

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.07.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Revision Nos.1510, 1533 & 1536 of 2013

Date of Reserving the Judgment 21.07.2015	Date of Pronouncing the Judgment 29.07.2015
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Crl.R.C.No.1510/2013

M.G.Sekar

...Petitioner/Petitioner/Accused (A3)

v.

State represented by
Inspector of Police
Anti-Corruption Branch
Central Bureau of Investigation
Chennai - 600 006.

...Respondent/Respondent/Complainant

Prayer:

Criminal revision filed under Section 397 read with 401 of Cr.P.C., against the order dated 26.11.2013 made in Crl.M.P.No.3433/2013 in C.C.No.1/2012 on the file of the Principal Special Judge for CBI Cases, Chennai.

Crl.R.C.No.1533/2013

Dr.Harish Chandra Rai

...Petitioner/Petitioner/Accused (A2)

v.

State represented by
Inspector of Police
Anti-Corruption Branch
Central Bureau of Investigation
Chennai - 600 006.

...Respondent/Respondent/Complainant

Prayer:

Criminal revision filed under Section 397 read with 401 of Cr.P.C.,
against the order dated 26.11.2013 made in CrI.M.P.No.7034/2012 in
C.C.No.1/2012 on the file of the Principal Special Judge for CBI
Cases, Chennai.

CrI.R.C.No.1536/2013

K.Narayana Rao ...Petitioner/Petitioner/Accused (A1)

v.

State represented by
Inspector of Police
Anti-Corruption Branch
Central Bureau of Investigation
Chennai - 600 006.

...Respondent/Respondent/Complainant

Prayer:

Criminal revision filed under Section 397 read with 401 of Cr.P.C.,
against the order dated 26.11.2013 made in CrI.M.P.No.4329/2012 in
C.C.No.1/2012 on the file of the Principal Special Judge for CBI
Cases, Chennai.

For Petitioners : Mr.K.Doraisami, Senior Counsel
for M/s.Muthumani Doraisami
in CrI.R.C.No.1510/2013

Mr.Murali Kumaran
for M/s.MCGAN Law Firm
CrI.R.C.No.1533 & 1536 of 2013

For Respondents : Mr.K.Srinivasan,
Special Public Prosecutor (CBI cases)

C O M M O N O R D E R

The present Criminal Revisions have been preferred for setting aside the impugned order dated 26.11.2013 made in Crl.M.P.Nos.4329, 7034 of 2012 and 3433 of 2013 on the file of the Principal Special Judge for CBI cases, wherein the discharge applications filed by A1 to A3 under Section 239 Cr.P.C came to be dismissed.

2. On the basis of source information, a case in RC.MA1.2009.A.0056 was registered on 30.10.2009 against four known persons and one unknown public servant of All India Council for Technical Education (hereinafter referred to as 'AICTE'), New Delhi and Regional Office, Chennai under the provision of law under Section 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. After investigation, the charge sheet was levied on 15.12.2011 and a final report was filed against three persons in Report No.43 of 2011 viz., the petitioners in Crl.R.C.Nos.1510, 1533 and 1536 of 2013 alleging that the appraisal committee headed by A-1 has processed the proposal on 18.04.2006 by observing that the College was functioning with the shortage of 42.5% of faculty and shortage of built up area and has recommended to reduce the intake from 180 to 90 Students. However, A-1 has intentionally omitted to cause any inspection in the College by an Expert Committee to verify the availability of the faculty strength as required under AICTE Approval Process Hand Book and has dishonestly or fraudulently recommended for increase in intake of students from 180 to 280 on 10.10.2007 as requested by A-3 and induced AICTE to accord sanction for the same deceiving the AICTE and conferring pecuniary advantage to A-3. A-2 has willfully suppressed the material particulars that the College was not functioning 10 years continuously so as to get the eligibility of 3 years extension at a stretch and that it was kept under no admission category in 2002-2003 by AICTE and has obtained the recommendation of the Moderation Committee for 3 years extension of approval 2008-2011 to the College.

3. In paragraph 10, 11 and 12 of the charge sheet it has been specifically stated as follows:

"10. That Shri R.A.Yadav, Vice-Chairman and Chairman, AICTE is named in the FIR as an accused. During the investigation, no prosecutable evidence was available to prosecute Shri R A Yadav for proving that he has shown undue favour to M/s.Padmavathy College of Engineering in the matter of granting extension of approval and increase in intake of students. Hence, he is not sent-up for trial

and consequently his name is mentioned in column 2 of the charge sheet.

11. That Shri K.Narayana Rao (A1), public servant was since retired from service on 31.01.2010, no sanction for his prosecution is required u/s 19(1) of PC Act, 1988.

12. During the course of investigation, it is revealed that Shri P.Venkateshwara Rao, Adviser-I, AICTE, New Delhi was also involved in commission of offences in this case and CBI has sought sanction for his prosecution as required u/s 19(1) of PC Act, 1988. But the competent authority declined to accord sanction for his prosecution and hence he could not be prosecuted and as such he was shown in column 2 of the charge sheet."

Hence, the petitioners were arrayed as A1 to A3 and the charge sheet was filed against them.

4. Thereafter, the petitioners have filed application for discharge from the charges leveled against them. The Trial Court after hearing both sides has dismissed the application filed by the petitioners stating that there is prima facie material available against them. It is a well settled principle that at the time of framing the charges, it is not the duty of the Court to consider whether it is a fit case for convicting the accused, but the Court has to only see whether a prima facie case has been made out and there is sufficient ground for framing the charges. On that basis, the Trial Court had dismissed the application filed by the petitioners stating that the prosecution has submitted adequate materials for reaching the Court's prima facie satisfaction to proceed further against the accused. Against the said order of the Trial Court, the present revisions have been preferred.

Crl.R.C.No.1510 of 2013

5. The learned Senior Counsel appearing for the petitioner in Crl.R.C.No.1510 of 2013 who has been arrayed as A-3 would submit that the petitioner (A-3) is the Chairman of Sri Padmavathi College of Engineering and that he has not committed any illegality or irregularity. The petitioner has only submitted proposals for extension of approval for the year 2006-2007, to increase the intake of students from 180 to 280 along with the compliance report and for extension of approval for the year 2008-2009. Based on the said proposals submitted by the petitioner (A-3), the chairman of AICTE has passed an order and all the incidents had taken place between 2005 to 2009. and the FIR was registered on 30.10.2009.

6. The learned Senior Counsel would further contend that there is no iota of evidence to prove the conspiracy and that the respondent police has filed the final report with no evidence to prove that the petitioner has entered into a conspiracy with other accused persons and relied on mere suspicion. He would further submit that for the irregularity committed in the absence of penal provision, the prosecution is not maintainable.

