

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-07-2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.O.P.Nos.4735, 6255, 7181, 7182 and 7183 of 2015
and
M.P.Nos.1, 1, 2 and 3 of 2015

Sri Manakula Vinayaga Educational
Trust, Puducherry Represented by
M.Dhanasekaran, Founder/Author/
Secretary, No.23, Mariyamman Koil
Street, Madagadipet,
Puducherry-605 107.

... First Petitioner/A-1 in
Crl.OP.4735/2015

Sri Manakula Vinayagar Medical College
and Hospital Represented by
M.Dhanasekaran, Founder/Author/
Secretary, Sri Manakula Vinayaga
Educational Trust,
Kalitheerthalkuppam,
Madagadipet,
Puducherry-605 107.

... Second Petitioner/A-3 in
Crl.OP.4735/2015

M.Dhanasekaran

... Petitioner/A-2 in Crl.OP.6255/2015

Dr.D.Raja Govindan

... Petitioner/A-4 in Crl.OP.7181/2015

Dr.M.C.R.Vyas

... Petitioner/A-6 in Crl.OP.7182/2015

Dr.C.A.Desai

... Petitioner/A-5 in Crl.OP.7183/2015

Vs.

The Deputy Superintendent of Police,
Central Bureau of Investigation,
Special Police Establishment,
Anti Corruption Bureau,

WEB COPY

Shastri Bhavan, Chennai
(Ref.Crime No.RC MA 1 2011 A 0009 dated
12.2.2011)

... Respondent/Complainant in
Crl.OP Nos.4735 & 6255/2015

The Deputy Superintendent of Police,
SPE:CBI:ACB, CHENNAI,
Shastri Bhavan,
Chennai-600 006.

... Respondent/Complainant in
Crl.OP Nos.7181, 7182 & 7183/2015

Crl.O.P.Nos.4735, 6255, 7181 to 7183/15 of 2015 is filed under Section 482 Cr.P.C., to call for the records and to quash the proceedings pending on the file of the learned Special Judge for CBI Cases, Puducherry in C.C.No.1 of 2014 for offences under Section 120-B IPC read with Sections 420, 468 read with Section 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

For Crl.OPs 4735 & 6255/15 : Mr.A.Ramesh,
Senior Counsel for
Mr.C.Arun Kumar.

For Crl.OPs 7181 to 7183/15 : Mr.A.Ramesh,
Senior Counsel for
Mr.L.Swaminathan

For Respondent in all Crl.OPs.: Mr.K.Srinivasan,
Special Public Prosecutor
for CBI Cases.

C O M M O N O R D E R

As all these five Criminal Original petitions are connected on facts and law, they were heard together and are being disposed of by this common order.

2. A-1 to A-6 in C.C.No.1 of 2014 on the file of the learned Special Judge, C.B.I. cases, Puducherry seeks quashment of the entire criminal proceedings in the said case under Section 482 Cr.P.C.

3. The details of the Crl.O.Ps. filed by them are as under:

CRL.O.P.No.	Accused	Name of the accused
4735/2015	(i) A-1	Sri Manakula Vinayaga Educational Trust, Puducherry represented by A-2
	(ii) A-3	(ii) Sri Manakula Vinayagar Medical College & Hospital, Puducherry represented by A-2
6255/2015	A-2	M.Dhanasekaran, Founder/Author & Secretary of A-1 and Managing Director of A-3
7181/2015	A-4	Dr.D.Rajagovindan, Director & Principal of A-3
7182/2015	A-6	Dr.M.C.R.Vyas
7183/2015	A-5	Dr.C.A.Desai

4. In the said case, offences alleged as against A-1 to A-6 are under Sections 120-B r/w 420, 468 r/w 471 I.P.C. and Sec.13(2) r/w 13(1) (d) of Prevention of Corruption Act and the substantive offences thereon.

5. Sri Manakula Vinayaga Educational Trust, Puducherry (A-1) was established in 1998 by M.Dhanasekaran (A-2) to impart medical education through Medical College and A-2 was its Founder, Chairman and Managing Trustee. In 1999, he was replaced by Kesavan.

6. The Government of Pondicherry issued Essentiality Certificate to the Trust to start a Medical College. The Trust applied to the Medical Council of India (hereinafter, in short, 'MCI') for permission. The MCI conducted inspection through Dr.C.A.Desai (A-5) and Dr.M.C.R.Vyas (A-6) and certain other Inspectors. Totally 11 such inspections were conducted.

7. In 2006, the Trust was granted letter of permission to establish A-3 Medical College and Hospital in Kalitheerthalkuppam, Madagadipet, Puducherry to admit 150 students in M.B.B.S. The Course commenced from the academic year 2006-2007. The College is affiliated to Pondicherry University. Out of the 11 Inspections conducted by MCI, A-5 conducted 1st (2005), 3rd (2006) and 7th (2009) at A-3 College and A-5 conducted 4th (2007), 5th (2008) inspection of A-3 College.

8. For renewal of the second, third, fourth and fifth batches, inspection was conducted by MCI through its Inspectors. In 2011, the College was granted permission by MCI to start P.G. Courses. Subsequently also permission was granted to start further

PG Courses. Totally, now 19 PG Courses are being run by the College.

9. Some of the students of A-3 College bagged many ranks and goldmedals in the University Examinations. Some of the students were sent to represent the College in certain International Medical Conferences. Till date, the College is conducting its UG and PG Courses. As on date, the MCI did not discontinued the permission granted to the College.

10. On 12.2.2011, based on some source information, CBI registered an FIR, in RC MA 1 2011 A 0009 as against 11 persons alleging conspiracy, irregularity, cheating, fraud and forgery in obtaining permission from MCI and the Government of India during the period 2003-2010 and it had also cheated the students:

11. In the said F.I.R., following persons have been included:

- (1) Sri Manakula Vinayagar Educational Trust, Madagadipet, Pondicherry;
- (2) M.Dhanasekaran, Secretary, Sri Manakula Vinayagar Educational Trust and Managing Director of Sri Manakula Vinayagar Medical College and Hospital;
- (3) Sri Manakula Vinayagar Medical College and Hospital;
- (4) Dr.Raja Govindan, Dean;
- (5) Dr.C.A.Desai-MCI Inspector, New Delhi;
- (6) Dr.S.B.Agarwal-MCI Inspector, New Delhi;
- (7) Dr.M.C.R.Vyas-MCI Inspector, New Delhi;
- (8) Unknown MCI Inspectors;
- (9) Unknown Officials of Board of Governors in super Session of MCI;
- (10) Unknown Officials of Ministry of Health, Government of Pondicherry; and
- (11) Unknown Officials of Ministry of Health and Family Welfare, Government of India.

12. The CBI conducted investigation, collected materials consisting of statement of witnesses and documents. Ultimately, on

11.12.2012, it had filed Final Report under Section 173(2) Cr.P.C., as against A-1 to A-6. They are as under:

- (1) Sri Manakula Vinayagar Educational Trust, Madagadipet, Pondicherry;
- (2) M.Dhanasekaran, Secretary, Sri Manakula Vinayagar Educational Trust and Managing Director of Sri Manakula Vinayagar Medical College and Hospital;
- (3) Sri Manakula Vinayagar Medical College and Hospital;
- (4) Dr.Raja Govindan, Dean;
- (5) Dr.C.A.Desai-MCI Inspector, New Delhi;
- (6) Dr.M.C.R.Vyas-MCI Inspector, New Delhi.

13. In the said Final Report, as against A-1 (Trust), it is alleged as under:

"Between June 2005 and March 2006, there were 3 inspections in the Medical College and Research Institute. Between April 2007 and June 2010, there was 8 inspections conducted by the Medical Council of India through its Inspectors for the purpose of renewal;

Dr.C.A.Desai (A-5) conducted "Third Inspection" on 4th March 2006 and "Seventh Inspection" on 29th April 2009 at the Medical College (A-3). Dr.M.C.R.Vyas (A-6) conducted "Fourth Inspection" on 20th and 21st April 2007 and "Fifth Inspection" on 11th and 12th April 2008 at the Medical College (A-3);

The above 4 Inspection Reports claimed to have given "Nil Deficiency Report", which was unduly in favour of the Medical College. But remaining 6 Inspection Reports exhibited several deficiencies with regard to the teaching faculties and resident Doctors;

The Educational Trust, Medical College and the MCI Inspectors conspired had with dishonest and fraudulently intention produced false documents and obtained not only permission but also subsequent renewals for conducting the Medical Course. The precise modus operandi alleged are

The Management with a dishonest intention brought Doctors from outstation and made them to appear before the MCI Inspectors as though they

are regular faculties;

The College Management fraudulently and dishonestly prepared false electricity bills in the name of the outstation Doctors to show that as if they are local residents;

The College Management obtained learners Driving Licence from the RTO, Pondicherry for the outstation Doctors to show that as if they are local residents;

The College Management arranged the hotel accommodation for the hired Doctors to deceive the MCI Inspectors and expenditures were met by College;

The Attendance Registers of the Faculty Members were manipulated to suit the need of the Inspection.

