated 6.3.2008 that during the interrogation the second respondent stated that he had never persuaded the complainant or anybody for admission of students at Free Progress Academy-1, Hura telling it was registered and recognised body and in any of the record maintained and published, he does not say such words that Free Progress Academy-1, Hura is registered and recognised by the CBSE, New Delhi.

[31]. According to the learned counsel for the private respondents after fully knowing the history of the functioning of the Academy and the complainant's wife was serving as Assistant Teacher at Free Progress Academy-2, Konthoujam, the complainant admitted his children and the respondents 2 to 5 did any act which would be brought within the purview of cheating under the provisions of the Indian Penal Code. The aforesaid argument of the learned counsel for the private respondents cannot be countenanced. Merely because the complainant's wife was serving as Assistant Teacher at Free Progress Academy-2, Konthoujam and the

factum of Free Progress Academy being not recognised school of CBSE was known to the complainant, it cannot be said that knowingly the petitioner admitted his children in Free Progress Academy. The functioning and administration of the Free Progress Academy as also the method of admission criteria and the tie-up of Free Progress Academy with other schools to have public examinations have not been clearly whispered in the prospectus published by the Free Progress Academy. This would clearly indicate cheating of the guardians of the students by the Free Progress Academy and its representatives, namely the respondents 2 to 5.

[32]. The case of the petitioner is that at the time of getting admission, the petitioner was represented and made to believe that Free Progress Academy Centre No.1 as a school not a tutorial home. After coming to know that Free Progress Academy Centre No.1 is a fake school and the private respondents have been continuing to commit the alleged offences, the petitioner has lodged the complaint.

[33]. In the order impugned herein, the learned Sessions Judge observed that *"it is an admitted fact of the respondents that the said Free Progress Academy No.1, Hura is a tutorial home without having academic calendar and it is not recognized by the C.B.S.E., New Delhi. The students of this tutorial home have not passed their Class-X Examination by attaching to other schools like Panisheola Indira Smriti Vidyapith,*

Panisheola, District Hooghly, West Bengal, etc.”. The aforesaid observation of the learned Sessions Judge clearly indicates that the prospectus of the Free Progress Academy is silent about the students admitted in the Free Progress Academy have got passed their Class X examination by attaching to other schools. The unclear prospectus of the Free Progress Academy would naturally hit the minds of ordinary prudent man that by misrepresentation and false promise, the authorities of the Free Progress Academy have admitted the children, including the children of the petitioner.

[34]. At this juncture, the learned counsel for the private respondents submitted that none of the other guardians have raised the allegation of cheating against the private respondents except the petitioner. Therefore, the allegation of the petitioner is baseless and, the Courts below are right in discharging the respondents 2 to 5.

[35]. The argument aforesaid cannot be countenanced. Since because the other guardians have not come forward and lodged the complaint is not a ground to discard the allegation levelled by the petitioner against the Free Progress Academy. Admittedly, during the course of investigation, the true picture has not been brought on record by the investigating officer. The investigating officer ought not to have come to the conclusion that the case is civil in nature and no criminal act involved.

Such a conclusion arrived at by the investigating officer may be on the basis of the civil suit pending at the relevant point of time between the petitioner and the respondents 2 to 5 claiming compensation. The claim made in the civil suit by the petitioner is for compensation and the criminal complaint is for the alleged cheating. In the facts and given circumstances of the present case, the civil suit filed by the petitioner and the appeal preferred by the respondents 2 to 4 will not affect the complaint lodged by the very same petitioner for the alleged cheating against the private respondents.

[36]. It appears that while reversing the finding of the Original (Money) Suit No.38 of 2022 dated 8.9.2006, the appellate Court held that the said case would never fall within the category of misrepresentation as nowhere it is the case of the plaintiffs that there was positive assertion on the part of the defendants that the school was recognized with the CBSE Board. At the same time it never happens to be a case of fraud. The principal difference between fraud and misrepresentation is that in one case the person making the suggestion does not believe it to be true and in the other he believes it to be true though in both the case it is the misstatement of fact which misleads the promisor.

[37]. Admittedly, the finding arrived at in the appeal would not affect the petitioner's case, as in the said appeal the appellate Court has dealt

with the misrepresentation involved as per Section 18 of the Indian Contract Act and, accordingly, held *supra*.

[38]. *Prima facie*, the FIR Case No.30(7)2004 was lodged by the petitioner after confirming from the Inspector of Schools, Government of West Bengal in its reply dated 12.8.2003 that Free Progress Academy, Centre No.1, Hura was beyond the control of the District Inspector of Schools, Purulia and also after knowing that the illegal acts of the respondents 2 to 5 were still continuing collectively and consciously. Further, as could be seen from the materials produced, the petitioner's wife was serving as Assistant Teacher in Free Progress Academy, Centre No.2 for a brief period ending on November, 1990 and has nothing to do with Free Progress Academy Centre No.1 which was established in the year 1995 or with the management of the affairs of the academy.