7. Further, the approval for the college was given on 19.12.1998 and the college commenced functioning from the year 1999-2000. The college was kept under the "No admission category" in the year 2002-2003 by AICTE for the 1st year admission only and it was functioning with the 2nd, 3rd and 4th year students. However, from the academic year 2003-2004, the admission of 1st year students was allowed by AICTE. In the year 2006-2007, the petitioner (A-3) submitted a proposal for extension of approval for the year 2006-2007 and to increase the intake of students in the college from the existing capacity of 180 students to 280 students along with the compliance report. Again on 30.08.2007, the petitioner (A-3) submitted a proposal to AICTE for extension of approval for the year 2008-2009. While so, in the year 2008, the AICTE announced a policy under which the colleges that are in existence for more than 10 years were eligible for extension of approval for further 3 years. The petitioner (A3) submitted a proposal before the Moderation Committee for extension of approval for 3 years, as the institution was in existence of more than 10 years. Based on the recommendation of the Moderation Committee, AICTE granted extension of approval to the college for three years viz., 2008 - 2011, without verifying the deficiency of the college. However, the respondent registered the case alleging that A-1 to A-3 in collusion with A-4 abused their official position and extended the approval of the college without proper verification.

8. The learned Senior Counsel would further submit that though R.A.Yadhav is the person who had accorded sanction, he has not been prosecuted stating that there is no prosecutable evidence to prove that he has shown undue favour to the College in the matter of granting extension of approval and increase in intake of students. Thus, it would prove that the final report filed by the respondent is biased in nature. Further, along with the final report, the evidence of 31 witnesses and 35 documents were filed. However, none of the evidences would reveal that prima facie case has been made out.

9. It is further submitted that L.W.10/B.K.Sharma who was working as Assistant Director, AICTE has clearly stated that on the recommendations made by the Hearing Committee for the introduction of

additional course/increase in intake for the academic year 2007-2008, after scrutinizing all the relevant documents, placed the same before Prof.K.Narayana Rao (A1), then Member Secretary on 04.10.2007, who has recommended and forwarded to the Chairman. Prof.R.A.Yadav, then Chairman of AICTE approved the recommendation on 10.10.2007 and accordingly, Prof.H.C.Rai (A2) communicated the decision to the institution. Thus, the 161 statement of L.W.10 would reveal that the grant of approval was collective decision of the Committee and the Chairman Prof.R.A.Yadav.

10. Further, L.W.14/Manusree, who was working as Assistant Director, AICTE, New Delhi in her 161 statement has clearly stated that the Appraising Committee recommended for extension of approval for one year i.e., 2008-09. However, as per the policy guidelines dated 02.01.2008, as the said College was coming under the 10 years category, 3 years extension of approval was recommended by the Committee and the same was approved by the Chairman on 11.04.2008.

11. To substantiate his contentions, the learned Senior Counsel appearing for the petitioner (A3) relied upon the various decisions of this Court as well as the Hon'ble Apex Court and also the provisions of All India Council for Technical Education Act, 1987; The All India Council for Technical Education Act - Regulations 1994; All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010.

12. The learned Senior Counsel would contend that the incidents were said to have taken place between 2005 to 2009 and the FIR was registered on 30.10.2009. However, the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 came into effect only on 10.12.2010, much after the registration of the FIR. Before the introduction of the said Regulations in the year 2010, even if any irregularity is committed in granting approval, it does not constitute a criminal offence. But after the said Regulations came into effect on 10.12.2010, if any irregularity is committed, it amounts to criminal offence as per Regulation 13 (Penal Provision).

13. Further, in the decision reported in 2014-2-L.W.(Crl.) 345, Additional Superintendent of Police, CBI, Chennai v. G.B.Anbalagan and others, it was held that on perusal of the various provisions of the Indian Medical Council Act, 1956, there is no penal provisions for the irregularity committed by the officials of the College and hence, they cannot be prosecuted. The said judgment is also made final. The learned Senior Counsel would submit that the provisions in the Indian Medical Council Act is para materia with the All India

Council for Technical Education Act, 1987; The All India Council for Technical Education - Regulations 1994; All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010. Hence, he prayed for setting aside the impugned order by relying on the following decisions:

1. 2014-2-L.W. (Crl.) 345, Additional Superintendent of Police, CBI, Chennai v. G.B.Anbalagan and others.
2. 2011 CRI.L.J.891, Smt.Meena Rathore v. CBI, ACB, Bhopal.
3. Unreported decision made in Crl.R.C.No.943 and 985/2013, dated 06.08.2014.
4. (1996) 10 Supreme Court Cases 193, C.Chenga Reddy and others v. State of A.P.
5. (2008) 2 Supreme Court Cases 561, Onkar Nath Mishra and Others v. State (NCT of Delhi) and Another.

Crl.R.C.No.1533 and 1536 of 2013

14. The learned counsel appearing for the revision petitioners in Crl.R.C.Nos.1533 and 1536 of 2013 who were arrayed as A-2 and A-1 respectively would submit that A-1 was working as Member Secretary of AICTE from 31.01.2007 to 07.08.2009 and A-2 was the Adviser during the period from 28.09.2006 to 29.07.2009. The charges are that A-1 being the head of Appraisal Committee assessed the proposal of the institution on 18.04.2006 and since the College was functioning with 42.5% shortage of faculty and shortage of built-up area he recommended for decrease in intake from 180 to 90 students. However, subsequently the college was permitted to increase the intake without causing proper inspection. A-2 being the Adviser and Convener of the Hearing Committee abused his official position and omitted to furnish the detailed project report without filing up some columns of the datasheet and he also failed to place before the Moderation Committee that the College was kept under no admission category for the Academic Year 2002-2003. Thus, due to irregularities of A-1 and A-2, the proposal for increase in the intake of students was sanctioned and the Moderation Committee recommended for extension of approval for the Academic Year 2008-2011, even though the College was not eligible to come under the 10-years existing category.

15. The learned counsel would put forth his argument in two limbs. One is that A-2 was appointed as an Adviser only on 28.09.2006 and therefore, he was not aware of the fact that there was a recommendation for reduction in the intake for the year 2006. Further, as per Regulation 6.2.2 of AICTE : Hand Book for Approval Process, the proposal shall be scrutinized by a Committee comprising of two members of concerned Regional Committee including the Regional Officer as convener. So, the petitioner/A-2 is not responsible for the irregularity. Further, the 161 statement of L.W.8/D.S.Bagri and

L.W.14/R.S.Gupta has clearly proved that there is no prima facie material available for framing the charges. But the Trial Court has failed to consider those factum. The case of the prosecution is that the College is not eligible to come under the 10-years existing category as the College was kept under no admission category for the Academic Year 2002-2003, however due to the irregularity committed by A-2, it was granted approval for the Academic Year 2008-2011. But the learned counsel for the petitioner would submit that A-2 has only communicated the order granting extension and he has nothing to do with the same. He would further submit that the statement from the members of the Moderation Committee has not been recorded. L.W.10/B.K.Sharma and L.W.14/R.S.Gupta has not stated anything about the involvement of A1 and A2. Further, there is no rule that the Adviser is duty bound to place the previous history record and the Adviser is not a member of the Moderation Committee. Furthermore, mere violations of the rules and regulations does not constitute criminal liability. Thus, the learned counsel for the petitioners in CrI.R.C.Nos.1533 and 1536 of 2013 prayed for setting aside the order of the Trial Court.