The norms required to fulfill the Faculty Members and residents as per the MCI requirements were not complied with still the management to meet with the requirements manipulated the same.

14. The said allegations were imputed as against A-1 (Trust), A-3 (College) and A-2 (Managing Trustee of A-1 and Secretary of A-3). It is also alleged that A-2 sent several letters to MCI and Health Ministry that the requisite norms were fulfilled, knowing fully well that it is not so, false and fabricated documents along with Declaration Forms of Doctors were submitted at the time of MCI Inspection.

15. In the Final Report, as against A-4, namely, Dr.D.Raja Govindan, who is the then Director and Principal of A-3 College, it is alleged as under:-

"..... In furtherance to the criminal conspiracy, Dr.Raja Govindan (A-4) attested photocopies of hundred of false Electricity Bills as if he saw the originals and attached with the Declaration Forms, even without the knowledge of the concerned Doctors. Investigation revealed that in pursuance of Criminal Conspiracy, A-4 used to contact Doctors and convinced them to act as permanent staff of the Institute at the time of MCI Inspections. He used to convince the Doctors that they would be paid hefty amount in the form of 'Retainer Fee' for doing so. He arranged hotel accommodation at Hotel Surguru

and Hotel Corbelli in Puducherry for the Doctors who visited Puducherry only for the purpose of MCI inspection and to pretend as if they were permanent staff. He used to arrange College Buss and vehicles to take the Doctors in bulk to RTO Office, Puducherry and back for obtaining Learners Driving Licence with false local address. He used to issue Staff Quarter Allotment Letters in the names of outstation Doctors to show that they were local residents. With fraudulent and dishonest intention to cheat MCI, A-4 used to obtain signatures of Doctors in the Attendance Registers at one go for the period spanning over month/year together as if they attended the Institute since then

..... Investigation further revealed that with dishonest intention, A-4 used to attach the false Electricity Bills purported to be issued by the Electricity Department, Puducherry with the Declaration Forms of the candidates in order to deceive the MCI. Investigation revealed that he was having full knowledge that the Institute was not having adequate teaching faculty and resident Doctors and inspite of that made MCI to believe otherwise

..... A-2 and A-4 and late N.Kesavan, with the intent to cheat MCI and Government of India, dishonestly used false and fabricated Electricity Bills as genuine knowing well that they were not issued by Electricity Department of Puducherry

..... A-4 conspired together during 2003 to 2010 at Puducherry, New Delhi and other places to cheat the MCI and Government of India and obtained permission/renewal of permission by deceitful means not only by submitting false documents to make it appear as genuine and also by abetting several Doctors practicing elsewhere to appear as permanent faculty members of Sri Manakula Vinayagar Medical College and Hospital.

16. In the Final Report, as against A-5 and A-6, namely, Dr.C.A.Desai and Dr.M.C.R.Vyas, who are permanent Inspectors of MCI,

it is alleged as under:

"..... That in pursuance of criminal conspiracy, A-5 and A-6, in their Inspection Reports projected false figures in favour of the Institute as far as the deficiency of Teaching Faculty and Resident Doctors concerned. Investigation further revealed that the figures projected by the accused MCI Inspectors viz., A-5 and A-6 in their Reports were falsely hiked by them on higher side, to cause undue favour by misusing and abusing their official position as Public Servants.

"Investigation revealed that in furtherance of the criminal conspiracy, A-5 did not allow the other Team Members to affix their signatures on the pages of the Report for the purpose of favouring the College by fraudulent means. Investigation further revealed that two Inspection Report dated 4.3.2006 and 29.4.2009 submitted by A-5 in favour of the College bear signatures of A-5 in all pages, whereas the signature of other two part time Inspectors are not seen on the report except on the first page that constitutes covering letter of the Inspection Report.

"Investigation revealed that the accused MCI Inspectors viz., A-5 (since retired) and Dr.M.C.R.Vyas (since retired) abused their official position as Public Servants by not showing other Team Members to go through vital documents during inspections and by not allowing Team Members to affix their signatures on all pages of the Reports. Further being Public Servants, they submitted false Inspection Reports to cheat MCI and induced the MCI and Government of India to accord permission for admission of MBBS students even though the Institute was having acute staff deficiency.

"..... In pursuance of the said conspiracy, A-5 and A-6 have fulfilled the object of inspection with criminal intention to cheat MCI and failed to discharge their duties by abusing their official position as Public Servants and favoured the Institute to obtain undue pecuniary advantage and also by obtaining permission from MCI and Government of India for admission of MBBS students eventhough requisite MCI norms were not fulfilled"

17. Ultimately, in the Final Report, it is alleged that A-1 to A-6 have committed offences under Section 120-B IPC read with Sections 420, 468 read with Section 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and the substantive offences thereof.

18. The learned Special Judge for CBI Cases, Puducherry, perusing the said Final Report and the documents attached thereto, took cognizance thereon as against A-1 to A-6 in C.C.No.1 of 2014 for the said offences and issued them summons.

19. Under these circumstances, these 5 Crl.OPs, as already detailed in paragraph No.3 (supra) have been filed by A-1 to A-6/petitioners under Section 482 Cr.P.C., to quash the entire criminal proceedings since there is no basis or materials to proceed as against them, it is an abuse of process of the Court, the learned Trial Court without applying its judicial mind, took cognizance thereon, issued summons to them and in the facts and circumstances, the Trial Court ought not to have taken cognizance as against them and thus the entire criminal proceedings is vitiated and they are required to be quashed.

20. In these Crl.OPs., the accused are in three groups, namely, A-1 and A-3 is Trust and College, A-2, an individual stated to to have represented A-1 and A-3, thus, A-1 to A-3 form a group. A-4 is Director and Principal, a staff of A-3 College. He comes under another group. A-5 and A-6 who are permanent Inspectors of MCI (since retired) deputed by MCI to conduct inspection of the College forms one group.

21. Mr.C.Arun Kumar, the learned counsel appeared for A-1 to A-3, while Mr.L.Swaminathan, the learned counsel appeared for A-4 to A-6. Mr.A.Ramesh, learned Senior Counsel has argued for all the three sets of accused.

22. The learned Senior Counsel for the petitioners submitted that taking cognizance under Section 190 Cr.P.C., is a judicial act. The Court should apply its mind on the Final Report and the materials/documents attached thereto and find out whether there is any prima facie case as against the petitioners for the offences alleged based on the materials produced, then alone the Court can take cognizance and issue summons to the accused.

23. The learned Senior Counsel for the petitioners also submitted that consequence of issuing summons under Section 204

Cr.P.C. to the accused has serious repercussion on the personal liberty of the person so summoned. Therefore, there must be basis supported by materials to proceed as against the accused.

24. In this connection, the learned Senior Counsel for the petitioners cited PEPSI FOODS (P) LTD AND ANOTHER VS. SPECIAL JUDICIAL MAGISTRATE {1998 SCC (CRL.) 1400}.

25. The learned Senior Counsel for the petitioners would submit that, however, in this case, even taking the allegations as such in the F.I.R. and in the Final Report and the materials produced in support of the same consisting of statement to witnesses and the documents would not even present a prima facie case as against the accused.

26. The learned Senior Counsel for the petitioners further submitted that the inspections were conducted by the Inspectors deputed by MCI. They have drawn up the Reports. The Pondicherry Government and Pondicherry University also gave necessary permission. Based on MCI report, the Union Health Ministry also granted permission for the first phase and subsequently upto fifth phase, permission was renewed as per the MCI Rules and Regulations. Subsequently, permission was granted to the College to run 19 P.G. Courses. Till date, MCI has not taken any action in connection with any complaint nor any action under the Indian Medical Council Act was initiated against the petitioners or others.