[39]. On overall analysis of the materials produced by both sides, this Court finds that the learned Judicial Magistrate First Class, Imphal West has mechanically dealt the question of improper and incomplete investigation of the case and came to the conclusion that there is no material so as to require the investigating officer for further investigation.

[40]. At this juncture, it is worth to quote the decision of the Apex Court in the case of *Vishnu Kumar Tiwari v. State of UP and another*, (2019) 8 SCC 27, wherein the Apex Court held:

“It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the investigating officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.”

[41]. The learned Judicial Magistrate First Class after stating the contents of the final report submitted by the investigating officer and after quoting the provisions of Section 418, 419 and 415 IPC came to the conclusion that no case of causing wrongful loss to the complainant was made out and that the materials also do not disclose either about the altering or destroying of any valuable security by the accused persons so as to bring home the offence/charge under Sections 418/419/420 IPC and disposed of the both the final report and the protest petition. When the learned Judicial Magistrate First Class came to the conclusion that there is no indication in the prospectus as to whether the Free Progress Academy

is a registered and recognised school of CBSE, it ought not to have come to the conclusion that there was no case of causing wrongful loss to the complainant. Similarly, the learned Sessions Judge also erred in arriving at a conclusion that there is no question of depriving the children of the petitioner to get their education in a normal environment because the petitioner's two children have completed higher education while third son is doing BE outside Manipur.

[42]. The available records reveal that the investigating officer has failed to investigate the allegation of issuance of reading certificate in the case of the petitioner's third son. According to the petitioner, the private respondents could not issue such a reading certificate from Free Progress Academy Centre No.1 when demanded by the petitioner and it turned out to be a fake school. This fact has been completely ignored by the Courts below and, as such, the finding of the learned Sessions Judge that the learned Judicial Magistrate First Class has correctly arrived at the finding that the respondents 2 to 5 have not committed any illegality is perverse. This Court finds some force in the said submission made by the learned counsel for the petitioner.

[43]. During the course of the investigation, there may be good number of witnesses were examined by the investigating officer. According to the prosecution, their statements are all quite alternative with the

statement of the complainant, however, their statements favoured the statements of the accused persons. Whether or not the statements made by the witnesses are contrary to the statement made by the complainant is to be decided by the Court of law. At the end of the final report, the investigating officer stated the case may be revived whenever any question arises.

[44]. *Prima facie*, the act of the Free Progress Academy become doubtful and the finding of the learned Sessions Judge to the effect that the said Free Progress Academy Centre No.1, Hura is a tutorial home without having academic calendar and it is not recognized by the CBSE, there is still doubt in the minds of this Court that the complaint of the petitioner needs to be re-investigated by the respondent police so as to give correct picture to the jurisdictional Court and for the welfare of the society. Though the allegation of the petition relates between the year 1999-2002, in order to lime light the true picture in this case and ends of justice, the re-investigation is necessary. No prejudice would be caused to the private respondents or the Free Progress Academy if re-investigation is ordered at this stage.

[45]. At this juncture, it is pertinent to highlight the decision of the Apex Court in the case of *Zunaid v. State of U.P. and others, Criminal*

Appeal Nos.2628-2629 of 2023, decided on 29.8.2023, wherein, the Apex Court held:

“11. It may be noted that even in a case where the final report of the police under Section 173 is accepted and the accused persons are discharged, the Magistrate has the power to take cognizance of the offence on a complaint or a Protest Petition on the same or similar allegations even after the acceptance of the final report. As held by this Court in Gopal Vijay Verma Vs. Bhuneshwar Prasad Sinha and Others, (1982) 3 SCC 510 as followed in B.Candrika Vs. Santhosh and Another, (2014) 13 SCC 699, a Magistrate is not debarred from taking cognizance of a complaint merely on the ground that earlier he had declined to take cognizance of the police report. No doubt the Magistrate while exercising his judicial discretion has to apply his mind to the contents of the Protest Petition or the complaint as the case may be.”

[46]. It is well settled that expressions “ends of justice” and “to prevent abuse of the process of any court” used in Section 482 of the Cr.P.C. are intended to work both ways, either when an innocent person is unjustifiably subjected to an undeserving prosecution, or if an *ex facie* well-merited prosecution is throttled at the threshold without allowing the material in support of it to see the light of the day.

[47]. For all the reasons stated above, the learned Sessions Judge, Manipur East erred in holding that there is no illegality in the order passed by the learned Judicial Magistrate First Class, Imphal West. In the light of the discussions held supra, orders of the Courts below are liable to be set aside.

[48]. In the result,

- (i) The Criminal Petition No.6 of 2009 is allowed.
- (ii) The order of the learned Sessions Judge, Manipur East dated 29.7.2009 passed in Criminal Revision Case No.7 of 2008 confirming the order dated 6.3.2008 passed in Cril. Misc. (FR) Case No.69 of 2007 and Cril. Misc. Case No.122 of 2007 is set aside.
- (iii) The concerned police is directed to re-investigate the case in accordance with law.

JUDGE

FR/NFR

Abujam Surjit