16. The second limb of argument is that sanction has not been accorded to a person who stands in the same footing as that of A-2 and hence, the petitioner/A-2 cannot be prosecuted. To substantiate the said contention, the learned counsel for the petitioners A-1 and A-2 relied upon the unreported judgment of this Court made in CrI.R.C.Nos.94, 95, 103 and 104/2013, dated 04.06.2013. The case of the prosecution is that since A-1 has retired from service, no sanction is necessary under Section 19 of the Prevention of Corruption Act. However, in the instant case since the charge sheet has been leveled against the petitioners under Section 120-B r/w 420 IPC, sanction is necessary. To substantiate the said argument, the learned counsel for the petitioners/A-1 and A-2 relied upon the following decisions:

1. (2007) 1 Supreme Court Cases 1, Parkash Singh Badal and Another v. State of Punjab and Others.
2. (2012) 3 Supreme Court Cases 64, Subramanian Swamy v. Manmohan Singh and Another.
3. 2014 SCC OnLine SC 1019, State of Punjab v. Labh Singh.
4. 2015 SCC OnLine SC 390, D.T.Virupakshappa v. C.Subash.

17. The learned counsel further submitted that even breach of provision of law does not constitute a criminal offence. For the said proposition, he relied upon the following decisions:

1. (1996) 10 Supreme Court Cases 193, C.Chenga Reddy and Others v. State of A.P.

2. 2012 (7) SCALE 520, Subramanian Swamy v. A.Raja.
Thus, by relying on the above decisions, the learned counsel for the petitioners/A-1 and A-2 prayed for allowing of the revision.

Respondent's Argument

18. Resisting the same, the learned Special Public Prosecutor (CBI cases) would submit that three charges have been framed against the petitioners herein and that the Indian Medical Council Act is not para materia with the All India Council for Technical Education Act, 1987; The All India Council for Technical Education Act - Regulations 1994; All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010. So, the decision relied on by the learned Senior Counsel appearing for the petitioner/A-3 is not applicable to the facts of the present case.

19. The learned Special Public Prosecutor would further submit that the charge sheet on three grounds:

1. Extension of approval to the college for the year 2007 - 2008.
2. Extension of affiliation for 3 years from 2008 to 2011 by misrepresenting that the college has been functioning for 10 years.
3. Increasing the intake of students from 180 to 280 without conducting proper inspections.

20. He would further submit that the Trial Court in paragraph 15 of the impugned order has rightly held that there is prima facie evidence before the Court to frame charges against the petitioners. Further, the 161 statements of L.W.1/Sandeep Singhal and L.W.10/Dr.Nirendra Devi would clearly prove that there is prima facie evidence. To substantiate his contention, the learned Special Public Prosecutor relied upon the decision reported in (2012) 9 Supreme Court Cases 460, Amit Kapoor v. Ramesh Chander, wherein it was held that at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial could prove him guilty. Thus, by relying on the above decision, the learned Special Public Prosecutor prayed for dismissal of the revisions.

21. Considered the rival submissions made by both sides and perused the material records.

Cr1.R.C.No.1510/2013

22. On receipt of source information, a FIR has been registered against four known persons and one unknown public servant of All India Council for Technical Education, New Delhi and Regional Office, Chennai in RC.MA1.2009.A.0056 on 30.10.2009 under Section 120-B r/w

420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. After investigation, the charge sheet was filed against A-1/Narayana Rao, Member Secretary, AICTE; A-2/Harish Chandra Rai, Adviser-I, AICTE and A-3/M.G.Sekar, Chairman of Padmavathi Engineering College.

23. Now this Court has to decide whether there is any prima facie material for framing of the charges?

As already stated, based on source information, FIR has been registered against 4 known persons and 1 unknown public servant of AICTE, New Delhi and Regional Office, Chennai on 30.10.2009 for the alleged offences committed during the period 2006 to 2009. After investigation the charge sheet was leveled against three persons and the petitioner in CrI.R.C.No.1510/2013 was arrayed as A-3. It is also admitted fact that Narayana Rao (A-1) had earlier recommended to reduce the intake of students from the capacity of 180 to 90 in the year 2006 in his capacity as Head of Appraisal committee pointing out the shortage of faculty by 42.5% and shortage of built-up area. However, when a proposal dated 14.07.2007 was submitted by M.G.Sekar (A-3), Narayana Rao (A-1) who was the Member Secretary recommended for increase in intake of students on 10.10.2007. It is alleged that Harish Chandra Rai (A-2) who was the Adviser and Convenor, willfully suppressed the required material particulars by not furnishing the details about the history of the college to the Moderation Committee. Thus, the following three charges were laid against the accused persons:

1. A-3 Sekar has submitted a proposal dated Nil to All India Council of Technical Education (AICTE), New Delhi, for extension of approval for the year 2006-2007 to Sri.Padmavathy College of Engineering. AICTE has appointed an appraisal committee headed by A-1 who has processed the proposal on 18.04.2006 by observing that the College was functioning with the shortage of 42.5% of faculty and shortage of built up area and has recommended to reduce the intake from 180 to 90 Students.
2. A-3 submitted a proposal dated 14.07.2007 to AICTE, New Delhi for increase in intake of students from 180 to 280 and introduction of an additional course, B.Tech (IT) in the aforesaid institution which was placed before the Hearing Committee of which A-2 was the Convener, being the Adviser has failed to fill up column No.III, IV and V of the Data Sheet thereby willfully suppressing to furnish the required detailed Project Report, history of the College which was placed under no admission category in the year 2002-2003 by AICTE, deficiencies for the existing and proposed course before the Hearing Committee to enable them to take an appropriate action in the

matter of recommending increase in intake of students and introduction of new course and inducing the AICTE to accord sanction for increase in intake of students and deceiving AICTE, conferring undue pecuniary advantage to A-3. A-1 has intentionally omitted to cause any inspection in the College by an Expert Committee to verify the availability of the faculty strength as required under AICTE Approval Process Hand Book and has dishonestly or fraudulently recommended for increase in intake of students from 180 to 280 on 10.10.2007 as requested by A-3 and induced AICTE to accord sanction for the same deceiving the AICTE and conferring pecuniary advantage to A-3.

3. A-3 has submitted a proposal on 30.03.2007 for extension of approval to Sri Padmavathy College of Engineering for the year 2008-2009. The Appraisal Committee appointed by AICTE recommended extension of approval for only one year 2008-2009 on 08.02.2008. The policy of AICTE has been modified in the year 2008-2009 and in view of the revised policy guidelines of AICTE, the proposal of A-3 was placed again before the Moderation Committee for extension of approval for the year 2008-2009 on 01.04.2008 and AICTE granted extension of approval for 3 years 2008-2011 based on the recommendation of A-1 who failed to cause inspection in the College inspite of the knowledge of the shortages in infrastructure of the College and A-2 has willfully suppressed the material particulars that the College was not functioning 10 years continuously so as to get the eligibility of 3 years extension at a stretch and that it was kept under no admission category in 2002-2003 by AICTE and has obtained the recommendation of the Moderation Committee for 3 years extension of approval 2008-2011 to the College and the aforesaid acts of A-1 to A-3 constitute the commission of offences punishable under Sec.120B r/w 420 IPC and Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act and Substantive Offences thereof.

24. But as per the 161 statement of L.W.10/B.K.Sharma, L.W.15/S.R.Abishek and L.W.29/Dr.Ch.Venkatrathinam, M.G.Sekar (A-3) is not a party to the irregularity committed in processing the application. So, A-3 cannot be prosecuted on that account. Further, as per Regulation 12 of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 1994 only the approval of the institution can be withdrawn, if the institution contravenes any of the provisions of these regulations. It is appropriate to incorporate the said provision:

"12. Withdrawal of approval.- If any technical institution including University, University Department or deemed University or College contravenes any of the provisions of

these regulations, the Council may, after making such inquiry as it may consider appropriate and after giving the technical institution concerned an opportunity of being heard, withdraw the approval granted under these regulations."