27. The learned Senior Counsel for the petitioners further submitted that under the said Act, MCI has all the powers to take action under Section 8(3)(1) of the Act as against erring College Management and even refuse permission. Further, under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 the MCI got the power to proceed against the erring Medical Professionals charged with professional and other misconduct.

28. The learned Senior counsel for the petitioners submitted that the Medical Council Act is a self-contained Code. It has all the powers to take action against any person and College for violation of its Rules and Regulations. Any violation of Rules and Regulations, if at all, they may be liable for disciplinary action under the said Act and it will not be a base for launching any prosecution. As on date, MCI has not filed any complaint. MCI had not take any action against the Medical Professionals concerned in this case. In such circumstances, the CBI registering FIR, launching prosecution and filing Final Report are vitiated and it is untenable.

29. In support of his submissions, the learned Senior Counsel for the petitioners cited the following decisions:-

- (i) M.C.R. VYAS vs. INSPECTOR OF POLICE, CBI {2014 (4) MLJ (CRL.) 32};
- (ii) STATE REPRESENTED BY CBI/ACB, CHENNAI vs. M.K.RAJAGOPALAN {2014 (3) MLJ (CRL.) 646};
- (iii) ADDITIONAL SUPERINTENDENT OF POLICE, CBI, ACB, CBI/ACB, CHENNAI vs. G.B.ANBALAGAN AND OTHERS {2014 (4) MLJ (CRL.) 279};
- (iv) THE STATE vs. SRI BALAJI VIDYAPEETH DEEMED UNIVERSITY AND OTHERS {MANU/TN/1303/2015};
- (v) THE STATE VS. THIRUMURUGA KIRUPANANDA VARIYAR THAVATHIRU SUNDARA SWAMIGAL MEDICAL EDUCATIONAL AND CHARITABLE TRUST AND OTHERS {MANU/TN/0700/2015}.

30. The learned Senior Counsel for the petitioners further submitted that in the FIR 11 persons were shown as accused, however, in the Final Report, CBI has dropped 5 accused, without any basis or acceptable reasons. Further, Doctors who have given false declaration were also dropped. Further, during the relevant period, besides A-4, other persons also have occupied the post like him. But, they were not proceeded with. Further, Dr.Sushma Vashit, MCI Inspector, during her inspection, indicated some other persons. But they were all let out. A-4 alone was targeted by CBI.

31. The learned Senior Counsel for the petitioners pointed out that as already stated the Officials of the Board of Governors of MCI and the Officials of the Health Ministry and MCI were also dropped.

32. This pick and choose is impermissible in law. And it is not fair investigation. And it is against law. It is mala fide exercise of power of investigation by the Prosecuting Agency.

33. The learned Senior Counsel pointed out that Dr.Naresh Kumar, Dr.Dhananjeya, Dr.Ramesh M.Thamba, Dr.Sanjeev Nanda, Dr.Sukumar, Dr.Sushma Vashist, Dr.Renu Saigal, who have also participated in the MCI inspection. However, they were dropped by the CBI. They were not arrayed as accused.

34. The learned Senior Counsel for the petitioners contended that even as per the prosecution records, A-2 namely, Dhanasekaran was the Founder of A-1 Trust, which runs A-3 College in 1998. In

1999, the Board was reconstituted with Kesavan as its Chairman-cum-Managing Trustee, he was in Office during the relevant period and he died on 6.9.2011, thereafter only, in his place, A-2 came, in such circumstances, implicating A-2 for the alleged act of the deceased Kesavan is unsustainable in law.

35. The learned Senior Counsel for the petitioners also submitted that A-5 and A-6 were alleged to have not permitted the other MCI Inspectors to sign in the Inspection Report. However, Witness No.14, Dr. Amulya Ratna, who was the then Secretary of MCI, New Delhi, has stated that for each inspection, MCI deputed three Inspectors which includes Wholetime Inspector/permanent Inspector. Permanent Inspector alone will sign in the Final page. The other Inspectors have also sign in the Reports and it is not necessary that the other Inspectors should also sign in the enclosures to the report. In such circumstances, allegations made as against A-4 and A-5 has no basis and it is unsustainable in law.

36. The learned Senior Counsel for the petitioners also submitted that the Medical Council Act in Section 30 has got separate machinery to take action against Council and its authorities by nomination. When it is not carried out, its obligations nor of its official business is not conducted in a proper manner an Enquiry Committee consisting of a High Court Judge and also by Council Members can be appointed. Thus, there is a separate machinery to take action against erring Council. In such circumstances, when the Act has got self-contained machinery, the CBI has no power to register a case and if there is any violation of MCI Rules and Regulations, MCI alone can take action and not the CBI.

37. The learned Senior counsel for the petitioners also submitted that A-4 is alleged to have attested the declarations made by certain Doctors as though they are Faculty Members and Resident Doctors. The Doctors did not deny the declarations made by them. There is separate Ethics Committee under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and action can be taken against them. But so far MCI has not taken any action against the said Doctors. CBI also not proceeded against them, however, projected them as witnesses. This is unsustainable in law.

38. The learned Senior Counsel for the petitioners also submitted that Witness Nos.88 to 90 who are Hotel Employees have stated that the Doctors were present at the time of inspection and this has not been controverted.

39. The learned Senior Counsel for the petitioners also

submitted that Witness No.72, staff of Regional Transport Office, in his statement, had stated that the Doctors were present for the purpose of issuing Driving Licences. This has also not been controverted.

40. The learned Senior Counsel for the petitioners also submitted that A-2 having sent letters to the MCI and the Health Ministry that the College is ready for inspection is only an invitation for him to conduct the inspection. It is a routine affair, it is an administrative act.

41. The learned Senior Counsel for the petitioners also submitted that from 2006 to 2011, MCI having granted permission to the UG and PG Courses would show the existence of faculties, infrastructures and facilities available in the College. Thus, it would show that in between the initial inspection, subsequent and final inspection already made the existing infrastructure facilities will not vanish.

42. The learned Senior Counsel for the petitioners also submitted that A-1 is a Trust and A-3 is a College. They are inanimate bodies. They are not 'persons' under Section 11 of the Indian Penal Code. The offence of conspiracy, cheating, fraud, etc. requires 'mens rea' (guilty mind). The offence of misconduct under PC Act also requires similar mental element. Inanimate bodies like A-1 and A-3 are incapable of having mind and soul to commit such offences requiring intention/mens rea. Therefore, their prosecution is vitiated.

43. The learned Senior Counsel for the petitioners contended that the offence of conspiracy under Section 120-B IPC requires when, where and under what circumstances conspiracy was hatched. Sections 120-B, 420, 468, 471 IPC commences with the phrase 'whoever commits'. Therefore, the person who has conspired with the other to commit cheating, forgery has to be clearly identified. But, in this case, it is not so identified in the materials presented by the prosecution. The allegations made in the Final Report not constitute the offences alleged, namely, Sections 120-B, 420, 468, 471 and Section 13(2) read with Section 13(1)(d) of the PC Act.

44. The learned Senior Counsel for the petitioners also submitted that there is no basis for A-4 having fabricated any Declaration Form or document. With regard to a document, which is alleged to have been forged, a person has to speak as to who has signed, committed the act of forgery. Further the document must have been examined by a Document Expert, he should have compared it with

admitted documents and there should have been relevant materials with regard to fabrication of documents and the writings therein.

45. The learned Senior Counsel for the petitioners submitted that, in this case, no such expert's report. Further, the genuineness of the Declaration Forms filled up by the Doctors to show that they are Resident Faculty Members have not been denied by the concerned doctors. In such circumstances, no question of impersonation will arise. Further, their such genuine statements in the declaration being attested by A-4 will not be an incriminating aspects. Further, who has fabricated, who has manufactured, when and where it was done, in connivance with whom it was done are required to be stated. But no such averments, no such materials.

46. The learned Senior Counsel for the petitioners in support of his submissions also cited T.G.L. GROUNDNUT CORPORATION VS. AGRICULTURE MARKET COMMITTEE {1985 (1) APLJ 368} AND K.S.NARAYANAN AND OTHERS VS. S.GOPINATHAN {1982 CRL.LJ 1611}.

47. On the other hand, the learned Special Public Prosecutor for CBI cases submitted that A-1 to A-6 have conspired together, produced false documents and made MCI and the Central Government to grant permission to start Medical Courses in A-3 Medical College. The required Faculty Members, Resident doctors were not only shown, but also not maintained in the College. Just to make a belief Faculty Members were made to present during the inspection. They have cheated the authorities and made the students to believe the same and suffer.

48. The learned Special Public Prosecutor further submitted that fake electricity bills, driving licence to show that the faculty is resident doctors have been produced. Witness No.28, Dr.K.Manoharan stated that the Electricity Bill attached to his declaration is false. Witness No.31, Dr.G.Krishnan and Witness No.32, R.Sanjeev Sekaran have stated that the Electricity Bills attached to the required declarations are false.

49. Witness No.33, Subramanian, Witness No.34, P.Buavaneshwari, staff of Electricity Department also stated that the Electricity Bills are false. Witness Meenatchi Jayamala also stated so.

50. Learned Special Public Prosecutor submitted that Witness Nos.35 to 37 who are Doctors have stated that they have not seen Dr.Sivaprakasam, an Associate Professor, mentioned in the Declaration Form.

51. The learned Special Public Prosecutor submitted that Witness No.62, Dr.Sanjeevi Nanda, stated that A-5 did not allow him to affix his signatures in all the pages of the Inspection Report. Witness No.63, Dr.Susma Vashit also after verifying the Attendance Registers, stated that there is acute shortage of the staff teaching faculty as Resident Doctors.

52. The learned Special Public Prosecutor further submitted that Witness No.24, J.Muthukrishnan stated that Dr.Mukesh Batra never resided in his house and Witness No.25, Manickam stated that the residential address furnished by Dr.Mahesh Kumar Shukla is false. The students have given statement that they have not seen some of the Doctors and some of the Doctors mentioned have not taken classes to them.

53. The learned Special Public Prosecutor submitted that when there is strong suspicion against the persons, charges have to be framed against the accused. The learned Special Public Prosecutor submitted that under Section 482 Cr.P.C., the Court cannot evaluate the evidence.

54. In this connection, the learned Special Public Prosecutor for CBI cited AMIT KAPOOR vs. RAMESH CHANDER AND ANOTHER {2012 (9) SCC 460}.

55. The learned Special Public Prosecutor also submitted that in a single transaction when there are distinct offences under two enactments, one under local enactment and the another under Indian Penal Code, with reference to IPC offences, an FIR may be registered and prosecution may be launched.

56. In this connection, the learned Special Public Prosecutor cited STATE OF NCT OF DELHI vs. SANJAY {AIR 2015 SC 75}.

57. In reply, the learned Senior Counsel for the petitioners submitted that in Sanjay (supra), prosecution was initiated under the Mines and Minerals Act. There is provision for launching a complaint and the complaint should be filed by an Authorised Officer. There is provision for launching the case, however, under the MCI Act and the Rules and Regulations framed thereunder, there is no separate provision for making a complaint or launching prosecution. On the contrary, MCI Act is a self-contained Code. It has got separate machinery to take action against erring College Management and Medical professionals who indulge in malpractice in obtaining permission and also there is separate provision for taking action against them and the Central Government can take action against the

Council Members, when they are not performing their function properly. In such circumstances, the prosecution launched for the alleged violation of Rules and Regulations of MCI is not maintainable.

58. The learned Senior Counsel for the petitioners submitted that such a view has been taken by this Court in M.C.R. VYAS VS. INSPECTOR OF POLICE, CBI{2014 (4) MLJ (CRL.)32}. As on date, this has not been challenged by the CBI before the Supreme Court by way of SLP and the decision in M.C.R.VYAS (supra) also has been followed in subsequent cases by this Court. Thus, Sanjay is not applicable to this case and it is distinguishable on facts.

59. I have anxiously considered the rival submissions, perused the averments in the criminal O.Ps., counters filed by the prosecution and the decisions cited by both sides.

60. In the circumstances, these criminal O.Ps. have been filed under Section 482 Cr.P.C. seeking quashment of the entire criminal proceedings in C.C.No.1 of 2014 pending on the file of the learned Special Judge, C.B.I. Cases, Puducherry. Already, elaborately we have seen the details of the case filed against them and the role assigned to each and the allegations made against them. In short, they were alleged to have committed some malpractices in obtaining permission from the Medical Council of India and the Central Government to conduct M.B.B.S. Course in A-3 College run by A-1 Trust and A-2 was at the helm of affairs and further A-4 gave them assistance and A-5 and A-6, MCI permanent Inspectors were also party to that.

61. Section 482 Cr.P.C. runs as under:

'482. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.'

62. Section 482 Cr.P.C. is intended 'to do justice and to undo injustice'. It is to prevent abuse of process of any Court or otherwise to secure the ends of justice. This inherent power has been conferred on the High Courts.

63. It is pertinent to note here the following observations

of this Court made in Dr.MCR.VYAS AND OTHERS VS. INSPECTOR OF POLICE, CBI, ANTI CORRUPTION BRANCH, CHENNAI (2014)4 MLJ (CRL) 32)

13. Before dealing with the merits of the petitions for quashing the criminal proceedings, it is necessary to consider the nature and scope of the inherent power of the High Court under Section 482 of Cr.PC. The said Section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at the stage of framing charges against the accused. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

14. The Honourable Supreme Court has discussed in its earliest decision reported in 1960-SC-866 (R.P.Kapur Vs. State of Punjab) the nature, scope and ambit of High Court's power under Section 482 of Cr.PC and envisaged three circumstances, under which the inherent jurisdiction may be exercised viz.

(i) There may be cases where it may be possible for the High Court to take the view that Institution or continuance of criminal proceedings against an accused person may amount to the abuse of process of the court or that quashing the impugned proceedings would serve the ends of justice,

(ii) if the criminal proceedings in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the Institution or continuance of the said proceedings, the High Court would be justified in quashing the proceedings on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category,

(iii) Cases may also arise where the allegations in the First Information Report or

the complaint even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter of merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused persons,

(iv) A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In the cases falling under this category, the allegations made against the accused persons do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between cases where there is no legal evidence or where there is evidence, which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on appreciation may or may not support the accusation question.

15. In exercising its jurisdiction under Section 482 of Cr.PC, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the Magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on reasonable appreciation of the evidence, accusation made against the accused would not be sustained.

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20. In State of Karnataka Vs. Munusamy (1977-2-SCC-699), the Honourable Supreme Court has said that in the exercise of the wholesome power under Section 482 of Cr.PC, the High Court is entitled to quash a proceeding, if it comes to

the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings are to be quashed.

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23. In *Sathish Mehra Vs. Delhi Administration*, a two Judges Bench judgement reported in 1996-9-SCC-766, it was held that the Trial Court has powers to consider even materials which the accused may produce at the stage of framing of charges. Whereas in *Superintendent and Remembrancer of Legal Affairs, WB Vs. Anil Kumar Bhujra* (1979-4-SCC-274) and *State of Bihar Vs. Ramesh Sujh* (1977-4-SCC-39) it was observed that at the time of framing a charge, the Trial Court can consider only the material placed before it by the investigating agency there being no requirement in law for the court to, at that stage, either give an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage. But, having regard to the views expressed in *Sathish Mehra's Case*, the matter was referred to a larger Bench. The larger Bench, namely, a three Judges Bench of the Honourable Supreme Court in *State of Orissa Vs. Debendra Nath Padhi* (2005-1-SCC-568) held that the view expressed in *Sathish Mehra's Case* (2000-6-SCC-338) holding that the Trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

24. However, in paragraph 29 of the judgement, it accepted the arguments advanced on behalf of the accused that the width of the powers of the High Court under Section 482 of Cr.PC is unlimited and the High Court can consider the materials produced by the accused which is of unimpeachable character of sterling quality and pass such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. The larger Bench made a conscious distinction between a proceeding under Section 227 of Cr.PC before the Trial Court and a proceeding under Section

482 of Cr.PC and made a reference to the court's power to consider material other than those produced by the Prosecution in a proceeding under Section 482 of Cr.PC. In a later decision of the Honourable Supreme Court rendered in the case of Rukmini Narvekar Vs. Vijaya Satardekar and others (2008-14-SCC-1) the Honourable Supreme Court referred to the larger Bench decision in approval of the view expressed therein.

25. The question that yet remains for consideration in this case is whether there are materials of unimpeachable character of sterling quality which convincingly demonstrate that the essential ingredients of the offence charged are missing and the very essentials were non-existent."

64. AMIT KAPOOR VS RAMESHCHANDER AND ANOTHER (2012)9 SCC 460) cited by the learned Special Public Prosecutor, CBI cases deals with discharge petition filed by the accused and framing of charges against the accused and revisional jurisdiction of Sessions Court and High Court under Section 397 Cr.P.C.