25. However, after All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 came into effect on 10.12.2010, the penal provision was introduced in Regulation 13 of the said Regulations. It is appropriate to incorporate Regulation 13:

"13. Penalty.- An institution running any technical education in violation of these regulations, shall be liable for initiation of legal civil action including withdrawal of approval, if any, and/or legal criminal action by the Council against the Institution and/or its promoter Society/Trust/Company and Individuals associated as the case may be:

Provided further that if any technical institution contravenes any of the provisions of these regulations, the Council after making such inquiry as it may consider appropriate and after giving technical institution concerned, an opportunity to clarify the matter, may take any or all action as specified below and as the case may be."

26. Thus, it is very clear that before the introduction of All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010, there is no penal provision for violation of any regulations and only the approval of the institution can be withdrawn. Whereas, after the Regulation 2010 came into effect on 10.12.2010, under Regulation 13, it has been specifically stated that any legal civil action or criminal action can be initiated against the Institution and/or its promoter Society/Trust/Company and Individuals associated as the case may be. However, the instant case relates to the alleged offences committed during the period 2006 to 2009 and the FIR was registered on 30.10.2009, much before the introduction of the Regulations 2010. In such circumstances, I am of the view that no criminal action can be initiated against the petitioner (A-3) when there is no penal provision in the Regulations 1994.

27. At this juncture, it is appropriate to consider the decisions relied on by the learned Senior Counsel appearing for the petitioner/ (A-3).

27.1. The learned Senior Counsel appearing for the petitioner

(A-3) has also taken me through the Indian Medical Council Act, 1956, wherein Section 19 deals with withdrawal of recognition. The said aspect has been extensively dealt with by this Court in the decision reported in 2014-2-L.W.(Crl.) 345, Additional Superintendent of Police, CBI, Chennai v. G.B.Anbalagan and others and it was held therein that when there is no penal provision under the Indian Medical Council Act, 1956, the violation of regulation framed by the MCI cannot exfacie give rise to a criminal liability. Thus, considering the facts of the present case in the light of the above decision, when the Indian Medical Council Act, 1956 is para materia with the AICTE Regulations 1994 and when there is no penal provision under the AICTE Regulation 1994 which was in existence during the period of commission of alleged offence viz., 2006 to 2009, I am of the considered view that the above decision is squarely applicable to the facts of the present case. It is appropriate to incorporate paragraph 40 and 58 of the said decision:

"40. In view of the statutory provisions of the Medical Council Act which is a self contained Act and when there are specific provisions in the Act to deal with the misconduct committed by the Institution and if it submits fake/forged declaration forms, it would be improper to resort to Section 420 of IPC altogether ignoring those provisions.

58. The Respondents have been charge sheeted for the alleged offence of conspiracy under Section 120B of IPC. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means, act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not supported by cogent and acceptable

evidence."

27.2. In the decision reported in 2011 CRI.L.J.891, Smt.Meena Rathore v. CBI, ACB, Bhopal, it was held that when the All India Council of Technical Education has not made any complaint against the petitioner the decision of the CBI to act against the petitioner, is a clear abuse of process of law. It is appropriate to incorporate Paragraphs 14 and 15 of the said decision:

"14. Thus, prima facie the contents of affidavit obtained by AICTE is contrary to Clause 4.2.2. of approval process. More so, bare reading of the said clause it is apparent that the intention of the AICTE is not that the land which is of the ownership of the society of a Trust cannot be mortgaged, but it may be mortgaged at later stage to generate the funds for development of the institution. In the present case if the loan has been taken from a Bank for construction of building, as not disputed, however, in the context of Clause 4.2.2, the information supplied by the petitioner, may be treated as false information, which is the crux in the context of the present case. It is alleged, the said affidavit is of false information furnished by the petitioner with a view to seek approval from the AICTE. In view of the foregoing it is clear that the contents of the affidavit which was obtained by AICTE, was different from Clause 4.2.2 of norms. It is also undisputed that the loan was taken for development and construction of college building. However, the only deviation is that on the date of application it was mortgaged. Whether such deviation would amounting to an offence as registered under Section 420 of IPC as alleged by the CBI. Section 420 of IPC not only deal the cheating with a view to cause harm to that person in body, mind, reputation or property, but it deals the cheating with an intention of dishonestly delivering the property to any person or to make alter or destroy the whole or in part of the valuable security, or any thing which is signed or sealed which is capable of being converted into a valuable security. The contents of the definition of cheating under Section 415 and the contents of Section 420 of IPC are somewhat different, wherein the intention of dishonestly inducing the delivery of property must be there with a view to cause damage or harm to that person in body, mind, reputation or property. In the opinion of this Court merely submitting affidavits stating that the land is not mortgaged with the bank would not come within the purview of offence under Section 420 of IPC. Thus the ingredients

of Section 420 of IPC under which the offence has been registered and the Challan has been filed by the CBI is conspicuously missing from the contents of the FIR and final report, particularly when the intention does not reflect so in view of the condition No.4.2.2 of the approval process as specified by the AICTE. Thus, in the opinion of this Court to make out the cause of Section of 420 ingredients are not available in the FIR or in the Challan papers.

15. The Apex Court in the judgment of Anil Ritolla @ A.K.Ritolia (AIR 2007 SC (supp) 1002:2008 Cri LJ 353) (supra) has observed that the statute provide a thing to be done in particular manner for a particular remedy, then appropriate action should be taken thereunder. In the present case if public servant of AICTE is of the opinion that the information supplied by the petitioner is false then the consequence as specified in the affidavits to take action for cancellation of the approval of the year 2009-10. It is relevant to note that in the present case the AICTE has not made any complaint against the petitioner, but the CBI has acted upon receiving some information and decided to proceed against petitioner under Sections 420 and 177, 181 of the IPC. In the opinion of this Court such recourse is not warranted coupled with the fact that from the material collected by the prosecution the ingredients to register the offence under Section 420 of IPC is conspicuously missing."

27.3. In the unreported decision of this Court made in CrI.R.C.No.943 and 985/2013, dated 06.08.2014, it has been held in paragraphs 36 and 52 as follows:

"36. Reference may also be made to the relevant portions from the Establishment of Medical College Regulations, 1999 (Amended upto September 2011). Clause 8 (3) of the said Regulation deals with the grant of permission for establishment of a new Medical College which is given below:-

"8(3)(1) The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of

permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.

The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

Provided that in respect of

(a) Colleges in the stage upto II renewal (i.e. Admission of third batch):-

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or residents is more than 30% and/or bed occupancy is <60% such an Institute will not be considered for renewal of permission in that academic year.

(d) Colleges which are found to have employed teachers with faked/forged documents:-

If it is observed that any institute is found to have employed a teacher with faked/forged documents and have submitted the declaration form of such a teachers, such an institute will not be considered for renewal of permission/recognition for award of MBBS Degree / processing the applications for postgraduate courses for two academic years i.e., That academic year and the next academic year also.

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/State Government.