65. Petitioners seeks quashing of criminal proceedings under Section 482 Cr.P.C. The ambit, purport and scope of Section 397 and 482 Cr.P.C. are different. Of course, sometimes they may overlap.

66. In AMIT KAPOOR (supra), the Court also dealt with the scope of power of High court under Section 482 Cr.P.C.

67. In AMIT KAPOOR (supra), the Hon'ble Supreme Court observed as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked

where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

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20. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the Section does not specifically use the expression prevent abuse of process of any court or otherwise to secure the ends of justice, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers

because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor & Ors. v. State of Punjab & Ors.* [AIR 1980 SC 258 : (1980) 1 SCC 43]]. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the courts jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final

disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

22. In *Dinesh Dutt Joshi v. State of Rajasthan & Anr.* [(2001) 8 SCC 570], the Court held that: (SCC p.573, para 6)

'6.....(Section 482) does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As lacunae are sometimes found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are, however, required to be reserved as far as possible for extraordinary cases.'

23. In *Janata Dal v. H.S. Chowdhary & Ors.* [(1992) 4 SCC 305], the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

24. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details : As far back as in 1926, a Division bench of this Court in *Re: Llewelyn Evans*, took the view that the provisions of

Section 561A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any Court. Explaining the word process, the Court said that it was a general word, meaning in effect anything done by the Court. Explaining the limitations and scope of Section 561A, the Court referred to inherent jurisdiction, to prevent abuse of process and to secure the ends of justice which are terms incapable of having a precise definition or enumeration, and capable, at the most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.

25. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents

submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

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27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so

patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.'

68. Now, keeping the ambit, purport and scope of Section 482 Cr.P.C., let us proceed to approach the case at our and.

69. The period of allegations mentioned in the F.I.R. is 2003-2010. As per the prosecution record, the Trust (A-1) was founded in 1998. In 1999, the Board of the Trust was reconstituted. Thereafter, upto his death on 6.9.2011, N.Kesavan was Chairman and Managing Director of the Trust (A-1). He has been named in the F.I.R. and the main allegations also have been made against him. He passed away in 2011. Only in 2011, A-2 became the Chairman and Managing Trustee. He came to the helm of affairs after Kesavan. The period of allegations commences from 2003-2010. In such circumstances, even as per the materials produced by the prosecution roping A-2 in this case will not arise.

70. In the F.I.R. 11 persons were shown as accused. One of them is Dr.S.B.Agarwal.He also acted as MCI Inspector. He is on par with A-5 and A-6.Besides that as per the report of Dr.Sushma Vashist, Whole Time Inspector,MCI who conducted 11th inspection,certain officials of Board of Governors of MCI have been indicted.Further, even in the F.I.R. and the prosecution materials,it is alleged that officials of the Puducherry Health Ministry and also the Central Government officials are involved in this matter.However, in the FinalReport except A-5 and A-6 others were left out.They were dropped.

71. A-4 is a College staff. He is alleged to have connived

with other accused in producing declaration of doctors as Resident Doctors during the inspection. The doctors have filed their declaration forms. During the period 2003-2010 besides A-4, Dr.M.Govindasamy from 1.1.2005 to 10.2.2006, Dr.M.Sundaravalli from 10.2.2006 to 26.2.2008 and Dr.Shaw Nawaz Khan from 5.12.2005 to 25.4.2008 have occupied the post of Dean. But except A-4 none of them have been included in the case.

72. Certain doctors have filled the prescribed declaration forms to the effect that they are faculty members of the College, Resident Doctors. They are not bogus doctors. They did not deny that they made the declarations. However, they were left out in the Final Report. On the contrary, it is surprising that these accomplices were shown as witnesses. They were projected as witnesses against the other accused.

73. Prosecution Agency registered F.I.R. which included 11 persons as accused. However, it has adopted pick and choose method. It had picked up A-1 to A-6 alone and dropped the others. It is not fair investigation. It is one sided. It is not proper.

74. It is pertinent to note that Dr.S.B.Agarwal has been left out from the charges. Along with A-5, Dr.Naresh Gupta, Dr.Dhananjay, Dr.Ramesh, Dr.M.Tambat and Dr.Sanjive Nanda have inspected the College during the relevant period and along with A-6 Dr.P.Dileepan, Dr.Dhananjai and Dr.R.Sukumar and Dr.Biswajit Biswas have also inspected the College. They have also signed the inspection report. But they were left out.

75. In this connection, it is pertinent to note the following observations of this Court made in Dr.M.C.R.VYAS (supra):

''35. In the instant case, as already discussed, the Ministry of Health and Family Welfare has granted permission to establish a Medical College and till date the said permission has not been withdrawn. On the other hand, the members of the Ad hoc Committee appointed by the Honourable Supreme Court and of the Executive Committee of the Council had considered the Council's Inspector's report dated 18th and 19th April 2007 and decided to recommend to the Central Government to renew the permission of 2nd batch of 150 MBBS students at the Institute for the academic year 2007-2008. During currency of the allegation even after registration of First Information Report the Central Government upon

consideration of the recommendation dated 10.2.2010 of the Medical Council, accompanied by the Inspection report on the inspection made on 28th and 29th granted renewal of permission in the fifth batch of MBBS Course for the academic year 2010-2011 on the basis that most of the norms prescribed had been complied with. In fact, the Union of India expressly stated in the counter filed by it in Cr.OP.No.19154/2010 that there was no review of the approval granted to the Petitioner. More significantly, the Medical Council of India by letter dated 24.12.2012 appoints Dr.MCR.Vyas (A6), Dr.Dhananjay and Dr.P.Dileepan to carry out the inspection of the Petitioner's Institute for the purpose of renewal of permission for admission of 3rd batch of MBBS students for the academic year 2008-2009. For the academic year 2009-2010, Dr.K.Ravi and Dr.Yamini Trivedi along with A6 Dr.M.C.R.Vyas have been appointed as Inspectors and Dr.K.Ravi and Dr.Yamini are neither shown as witness nor arrayed as an accused. In fact, all the three jointly conducted the inspection and the report thereon is signed by all those three inspectors. Like wise for the academic year 2010-2011, Dr.Agarwal (A8), Dr.Kirti Debey and Dr.Shilpa Rao, have jointly conducted inspection of the Petitioner's Institute, but however, except Dr.Agarwal, the other two Doctors who jointly carried out the inspection are neither shown as witness nor as an accused.

36. Mr.Abdukumar Rajarathinam, the learned counsel appearing for some of the Petitioners, contended that the Respondent/CBI had charge sheeted the accused persons in a pick and choose manner. The learned counsel pointed out to the inspection reports jointly submitted by the Inspectors for the academic period in question, i.e. for 2008-2009, 2009-2010 and that the other Inspectors were not made as accused though they had inspected the College jointly and further pointed out that they had also signed the report. I see every force in the contention made by the learned counsel.

37. As per Section 17 of the India Medical Council Act 1956, the Committee shall appoint such

member of medical Inspectors for inspecting any medical Institution. As per Regulations 2(e), 59 (3), 59(5), 59(6) (a) (i), 59(6) (b) (ii), 59(7) and 59(11) of the Medical Council of India Regulations 2000, not less than three Inspectors should be appointed by the Executive Committee for inspection of medical Colleges and after joint inspection, their report shall be sent to the Executive Committee for its consideration and reporting to the Council. Further, after approval by the Council, the report sent by the Inspectors shall be forwarded to the Central Government for its action. Therefore, inspection of a Medical College is conducted by three Inspectors and their joint report is sent to the Medical Council and thereafter to Central Government for consideration of approval/ renewal of Medical College. In the instant case, admittedly, Dr.Dhananjay and Dr.P.Dileepan (who jointly inspected with A6 Dr.MCR.Vyas) for academic year 2008-2009 and Dr.K.Ravi and Dr.Yamini Trivedi (who jointly inspected with A6) for academic year 2009-2010 were not made as accused, although admittedly they jointly carried out the inspection and signed the inspection report. Similarly, Dr.Kirti Dubey and Dr.Shilpa rao (who jointly inspected with A8 Dr.Agarwal) were not made as accused. It is highly inconceivable without their knowledge A6 and A8 would have hatched conspiracy. It is important to note that those Doctors who have accompanied A6 and A8 during their respective inspection were not even enquired into and cited as a witness in this case which clearly suggest biased investigation done by the investigating agency. At this juncture, it becomes necessary to refer to the statement of LW.139 Dr.Amulya Navin Chandra Setalvad, the then Secretary, MCI, which would clearly indicate that only those Doctors who accompanied A6 and A8 during inspection were entrusted with the work of verifying the declaration forms (which according to the Prosecution is forged one) and they were responsible for any omission committed in that regard. For better appreciation, the relevant portion in her further statement recorded on 7.4.2011 is extracted below:-