(4) Failure to seek timely renewal of recognition as required in sub clause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Courses of MBBS at the said Institute."

Thus, it is clear that Medical Council of India is a body which has its own code of conduct to be followed while granting approval or recommending for renewal. The shortfall in faculties and submissions of fake/forged documents would only disentitle the Institution from getting renewal of permission. Also, the errant medical Doctors would be dealt with accordingly by the Medical Council, whereby the names of defaulters can be removed from the State Medical Register, this debarring them from engaging themselves in the profession. Also, the Medical

Council of India Act provides for withdrawal of recognition granted to such College as per Section 19 of the Act. Nowhere it is stated either in Medical Council of India Act or the regulations that such violation would result in penal consequences. The contravention of rules and Regulations may be an offence against the statute, but it is not a crime. It is pertinent to point that no complaint is preferred by Medical Council of India. Therefore, there is considerable force in the submission made by the learned counsel for the Petitioners that there is no room or jurisdiction in any external agency to investigate into the affairs of any medical Institution coming within the purview of the Medical Council of India.

...
...

52. Merely levelling charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability on the Respondents. The purpose of circumstances warranting an interference of existence of a conspiracy should be stated so as to bring the Respondents to face the trial in criminal court. A complaint should make out a prima facie case against the accused persons and one cannot have the construction of a fine superstructure without a foundation as observed in *K.S.Narayanan v. Gopinathan* (1982-Cri.L.J-1611). There must be prima facie evidence that a person was a party to the conspiracy and that there was an agreement for that purpose. Anything said or done or written by the conspirators after the formation of the conspiracy will be very material. Thus, to make out an offence of criminal conspiracy, it is not sufficient to establish that a number of persons had a common intention to commit an act opposed to or forbidden by the law and it has further to be proved that they agreed to commit the relevant act. Similarly, the law requires specific proof against each of the conspirators participating in doing a particular criminal offence."

27.4. In the decision reported in (1996) 10 Supreme Court Cases 193, *C.Chenga Reddy and others v. State of A.P.*, it was held though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter, those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them. It is appropriate to incorporate the relevant portions in paragraphs

22 and 52 of the said decision:

"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet. none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellant and wholly incompatible with their innocence. In *Abdulla Mohammed Pagarkar v. State (Union Territory of Goa, Daman and Diu)*, [1980] 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the concerned officials and contractors, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper. That because of the actions of the appellants in breach of codal provisions, instructions and procedural safeguards, the State may have suffered financially, particularly by allotment of work on nomination basis without inviting tenders, but those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them.... .

52.There have been some irregularities committed in the matter of allotment of work to the appellant or breach of codal provisions, circulars and departmental instructions, for preparation of estimates etc. and those irregularities give rise to a strong suspicion in regard to the bonafides of the officials of the department and their link with the appellant, but that suspicion cannot be a substitute of proof....."

27.5. In the decision reported in (2008) 2 Supreme Court Cases 561, *Onkar Nath Mishra and Others v. State (NCT of Delhi)* and

Another, it was held that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, the Court is not expected to go deep into the probative value of the material on record. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The materials brought on record by the prosecution has to be accepted as true at that stage. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of commission of that offence.

28. Now, it is appropriate to consider the decision relied on by the learned Special Public Prosecutor appearing for the respondent.

28.1. In the decision reported in (2012) 9 Supreme Court Cases 460, *Amit Kapoor v. Ramesh Chander*, wherein it was held that at the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial could prove him guilty. It is appropriate to incorporate paragraph 11, 17 and 19 of the said decision:

"11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.

...
...

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a

presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

...

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh (1977) 4 SCC 39:

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes

to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily

and generally the order which will have to be made will be one under Section 228 and not under Section 227.""

Finding in Crl.R.C.No.1510/2013

29. Thus, considering the facts and circumstances of the case, as per the regulations prevailing during the period of alleged offence viz., 2006 to 2009, if any irregularity is committed in contra to the provisions of The All India Council for Technical Education - Regulations 1994, AICTE can only withdraw the approval granted under the regulations. Only after the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 came into effect on 10.12.2010, the Regulation 13 (Penal Provision) was introduced wherein it was held that an institution running any technical education in violation of these regulations, shall be liable for initiation of legal civil action including withdrawal of approval, if any, and/or legal criminal action by the Council against the Institution and/or its promoter Society/Trust/Company and Individuals associated as the case may be. As on the date of filing of the FIR viz., 30.10.2009 only the Regulation 1994 was in force and under such regulation, only the approval can be withdrawn. As stated supra, similar issue has been has been extensively dealt with by this Court in the decision reported in 2014-2-L.W.(Crl.) 345, Additional Superintendent of Police, CBI, Chennai v. G.B.Anbalagan and others and the said decision which ended in finality is squarely applicable to the facts of the present case.

30. In such circumstances, I am of the considered view that there is no material before the Court to prove the prima facie case against the revision petitioner/A-3 to frame charges under Section 120-B r/w 420 IPC. Further, Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 will not be attracted against the petitioner/A-3, since he is not a public servant. Hence, the impugned order made against the petitioner/A-3 is liable to be set aside and it is hereby set aside.

Crl.R.C.Nos.1533 & 1536/2013

31. It is an admitted fact that charge sheet has been levied against the petitioners/A-1 and A-2 under Section 120-B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Before going into the merits of the issue, this Court has to decide whether the charge sheet levied without obtaining sanction to prosecute A1 is sustainable?

It is true that A-1 has retired from service. So, as per Section 19 of the Prevention of Corruption Act, no sanction is necessary to

prosecute a retired person. However, as per Section 197 CrPC, sanction is necessary. At this juncture, it would be appropriate to incorporate the relevant provision:

Section 19 of Prevention of Corruption Act

"(1) No court shall take cognizance of an offence punishable under section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the code of Criminal Procedure, 1973,-

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such

sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings."

Section 197 CrPC

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹ Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his

official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

32. At this juncture, it is appropriate to consider the decisions relied on by the learned counsel for the petitioners/A-1 & A-2.

32.1. In the decision reported in (2007) 1 Supreme Court Cases 1, Parkash Singh Badal and Another v. State of Punjab and Others, it was held that the plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence and mere allegations and suspicions would not be sufficient. It is appropriate to incorporate paragraphs 37 and 61 of the said decision:

37. In P.K. Pradhan v. State of Sikkim (2001 (6) SCC 704) it has, inter alia, held as follows:

"The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is prohibition imposed by the Statute from taking

cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty." The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation."

61. A plea of mala fides has not only to be clearly pleaded but specifically proved by adducing cogent evidence. Mere allegation and suspicions would not be sufficient. The person against whom mala fides conduct is attributed is interestingly not a party in the proceedings.

32.2. In the decision reported in (2012) 3 Supreme Court Cases 64, Subramanian Swamy v. Manmohan Singh and Another, it was held that the decision to grant or to refuse sanction is not a quasi-judicial function but an administrative function and the Sanctioning authority has to apply his mind and find whether the material collected against a public servant is prima facie sufficient to proceed against him. It is appropriate to incorporate paragraphs 39, 60 to 63 and 64.1 of the said decision:

39. In Kalimuthu's case, the only question considered by this Court was whether in the absence of requisite sanction under Section 197 CrPC, the Special Judge for CBI cases, Chennai did not have the jurisdiction to take cognizance of the alleged offences. The High Court had taken the view that Section 197 was not applicable to the appellant's case. Affirming the view taken by the High Court, this Court observed :

"The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. Further, in cases where offences under the Act are concerned, the effect of Section 197, dealing with the question of prejudice has also to be noted."