'As seen from the declaration forms, Dr.Kirti Dubey and Dr.Shilpa Rao have been entrusted with the work of verifying the declaration forms. While conducting inspection, Dr.Kirti Dubey and Dr.Shilpa Rao failed to verify the bona fideness of the faculty members available/present in the Medical College and also failed to verify/check whether the signatures of the faculty members of the Medical College in the declaration forms are identical and genuine. It is mandatory as per the prevalent norms of the Medical College of India that these Inspectors should obtain the signatures of the faculty members in their presence, either in the Attendance sheet or in the declaration form at the time of inspection, to verify the same with the signatures of the said faculty already seen in the declaration forms, received at the MCI earlier. In the instant case, though they have obtained the signatures of the faculty members in the Attendance Sheets dated 28.1.2010 as well as in the declaration forms, they failed to verify the signatures obtained in their presence with the signatures of the faculty members already available in the declaration forms. It is a gross misconduct committed by these MCI Inspectors by their negligence. Dr.S.B.Agarwal the whole time Inspector of MCI who was leading the inspection team should have ensured the same as he has more say being the leader of the inspection team, which he has failed miserably.'

It is strange that the other Doctors who have conducted joint inspection and had signed the Report jointly were not even enquired into and cited as a witness. The Investigating Officer having found that there is a joint report by all the three Inspectors should have at least made an effort at investigating the cause and the circumstances resulting in the joint report and further whether they had any positive role. Not only the Investigating Officer did not do so, he did not even make an attempt at recording the statement of the Doctors. When there is soft pedalling in the investigation in respect of the

Doctors who were similarly placed throws doubt on the impartiality of the investigating agency.''

76. The above view of this Court in MCR VYAS (supra) also has been followed in STATE VS, M.K.RAJAGOPALAN (2014(3) MLJ (CRL.) 646), STATE VS. G.ANBALAGAN (2014(4) MLJ (CRL) 279) and also in STATE VS. THIRUMURUGA KIRUPANANDA VARIYAR THAVATHIRU SUNDARA SWAMIGAL MEDICAL EDUCATIONAL AND CHARITABLE TRUST AND OTHERS (MANU/TN/0700/2015) and SRI BALAJI VIDYAPEETH DEEMED UNIVERSITY AND OTHERS (MANU/TN/1303/2015).

77. It is alleged that A-5 and A-6 have not permitted the other MCI Inspectors to sign in the enclosures. In this connection, witness No.14 Dr.Amulya Ratna N.Setalvad, the then Secretary, MCI, New Delhi had stated that each inspection will consist of 3 Inspectors and the report will be signed by them and it is not forwarding letter and report will have the signatures of the 3 MCI Inspectors. Enclosures will bear the signatures of Wholetime Inspectors. Thus, it is not necessary that all the Inspectors also should sign in the enclosures. It is pertinent to note that in the present case A-5 and A6 have signed in the enclosures to the Inspection Report. Thus, the allegations made as against A-4 and A-5 in this regard is unpalatable and has no basis.

78. Dr.Sushma Vashit, Wholetime Inspector conducted inspection for the 5th batch of MBBS. Subsequently, in different phases, permission has been given to this College to start 19 PG courses. Subsequent to the inspection by A-4, A-5 also renewal has been granted by Central Government based on the MCI report. In such circumstances, it would be against common sense that the infrastructure facilities and other items present in those inspection before or subsequently seized to exist. This emanates from the materials presented by the prosecution itself. It shakes the very basis of the prosecution case.

79. Doctors have filled up the declaration forms. In their statement they did not deny that they are faculty members, they are resident doctors. They have also furnished their residential address. Witness No.72 stated about the doctors presented for the purpose of issuing driving licences.

80. Witness Nos.88 to 90, who are employed in certain Hotels have stated about the doctors present during inspection time. There is no dispute that the doctors were counted during the inspection by the MCI Inspectors. A-4 has attested the declaration forms of those doctors in his administrative capacity. The witnesses from the

electricity department did not link falsity of the bills to A-4. So also is the statement of the students. There is no legally acceptable materials for these allegations.

81. It is alleged that A-1 to A-6 have conspired together to commit certain offences. Conspiracy is the main base for the alleged commission of the offences. Conspiracy is defined in Section 120-A I.P.C. It is punishable under Section 120-B IPC. It is an unlawful pact to do an illegal act, it may also be an unlawful agreement to do a legal act in an illegal manner. Further, the alleged offences viz., Section 420, 120-B, 468 and 471 of I.P.C. commences as under:

SL.No	Section	Commencing Words
1	420 IPC	Whoever commits.....
2	120-B IPC	Whoever is a party
3	468 IPC	Whoever commits.....
4	471 IPC	Whoever fraudulently or dishonestly.....

82. Thus, the said offences requires mens rea (mental element). An inanimate body like A-1 Trust College cannot commit this offence because it has no animus (mental element), soul or body. A-3 College is an off-shoot of A-1. A-3 is also like A-1. There is no specific provision in Section 11 I.P.C. to punish A-2 or others for the alleged commission of such type of offences by A-1 and A-3. The reasons are obvious. In such circumstances, impleading A-1 and A-3 is unsustainable.

83. There must be materials to show that when, where, in what manner, the accused persons have conspired together. But, in this case, no such materials.

84. Declaration forms produced by certain doctors have been referred as fabricated documents in this case. It is not stated that they are bogus documents. It is not stated that those Doctors have impersonated others by producing those documents. There is no allegation with respect to those documents that either A-4 or other accused have committed impersonation.

85. For forgery, using forged instrument as genuine there must be materials to show that they were examined by document expert and compared with admitted signatures, writings of the persons/accused concerned and the Document Expert's Report have to be obtained. Further, there must be witnesses to show that they have witnessed the forging or fabricating of the documents at such and

such time, by such and such persons, in such and such manner. But, no materials to that effect.

86. In this connection, it is relevant to note the following observations of this Court made in Dr.M.C.R.VYAS (supra):

"71. In respect of the allegations of attestation of declaration forms by A2, A7 and preparation of form 16 by A5, the same would not attract an offence of forgery. The Honourable Supreme Court in Mohammed Ibrahim and others Vs.State of Bihar and another (2009-8-SCC-751) in paragraphs 9 to 17 and 23 to 28 dealt with the ingredients of forgery and held that if a person executes a document without impersonating another person, then the said document could not be defined as false document and therefore, the ingredients of forgery is not attracted against the person who executed the document. It is held as follows:-

9. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under Section 467 or Section 471 of Penal Code.

10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two Sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to

commit fraud or that the fraud may be 6 committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record; (d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document

in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]."

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:

(1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

(2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

(3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person

claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. 24. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract.

25. In *Dr. Vimla vs. Delhi Administration* - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or

advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

The above definition was in essence reiterated in State of UP vs. Ranjit Singh - 1999 (2) SCC 617.

26. The Penal Code however defines 'fraudulently', an adjective form of the word 'fraud', in Section 25, as follows :

"25. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise".

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows :- "24. 'Dishonestly'- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly".

28. To 'defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (sec.206, 421, 424)

(ii) Fraudulent claim to property to prevent seizure (sec. 207).

(iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin (sec.239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (sec. 246 to 253)

(vi) Fraudulent acts relating to stamps (sec. 261-261)

(vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)

(viii) Cheating (sec. 415 to 420) (ix)

Fraudulent prevention of debt being available to creditors (sec. 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).

(xi) Forgery making or executing a false document (sec. 463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)

(xiii) Fraudulently going through marriage ceremony (sec.496). It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law."

87. F.I.R. has been registered by C.B.I. based on certain source information on 12.2.2011. There was no complaint lodged by MCI. There was no complaint lodged by Health Ministry of Puducherry or of Central Government or by Pondicherry University. As on date, no complaint as against the accused by MCI or others.