...
...

60. Apart from that the learned Attorney General in the course of his submission proceeded on the basis that the question of sanction has to be considered with reference to Section 19 of the Prevention of Corruption Act (hereinafter "the P.C. Act") or with reference to Section 197 of the Code of Criminal Procedure, 1973 (hereinafter "the Code"), and the scheme of both the sections being similar (Vide paragraph 3 of the supplementary written submission filed by the learned Attorney General). In fact, the entire submission of the learned Attorney General is structured on the aforesaid assumption. I fail to appreciate the aforesaid argument as the same is contrary to the scheme of Section 19 of the P.C. Act and also Section 197 of the Code.

61. In *Kalicharan Mahapatra vs. State of Orissa* reported in (1998) 6 SCC 411, this Court compared Section 19 of P.C. Act with Section 197 of the Code. After considering several decisions on the point and also considering Section 6 of the old P.C. Act, 1947 which is almost identical with Section 19 of the P.C. Act, 1988 and also noting Law Commission's Report, this Court in paragraph 13 of *Kalicharan* (supra) came to the following conclusions:

"13. The sanction contemplated in Section 197 of the Code concerns a public servant who "is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", whereas the offences contemplated in the PC Act are those which cannot be treated as acts either directly or even purportedly done in the discharge of his official duties. Parliament must have desired to maintain the distinction and hence the wording in the corresponding provision in the

former PC Act was materially imported in the new PC Act, 1988 without any change in spite of the change made in Section 197 of the Code."

62. The above passage in Kalicharan (supra) has been quoted with approval subsequently by this Court in Lalu Prasad vs. State of Bihar reported in 2007 (1) SCC 49 at paragraph 9, page 54. In paragraph 10, (page 54 of the report) this Court held in Lalu Prasad (supra) that

"10.Section 197 of the Code and Section 19 of the Act operate in conceptually different fields".

63. In view of such consistent view by this Court the basic submission of the learned Attorney General to the contrary is, with respect, untenable.

...

64.1. Recently a unanimous three-judge Bench decision of this Court in the case of State of Uttar Pradesh vs. Paras Nath Singh, [(2009) 6 SCC 372], speaking through Justice Pasayat and construing the requirement of sanction, held that without sanction:

"6.The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.""

32.3. In the decision reported in 2014 SCC OnLine SC 1019, State of Punjab v. Labh Singh, it was held that unlike Section 19 of the Prevention of Corruption Act, the protection under Section 197 of Cr.P.C is available to the concerned public servant even after retirement. It is appropriate to incorporate paragraphs 7 and 8 of the said decision:

"7. In the present case the public servants in question had retired on 13.12.1999 and 30.04.2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13.09.2000 and later on 24.09.2003. The public servants having retired from service there was no occasion to consider grant of sanction under section 19 of the POC Act. The law on the point is quite

clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In *S.A.Venkataraman v. State* while construing section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in *S. A. Venkataraman (supra)* was adopted by this court in *C.R. Bansi v. State of Maharashtra* and in *Kalicharan Mahapatra v. State of Orissa* and by the Constitution Bench of this court in *K. Veeraswamy v. Union of India*. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.

8. However as regards charges for the offences punishable under the IPC concerned the High Court was absolutely right in setting aside the order of the Special Judge. Unlike section 19 of the POC Act, the protection under section 197 of Cr.P.C. is available to the concerned public servant even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.09.2000 and secondly on 24.09.2003, the court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned. As laid down by this Court in *State of Himachal Pradesh v. Nishant Sareen* the recourse in such cases is either to challenge the order of the Sanctioning Authority or to approach it again if there is any fresh material."

32.4. In the decision reported in 2015 SCC OnLine SC 390, *D.T.Virupakshappa v. C.Subash*, it was held that the alleged offensive conduct is reasonably connected with the performance of the official duty of the appellant and therefore, previous sanction of the State Government has to be obtained and the cognizance taken by the Magistrate without the previous sanction of the State Government is bad in law. It is appropriate to incorporate paragraphs 9 and 10 of the said decision:

"9. In *Om Prakash (supra)*, this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

" 32. The true test as to whether a public

servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

10. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of a criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order."

32.5. In the decision reported in 2012 (7) SCALE 520, Subramanian Swamy v. A.Raja, it was held that a wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between the Minister or even with the Prime Minister, by itself cannot be said to be a product of criminal conspiracy. It is appropriate to incorporate paragraphs 52 and 53 of the said judgment:

"52. Criminal conspiracy cannot be inferred on the mere

fact that there were official discussions between the officers of the MoF and that of DoT and between two Ministers, which are all recorded. Suspicion, however, strong, cannot take the place of legal proof and the meeting between Shri P. Chidambaram and Shri A. Raja would not by itself be sufficient to infer the existence of a criminal conspiracy so as to indict Shri P. Chidambaram. Petitioners submit that had the Minister of Finance and the Prime Minister intervened, this situation could have been avoided, might be or might not be. A wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between Ministers or even with Prime Minister, by itself cannot be said to be a product of criminal conspiracy.

53. We are of the considered view that materials on record do not show that Shri P. Chidambaram had abused his position as a Minister of Finance or conspired or colluded with A. Raja so as to fix low entry fee by non-visiting spectrum charges fixed in the year 2001. No materials are also made available even for a prima facie conclusion that Shri P. Chidambaram had deliberately allowed dilution of equity of the two companies, i.e. Swan and Unitech. No materials is also available even prima facie to conclude that Shri P. Chidambaram had abused his official position, or used any corrupt or illegal means for obtaining any pecuniary advantage for himself or any other persons, including Shri A. Raja."

33. The learned Special Public Prosecutor appearing for the respondent relied on the decision reported in (2012) 9 Supreme Court Cases 460, Amit Kapoor v. Ramesh Chander and the same has been discussed supra.

34. Considering the facts of the present case in the light of the above decisions, though it has been specifically stated in the charge sheet that since A-1 has retired from service, no sanction is necessary to prosecute him, it is pertinent to note that A-1 is not only prosecuted under the provisions of the Prevention of Corruption Act but also under the provisions of the Indian Penal Code. Hence, as per Section 197 CrPC, sanction is necessary before taking cognizance of the offence. Admittedly, in the instant case, no sanction has been obtained for prosecuting A-1. Hence, I am of the view that the decisions reported in 2015 SCC OnLine SC 390, D.T.Virupakshappa v. C.Subash and 2014 SCC OnLine SC 1019, State of Punjab v. Labh Singh is squarely applicable to the facts of the present case and the

prosecution of the petitioner (A-1) under Section 120(b) r/w 420 IPC without prior sanction is bad in law.

35. As far as A-2 is concerned, it has been specifically stated in paragraph 12 of the charge sheet that during the course of investigation, it is revealed that Shri P.Venkateshwara Rao, Adviser-I, AICTE, New Delhi was also involved in commission of offences in this case and CBI has sought sanction for his prosecution as required u/s 19(1) of PC Act, 1988. But the competent authority declined to accord sanction for his prosecution and hence he could not be prosecuted and as such he was shown in column 2 of the charge sheet.

36. At this juncture, it is appropriate to consider the unreported decision of this Court made in Crl.R.C.Nos.94, 95, 103 and 104/2013, dated 04.06.2013 wherein it was held that once sanction was not accorded to a similarly placed person, the said relief must be extended to the other accused. It is appropriate to incorporate paragraph 11 of the said decision:

"11. It is pertinent to note here that according to the prosecution, Dr.P.Venkateswara Rao is one of the conspirator along with A.5 to A.8 and he was shown in the final report column 2 for the reason that sanction was declined by the concerned authority. Even as per the counter filed before this Court, it is maintained by the prosecution that he also stands on the same footing as A.6 - Prof.D.R.Kohli, as both were members of the Hearing Committee while 'not recommending' as well as 'recommending'. This is a very peculiar situation. The materials against A.6 - Prof.D.R.Kohli and the left out accused - Dr.Venkateswara Rao are one and the same, but sanction for prosecution has been granted for one accused and not granted for the other accused. One had been set at liberty at the initial stage being not challenged by the prosecution wherein other accused who stand in the same footing are to undergo the ordeal of trial."

Further, in the instant case, the order of declining sanction to prosecute Shri P.Venkateshwara Rao, Adviser-I, AICTE, New Delhi was also not challenged by the respondent. In such circumstances, I am of the view that Harish Chandra Rai, Adviser-I, AICTE who also stands in the same footing as that of Shri P.Venkateshwara Rao, Adviser-I, AICTE, New Delhi, shall not be prosecuted and it is one of the reason to set aside the impugned order. Furthermore, in the above decision, it has been specifically stated that mere violations and dereliction of duties on the part of the accused cannot fasten criminal liability. In the instant case, there is no evidence to show that the

accused has committed any offence.

37. Now this Court has to consider what is the procedures to be adopted while granting approval?

Regulation 6 of the AICTE Regulations, 1994 deals with conditions for grant of approval. As soon as receipt of the application for grant of approval, the application has to be scrutinized by the Regional committee concerned and the Board of Studies concerned, as per Regulation 9. At this juncture, it would be appropriate to incorporate the details and roles of various committees.

Regional Committee:

There is a Regional committee of 17 members constituted by the Competent Authority at AICTE, Hqrs for each Regional Office. The Chairman of this Committee is appointed by Competent Authority of the Council and the tenure of the Chairman and this Committee is three years. The concerned Regional Officer (ex-officio) is the Member Secretary to this Committee. Normally this Committee advise the Council on the various requirements/data/appraisal of the Technical Education in the particular Region.

As per the Approval Process Hand Book there is a Regional Committee Sub-Committee consisting of one Member of the Regional Committee and the Regional Officer as Convenor of this Committee. The Committee scrutinizes the proposals submitted by various Trust/Societies for the establishment of New Technical Institutions with respect to the checklist provided in the Approval Process Hand Book. This scrutinization takes place on the basis of the xerox copy of the various documents supplied in the proposal by the applicant Trust/Society. In case the RC sub Committee finds the proposal in order then it is forwarded to the Headquarters for further necessary action otherwise the deficiencies are communicated to the applicant society/trust for rectification.

Also as per the Approval Process Hand Book the applications submitted by the existing technical institutions for increase in intake/variation/introduction of additional courses are also processed by the RC Sub Committee with respect to the check list and forwarded to the AICTE Hqrs if the proposal is found in order otherwise the deficiencies are communicated to the institution by the Regional Officer for rectification.

Hearing Committee

A Hearing Committee is constituted at AICTE Hqrs for considerations of the proposals submitted for the establishment

of New Technical institution for the consideration of the issuance of Letter of Intent [LOI]. The Constitution of this Committee consists of an academician/professional of repute as Chairman, 3 Expert Members at the level of Professor and Adviser/Director of AICTE Hqrs as the Convenor.

There is another Hearing Committee which is constituted by the Chairman AICTE and it consists of an academician/professional of repute as Chairman, 3 Expert Members at the level of Professor and Adviser/Director of AICTE Hqrs as the Convenor and this Committee considers the applications and recommends for increase/variation in intake/introduction of additional course(s) or rejects the applications fully or partially mentioning the reasons for the same.

The recommendations of the Hearing Committee are placed before the Vice Chairman/Chairman AICTE for a decision and this decision is placed before the Executive Committee for ratification.

Appraisal Committee

All the Compliance Reports submitted by the various Technical Institutions for extension of approval are placed before the Appraisal Committee and this Committee consists of three experts members not below the Rank of Associate Professor/Reader in the concerned subjects/fields, two members [including the Regional Officer] of the Regional Committee to be nominated by the Chairman, AICTE and the officer of the Council as Convenor. The Compliance Report is placed before the Appraisal Committee and the recommendations of the Appraisal committee are placed before the Vice Chairman/Chairman of AICTE for a decision on continuation of approval or otherwise and this decisions is placed before the Executive Committee for ratification.

Appellate Committee

In case the Applicant Society/Trust disputes the decision of the Council it may appeal any time and the appeal shall be heard by an Appellate Committee constituted by the Chairman AICTE from time to time with the following members:

- a. An educationists/academician of repute as Chairman
- b. Director of IIT/NIT/IIM* [*for Management proposals]
- c. Vice Chancellor of a University
- d. Adviser [AICTE] as Convenor.

Based on the recommendations of the Appellate Committee and other relevant information, a final decision will be taken by the Vice Chairman/Chairman of AICTE on behalf of Council.

Executive Committee

As per Chapter IV, Clause 12 of the AICTE Act No.52 of 1987 there is a Executive Committee for discharging such functions as may assigned to it by the Council. The constitution of this EC is given in Chapter IV, Clause 12(2) of the AICTE Act. All the decisions taken by any of the Committee constituted by the AICTE are placed before EC for ratification.

Expert Committee

It is the duty of the expert committee to verify all the infrastructural, academic and related facilities as per the norms and standards provided by the Council from time to time and record or ask the convener to record their specific observations. The role of convener is to fix a date of the visit in consultation with the concerned educational institution and call upon the experts on the finalised date of visit. He would also make alternative arrangements of the expert in case, any one of the expert are not available on the particular date from the panel of experts. The convener ensures that all the experts are available on the site of visit and experts carry out their duties in a smooth manner and the concerned institutions provide all relevant informations/documents as required by the members of the Expert Committee. The Convener also ensures that the report of the expert committee visit along with all annexures should reach to the AICTE, Head Office.

38. However, there is no evidence to show that neither A-1/Narayana Rao nor A-2/Harish Chandra Rai acted as a convener or served as a member of the expert committee. In such circumstances, the question as to why they had not conducted inspection in the College prior to extension of approval does not arise. Even if they were found to have acted against the regulations, it will not constitute a criminal offence.