88. The sum and substance of the allegations made against the accused are that they have furnished incorrect information to the MCI during MCI inspection. It is alleged that it is with a view to secure permission for Medical Courses by producing declaration of some doctors as they are Resident Doctors, produced certain electricity bills, driving licence to show that they are residing doctors and there is improper performance of duties by A-5 and A-6, who are permanent MCI Inspectors and also certain administrative lapses on the part of A-4, a staff of the Medical College and A-2 was stated to be at the helm of affairs of A-1 Trust and A-3 College.

89. Under the Indian Medical Council Act, 1956 Medical Colleges are established. The Medical Council of India Regulations, 2000 has been framed. It prescribes procedure by which MCI permission and permission of the Central Government through MCI and subsequent inspection for renewal have to be obtained. This is for U.G. and P.G. Courses. If there is any violation thereto power has been given to MCI to take action against the erring persons.

90. Further, if a Doctor makes any false declaration, he can be proceeded with by the Ethics committee of the MCI constituted under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Further, under the said Act, Central Government also has been given the power to take action against erring person by appointing enquiry committee headed by High Court Judge to inquire into the irregularities, if any committed. However, in the present case, no such action by MCI or by the Central Government or by Puducherry Government.

91. The Indian Medical Council Act is a self-contained Code. There is separate scheme to enquire into the allegations as against the Medical Colleges and also particular type of action to be taken against them. But, no penal provision for prosecution for violation of the Rules and Regulations of MCI. Thus, the idea is not to make these lapses as offences. Thus, it will not amount to commission of offence.

92. In this connection, it is pertinent to note the following the observations of this Court made in Dr.M.C.R.VYAS (supra):

"27. Establishment of a New Medical College is governed under Section 10A of the Indian Medical Council Act, 1956. Section 10A, which provides for terms and conditions to be fulfilled before starting or establishing a Medical College or starting higher courses, makes it clear that what is postulated thereunder is evaluation of application made by the Institution concerned by the Central Government in the first instance and then forwarding the same to the Medical Council of India for its further examination. As observed by the Honourable Supreme Court in Medical Council of India Vs. Rajiv Gandhi University of Health Sciences (AIR-2004-SC-2603) there are various steps envisaged under the scheme such as (a) issuance of letter of intent by the Central Government on the recommendation of the Council; (b) issuance of letter of permission by the Central Government on the recommendation of the Council for starting admissions; (c) issuance of annual renewal to be granted by the Central Government on the recommendation of the Council; (d) at the stage of the 1st batch of students admitted in MBBS Course go for final year examination, grant of formal recognition by the Central Government on the permission of 1st batch of students, any College fails to fulfil the minimum norms in any successive year, as per the statutory regulations, further admissions are liable to be stopped at any stage. 28. Therefore, for establishment of a new Medical College, the proposed College has to necessarily have proper facilities, infrastructure faculties and other requirements as provided under Section 10A(7) of the Act. There is no dispute that such permission

for establishment of a Medical College was granted on 5.6.2006 in the instant case for the academic year 2006-2007 pursuant to the recommendation of the Ad hoc Executive Committee of the Medical Council of India to the Ministry of Health and Family Welfare. The Honourable Supreme Court in Civil Appeal No.599/2002 by its order dated 2.11.2002 decided to appoint a Monitory Committee to assist and monitor the work of the Medical Council of India and appointed four eminent Doctors namely Dr.N.Rangabhashyam of Chennai, Professor P.N.Tandon of New Delhi, Dr. (Mrs.)S.Kantha of Bangalore, as members of Ad hoc Committee who along with the Executive Committee of the Medical Council of India recommended to the Ministry of Health and Family Welfare and the permission for establishment of Medical College was granted on 5.6.2006 after thorough inspection of the College and the relevant documents namely, the order of the Honourable Supreme Court dated 2.11.2002, letter of permission from Ministry of Health and Family Welfare dated 5.6.2006 which are filed in the common typed set filed by the Petitioners.

29.....

30. Thereafter, under the Ordinance dated 15.5.2010 Board of Governors appointed by the Central Government superseded the Medical Council and the Central Government assigned all its powers of granting, renewing or refusing permission to Medical Colleges to the Board of Governors. In Cr.OP.No.19154/2010 filed by A1 to quash the First Information Report, counter has been filed by the Ministry of Health and Family Welfare wherein it has been stated as extracted below:- ?.

''3. I respectfully submit that the recommendations, on which decisions had been taken by the Central Government prior to promulgation of Indian Medical Council (Amendment) Ordinance 2010 dated 15.5.2010 have not been reviewed and only those recommendations which were pending with the 1st Respondent/CBI as on 15.5.2010 were sent to the Board of Governors, Medical Council of India for their consideration and decision as

per the provisions made in the above said Ordinance. I submit that in the case of Petitioner, no review of the approval for admission for the academic year 2010-2011 granted by this Respondent /CBI was undertaken or recommended since the same was accorded prior to promulgation of Indian Medical Council (Amendment) Ordinance 2010).

31. It is submitted by the learned senior counsel for the Petitioners that had there been any conspiracy or cheating on the part of the Petitioners College, the Ministry of Health and Family Welfare would not have stated that no review of the approval for the College was undertaken or recommended. It is further pointed out by the learned counsel for the Petitioners that after inspection by the Inspectors appointed by the Board of Governors, permission was granted on 11.5.2011 for starting higher course, namely MD (Bio Chemistry) Course. The letter of permission dated 11.5.2011 addressed to the Dean/Principal of Sri Lakshmi Narayan Institute of Medical Science shows that the permission has been granted by the Board of Governors for starting of MD (Biochemistry) Course for the academic year 2011-2012 under Section 10A of the Medical Council of India Act, 1956. Similarly, permission has been granted by the Board of Governors on 11.5.2011 for starting MD (Physiology) Course to the Petitioner's College. That apart, after due inspection of the College by the Inspectors appointed by the Board of Governors of Medical Council of India and based on the recommendation of the Board of Governors, who took charge of the Medical Council of India, the Ministry of Health and Family Welfare recognised the College as established Medical College under the affiliation of Bharat University and had issued notification to that effect on 11.7.2011.

32. It is alleged that the Petitioners conspired together and cheated Medical Council of India and the Ministry of Health and Family Welfare for renewal of permission for the academic years 2008-2009, 2009-2010 and 2010-2011. The documents referred to above are all

public documents and there cannot be any doubt that they are unimpeachable documents. No mala fide or motive is alleged against the authorities concerned. When the College was granted permission without any kind of allegation for establishment of College for the academic year 2006-2007 and for subsequent renewal of permission for the academic year 2007-2008, why should there be a necessity for the College to cheat the Medical Council of India or Ministry of Health and Family Welfare for the academic years 2008-2009, 2009-2010 and 2010-2011. The faculties, infrastructure and facilities which were available earlier in the College cannot vanish during the subsequent academic years. Moreover, it is an admitted fact that the Board of Governors specially constituted by the Central Government subsequent to the allegations made by the Respondent/CBI had inspected and recommended the College to be declared as a recognised Medical College to the Central Government.

33. Looking into the aforesaid materials/documents, which in my opinion, are of unimpeachable in other words undisputable documents, whereupon approval and renewal had been granted and subsequently the Petitioner's Institution being awarded a Recognised Medical College which related to the period before and after the allegations attributed against the accused person would only suggest non existence of any conspiracy. 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 it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence, have to be considered to decide about the complicity of the accused.

57 Mr.R.Thiagarajan, the learned senior counsel further urged that the various provisions of the Indian Medical Council Act, 1956 would make it clear that the Regulation framed thereunder have a statutory force and are mandatory in nature providing for every

contingency regarding the running of medical Institution. Therefore, he would contend that Act being a complete code by itself, 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. He drew the attention of this court to the various provisions of the Act in that regard.

58. In order to appreciate the submissions of the learned senior counsel, it is necessary to refer to the relevant provisions of Medical Council of India Act.

59. Under Section 10A, it is the Central Government which is the authority empowered either to grant or refuse to grant for starting any Medical College or for any increase in the intake. The Medical Council constituted under Section 3 of the Medical Council of India Act is the recommendatory body recommending to the Central Government for the approval or disapproval of the permission required for starting and running the medical Institution. Section 19 of the Act provides for withdrawal of recommendation when the staff, equipments, accommodation, training and other facilities for instructions and training provided in any University or Medical Institution appears to the Central Government that they do not satisfy the standards prescribed by the Council. This power of Central Government is exercised on the recommendation made to it by the Medical Council.