39. According to the Charge sheet, A-1/Narayana Rao is the Member Secretary and A-2/Harish Chandra Rai is the Adviser-I. So, on considering the official capacity of A-1 and A-2 along with the role of various committees and the procedures for granting approval for the technical institution, granting permission to increase the intake, extension for approval and for giving permission for introduction of new course, it is seen that the Regional committee alone would process the same at the first instance. Only if the found to be in order by the Regional Committee, it is forwarded to AICTE Hqrs. So, it is the bounden duty of the Regional committee to verify the materials and checklist. In such circumstances, merely because some column in the Data sheet were not filled up, prima facie it is

not the duty of the Member Secretary and the Adviser of AICTE, New Delhi, but it is only the duty of the Regional Committee.

40. Further, on a bare perusal of the roles assigned to various committees while granting approval, it is seen that A-1 and A-2 alone are not competent to extend the period of approval, increase the intake and also for introduction of new courses. But all the decisions taken by any of the Committee constituted by the AICTE are placed before the Executive Committee for ratification. The Chairman of AICTE is the competent person to take decision on grant of approval and the decision of Chairman shall be placed before the Executive Committee for ratification. So, I am forced to accept the argument put forth by the learned counsel for the petitioners that A-1 and A-2 alone are not competent to extend the period of approval, to grant permission to increase the intake and for giving permission for introduction of new courses.

41. On perusal of 161 statement of L.W.1/Sandeep Singhal would reveal that there is no violation of rules by A-1 and A-2. It was further stated therein that on 18.04.2006, the appraisal committee consisting of A-1/Narayana Rao recommended for extension of approval with reduction in intakes due to shortage of faculty by 42.5%. However, Prof. Damodar Acharya, the then Chairman, AICTE ordered for maintaining status quo and only on that basis, A-2/Harish Chandra Rai has only sent the letter intimating the grant of extension. In such circumstances, I am of the considered view that no prima facie case has been made out against the petitioners (A-1 and A-2) for framing of charges. Further, the evidences and the 161 statements of the witnesses do not show that A-1 and A-2 has conspired with A-3 and dishonestly, fraudulently and intentionally deceived and granted approval to the College.

42. The learned counsel for the petitioners/A-1 and A-2 also drawn my attention through the various provisions of law viz., Sections 24, 25 and 43 IPC and Section 338 of the General Clauses Act and submitted that prima facie the ingredients of Section 420 IPC has not been made out. As already discussed, in the decision reported in (1996) 10 Supreme Court Cases 193, C.Chenga Reddy and others v. State of A.P., it was held though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter, those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them. It is also pertinent to note that the above decision has been made while setting aside the conviction imposed by the Trial Court and confirmed by the High Court.

43. Further, as stated supra, in the decision reported in 2012 (7) SCALE 520, Subramanian Swamy v. A.Raja, it was held that a wrong judgment or an inaccurate or incorrect approach or poor management by itself, even after due deliberations between the Minister or even with the Prime Minister, by itself cannot be said to be a product of criminal conspiracy.

44. Thus, as per the above citations, it can be concluded that the irregularities alleged to have committed by the revision petitioners/A-1 and A-2 does not constitute a criminal offence.

Conclusion

45. On considering the facts and circumstances of the case in the light of the above decisions, I am of the view that even though the revision petitioners/A-1 and A-2 hold the post of Member Secretary and Adviser in the AICTE, the procedures have been clearly formulated for granting approval, for extension of approval, to increase the intake of students and for introducing new courses and that the A-1 and A-2 cannot take a unilateral decisions in those issues. As discussed supra, the proposal given by A-3 have passed through the various committees constituted for the said purposes and only after the Regional Committee is satisfied with the materials placed by the institution, it will forward the proposal to the AICTE. So, the allegation that A-2 has not filled up certain columns in the Data Sheet does not arise at all and as per the 161 statement of L.W.3/K.A.Bhaskaran and L.W.6/Sanjeev Batra, only they were responsible for preparing the Data Sheet and not the revision petitioner (A-2). Furthermore, on 18.04.2006, when a decision to grant extension was taken by the Committee, A-2 has not joined the duty as Adviser and he joined duty only on 28.04.2006. The act of A-2 in just sending the communication to the College intimating the grant of extension as decided by the then Chairman of AICTE, Prof. Damodar Acharya does not constitute any offence and hence, A-2 cannot be prosecuted. As regards, A-1, though he has retired from service, as per Section 197 CrPC, sanction is necessary before taking cognizance of the offence. Since no prior sanction is obtained, I am of the view that the A-1 cannot be prosecuted.

46. In view of the foregoing discussions, the following conclusions are arrived at by this Court.

1. The alleged offence is said to have taken place between the years 2006 to 2009 and during the said period only The All India Council for Technical Education Act - Regulations 1994 was in force and under the said Regulations there is no penal provision. Only after the All India Council for Technical

Education (Grant of Approvals for Technical Institutions) Regulations, 2010 came into effect on 10.12.2010, the Regulation 13 (Penal Provision) was introduced. However, the same is not applicable to the present case in which the FIR was registered as early as 30.10.2009 itself.

2. Applying the principle laid down in the decision of the Hon'ble Apex Court reported in 2012 (7) SCALE 520, Subramanian Swamy v. A.Raja, there is no prima facie material for constituting the offence of conspiracy.
3. As per the decision of the Hon'ble Apex Court reported in (1996) 10 Supreme Court Cases 193, C.Chenga Reddy and others v. State of A.P., though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter, those acts of omission and commission by themselves do not establish the commission of criminal offences alleged against them. Applying the said ratio decidendi to the facts of the present case, the petitioners cannot be prosecuted.
4. Even though no sanction is necessary to prosecute a retired public servant under Section 19 of the Prevention of Corruption Act, as per the decisions reported in (2012) 3 Supreme Court Cases 64, Subramanian Swamy v. Manmohan singh and Another; 2014 SCC OnLine SC 1019, State of Punjab v. Labh Singh; 2015 SCC OnLine SC 390, D.T.Virupakshappa v. C.Subash, prior sanction is necessary before taking cognizance of the offence under IPC, as per Section 197 CrPC. Hence, A-1 cannot be prosecuted without obtaining sanction.
5. As per the decision made in CrI.R.C.Nos.94, 95, 103 and 104/2013, dated 04.06.2013, mere violations and dereliction of duties on the part of the accused cannot fasten criminal liability. Hence, A-1 and A-2 cannot be prosecuted.
6. Further, on perusal of 161 statement of the witnesses, there is no prima facie material for framing of charges.

However, the Trial Court has failed to consider all the above aspects and hence, the impugned order passed by the Trial Court dated 26.11.2013 made in CrI.M.P.Nos.4329, 7034 of 2012 and 3433 of 2013 is liable to be set aside and it is hereby set aside.

47. In fine,

1. The Criminal Revision Petitions are allowed.
2. The petitioners/A-1, A-2 and A-3 are discharged from the charges laid against them.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

pgp

To

1. The Principal Special Judge for CBI Cases,
Chennai.
2. The Inspector of Police,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai - 600 006.
3. The Director General of Police,
Mylapore, Chennai - 4.
4. The Collector,
Chennai - 1.
5. The Public Prosecutor
High Court, Madras.

- 1 CC to Mc Gan Law Firm, Advocate SR.No. 39214
5 CCs to M/s.Muthumani Doraisamy, Advocate SR.No. 38971
1 CC to Mr.K.Srinivasan, Advocate SR.No. 38800

Criminal Revision Nos.1510, 1533
& 1536 of 2013

TEJ (CO)
PSI (05.08.2015)