60. A particular reference may be made to Section 30 of the Act which reads as follows:-

Section 30: Commission of Inquiry:- (1) Whenever it is made to appear to the Central Government that the Council is not complying with any of the provisions of this Act the Central Government may refer the particulars of the complaint to a commission of inquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being a Judge of a High Court and one by the Council, and such Commission shall proceed to inquire in a summary manner and to report to the Central

Government as to the truth of the matters charges in the complaint and in case of any charge of default or of improper action being found by the commission to have been established, the Commission shall recommend the remedies if any which are in its opinion necessary.

(2). The Central Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit, and if the Council fails to comply with any such requirement, the Central Government may amend the regulations of the Council or make such provision or order to take such other steps as may seem necessary to give effect to the recommendations of the Commission.

(3) A Commission of inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have also such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908)

61. The above said provision makes it clear that in the event of the Council not complying with any of the provisions of the Act (including inspection by a team of its Inspectors) then the Central Government may refer the matter to the Commission of Inquiry consisting of three persons of whom one shall be a Judge of the High Court. The Commission shall proceed to inquire in a summary manner and to report to the Central Government and also recommend remedies for the lapses. On such report, the Central Government is empowered to take appropriate action since the inspection of the Medical Institution and its running are matters within the purview and jurisdiction of the Medical Council of India, its recommendations to the Central Government will have its effect. It is the Central Government which is the ultimate authority to initiate action for any lapses on the part of the Council arising out of the inspection of the Institutions

through its agency viz. the Inspector.

62. On examination of the relevant provisions of the Medical Council of India Act, it is clear that the Act is a complete code by itself and it provides for rectifying the irregularities and complying with the requirements needed for running the Medical Institution to maintain the standard of education prescribed by the Indian Medical Council. The Indian Medical Council Act and the Regulations framed thereunder have a statutory force and are mandatory.

63. A Constitution Bench of the Honourable Supreme Court in Dr. Preeti Srivatsava Vs. State of MP (1999-7-SCC-120) has concluded as follows:-

'57. In the case of Medical Council of India Vs. State of Karnataka, a Bench of three judges of this court has distinguished the observations made in Nivedita Jain. It has also disagreed that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to MBBS Course. The court took note of the observations in State of Kerala Vs. T.P. Roshana (SCC at p.580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical Institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub standard entrance qualifications for medical courses. These observances would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.

64. The principle of law is settled down by the Honourable Supreme Court and held in 1969-1-SCC-509 (State of Gujarat Vs. Shantilal Mangal Das and others) that:- It is settled Rule of

interpretation of statutes that when power is given under a statute to do a certain thing in certain way, the thing must be done in that way or not at all.

65. 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 teacher, 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 Course of MBBS at the said Institute.

66. 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, thus 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 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.

67. At this juncture, it is relevant to mention that the preliminary reports in respect of Teerthankar Mahaveer Medical College, Moradabad and Muzaffarnagar Medical College, Musaffar Nazar would show that those Medical College management placed false information/false documents and fraudulent information before the

inspection team to obtain approval, however, the CBI advised Medical Council of India to take appropriate action against the said College as per the norms. So it is evident that the Respondent/CBI has violated Article 14 of the Constitution of India and acted discriminately against the Petitioners."

93. The said dictum of this Court in Dr.M.C.R.VYAS (supra) has been reiterated in STATE VS. M.K.RAJAGOPALAN (2014 (3) MLJ (CRL) 646). It was followed in STATE VS. G.ANBALAGAN (2014 (4) MLJ (CRL) 279), in STATE vs. THIRUMURUGA KIRUBANANDA VARIYAR ETC. (MANU/TN/0700/2015) and also in STATE vs. SRI BALAJI VIDYAPEETH DEEMED UNIVERSITY (MANU/TN/1303/2015).

94. It has been pointed out by the learned Senior counsel for the petitioners that the decision of this Court in Dr.M.C.R.VYAS (supra) has not been taken by the prosecution to the Supreme Court by way of SLP and challenged it. This has not been controverted by the prosecution.

95. In this connection, it is pertinent to note the following observations of this Court made in THIRUMURUGA KIRUBANANDA VARIYAR (supra):

"The above two decisions came after the impugned order was pronounced by the trial Court. Admittedly, no SLP has been filed against the judgment of this Court in MANU/TN/1698/2014: (2014)4 MLJ (Crl) 279 (Additional Superintendent of Police, CBI, Anti-Corruption Bureau, CBI/ACB, Chennai vs. 646 (State represented by CBI/ACB, Chennai vs. M.K.Rajagopalan and another)."

96. It is pertinent to note that Dr.M.C.R.VYAS (supra), M.K.RAJAGOPALAN (supra), ANBALANGAN (supra), THIRUMUURUGA KIRUBANANDA VARIYAR (supra) and SRI BALAJI VIDYAPEETH DEEMED UNIVERSITY (supra) have all been registered by CBI as against the Management of Medical Colleges, MCI Inspectors and the College staff and similar allegations as before us were also made in the said cases.

97. In STATE OF NCT OF DELHI VS. SANJAY (2015 AIR (SC) 75) there was prosecution under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (in short, MMDR) and also for an offence under Section 379 I.P.C. The Hon'ble Supreme Court observed that the offence under Section 21 of MMDR Act and the

offence under Section 379 IPC are distinctive offences, therefore, the learned Magistrate on receipt of police report can take cognizance of the said offence under Section 379 IPC without a complaint being filed by the Authorised Officer under MMDR Act.

98. Section 4 of MMDR Act prescribes certain conditions with regard to prospecting or mining operations to be under licence or lease. Violation of the same is punishable under Section 21 of the said Act. As per Section 22 of the said Act, the offence under the Act or the Rules framed thereunder shall be made only upon a complaint in writing being made by an Authorised Officer of the Central Government or State Government.

99. However, in the case before us, we have already seen that the Indian Medical Council Act is a self-contained Code for taking action as against medical educational institution and doctors who commits misconduct, irregularities in obtaining initial permission to run U.G. and P.G. Courses and in renewal also periodical renewal of the same by batch by batch on yearly basis and also inspection on every 5 years. There is no penal provision in the said Act to punish those who commit such misconducts and irregularities. Further, if doctors indulged in unethical practice relating to making declaration in connection with showing themselves as whole time faculties, Resident Doctors, there is separate regulation called Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. Violation of the provisions of MCI Act or Rules and Regulations made thereunder may give rise to disciplinary action and not prosecution. In the circumstances, as rightly contended by the learned Senior counsel for the petitioners, the case before us is distinguishable on facts.

100. We have elaborately considered the allegations in the F.I.R., Final Report containing the alleged commission of certain offences made against the petitioners. We have also seen the materials/documents produced by the prosecution in support of the said allegations. In view of the discussions so far made, this prosecution is faulty and vitiated. All goes to show that this prosecution is abuse of process of Court and it won't serve any ends of justice.

101. Taking cognizance under Section 190 Cr.P.C. based on the Final Report and the materials presented along with the Report and issuance of summons to accused under Section 204 Cr.P.C. leads to very many serious consequences tending to make inroad into the personal liberty of the individual.

102. There must be prima facie case to take cognizance. It is a judicial function. There cannot be mechanical application of mind to the said materials (See PEPSI FOODS P. LTD. VS. SPECIAL MAGISTRATE (1998 SCC (CRI) 1400).

103. However, in the instant case, the trial Court has not applied its judicial mind in taking cognizance of the Final Report and the materials presented by the prosecution as they disclose it an abuse of process of the Court. In the circumstances, the relief sought for could be granted to the petitioners.

104. In view of the foregoings, these CrI. O.P. Nos.4735, 6255, 7181, 7182 and 7183 of 2015 are allowed. The entire criminal proceedings as against A-1 to A-6/petitioners in C.C.No.1 of 2012 on the file of the learned Special Judge, CBI cases, Puducherry are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Svn/vaan

To

1.The Special Judge,
CBI Cases,
Puducherry.

2.The Special Public Prosecutor,
CBI Cases, Chennai.

+3cc's to Mr.L.Swaminathan, Advocate, S.R.No.39449
+1cc to Mr.K.Srinivasan, Special Public Prosecutor for CBI,
S.R.No.39438

PVR(CO)
CA(05/08/2015)

CrI.O.P.Nos.4735, 6255, 7181,
7182 and 7183 of 2015
and M.P.Nos.1, 1 and 3 of 2015