

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Petition No. 6793 of 2012

-

ORDER

This is a Criminal Petition under Section 482- Criminal Procedure Code by the petitioners/A1 to A5 requesting to quash the proceedings against them in C.C.No.253 of 2007 on the file of the learned II Additional Judicial Magistrate of First Class, Kothagudem of Khammam District, taken on file for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code ('the IPC' for short).

2. I have heard the submissions of the learned counsel for the petitioners/accused, the 1st respondent/complainant and the learned Public Prosecutor.

3. Now the points for determination are:

1. Whether the petitioners/accused 1 to 5 had made out valid and sufficient grounds for quashing the proceedings against them in C.C. No.253/2007 on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Kothagudem?

2. Whether the uncontroverted allegations made in the complaint do not disclose *prima facie* the commission of any offence much less the alleged offences and make out a case against the petitioners?

4. (a) The case of the 1st respondent as stated in his private complaint, in brief, is as follows:

"The first respondent/complainant is the Director of Sri Sai Academy at Paloncha. The 1st accused is the Director, Distance Education, Chandrasekhar Azad University Agriculture & Technology (CSAUAT), Kanpur. The 2nd accused is the Registrar-cum-Member Secretary of Directorate of Distance Education (DDE) of CSAUAT. The

3rd accused is the Comptroller and Finance Adviser of DDE CSAUAT. The 4th accused is the Executive Member of DDE CSAUAT. The 5th accused is the Executive Member of DDE CSAUA and the 6th accused is a Facilitator for the University and resident of New Delhi. The present petitioners/accused are residents of Kanpur, where the University is located. The University Grants Commission (UGC) had introduced distance mode of education for the benefit of those persons who are not educated by the traditional method. The Government of India have constituted the Distance Education Council (for short 'the DEC') to monitor and regulate distance education centres. According to the rules laid down by the Government of India, Universities are only authorised to conduct education by distance mode only after taking prior permission from the UGC and the DEC. Permission is also required from the State Government of the State concerned where the centre is proposed to be opened. While so, A1 to A5 had issued prospectus wherein it is stated that the statutory requirements are met and that the Directorate had also deposited a sum of Rs.7.40 lakhs along with an application submitted to DEC for approval of its programme for the year 2005. However, without obtaining approval from the concerned authorities, the DDE of CSAUAT had given wide publicity in the daily news paper 'Vaartha' through the A6, the facilitator, to contact for establishment of study centres in areas unrepresented. In response to the above advertisement, the 1st respondent had contacted A6, the facilitator, and A1. And, as per the rules of the University and on demand made, he had obtained a Demand Draft [DD] for Rs.45,000/- on 17.03.2005 on SBH Kinnerasani Branch, Paloncha in favour of A3 payable at SBH Kanpur and sent the same through A6 along with an application and cash of Rs.5,000/-. Later, the DD was forwarded to the University by A6. After receipt of the said DD, the DDE had issued provisional authorisation letter dated 22.03.2005. On receipt of the authorisation letter, the 1st respondent had started the

Distance Education Study Centre of CSAUAT at Paloncha by giving wide publicity and had started enrolling the students like LW4. In the month of June, 2005, A1 had sent an order dated 07.06.2005 intimating that the Distance Education Study Centres are cancelled with immediate effect. A1 to A6 did not return the deposited amount of the 1st respondent and had thus cheated the 1st respondent and also the students enrolled in the institution of the first respondent/ and had caused inconvenience and annoyance besides irreparable loss on account of loss of time and reputation.”

4. (b) The said complaint filed by the 1st respondent was referred by the learned Magistrate to the police concerned. After registering the case in Cr.No.122 of 2007, the Station House Officer, Paloncha Town Police Station had investigated into the matter and laid the charge sheet against A1 to A6 for the offence punishable under Section 420 read with Section 34 of the IPC, and the learned Magistrate has taken cognizance for the said offence and taken on file the calendar case aforementioned.

5. Now, the case of A1 to A5, who are seeking quashment of the proceedings against them in the above calendar case, is this:

“The University is running different courses under the distance education programme through different authorised study centres since one year prior to 07.06.2005. However, the Chancellor of the University by an order dated 03.06.2005 by exercising powers vested in him under the provisions of Uttar Pradesh Krishi Evam Prodyogik Adhiniyam, 1958 (‘the Adhiniyam’, for short) had ordered for closure of the distance education programme and had cancelled the permission granted earlier to run the study centres. As a sequel, upon the approval of the Vice Chancellor, the second petitioner had informed all the study centres including the one of the first respondent about the cancellation orders. The sixth accused in this case had filed CrI.P.No.7678/2007. The first

respondent received Rs.1 lakh from A6 and it was represented during the course of hearing of the said criminal petition that the parties have entered into an MOU and that under the said MOU the said amount was paid by A6, the facilitator to the first respondent. In view of the said facts the Criminal Petition filed by A6 was allowed by this Court on 27.01.2011 and the proceedings against A6 in this calendar case were quashed by this Court. In view of the orders issued by the Chancellor of the University cancelling the programme, there is no element of cheating. There was no dishonest intention at the inception when the University entered into an agreement with the first respondent. The University, which was established under the provisions of Uttar Pradesh Krishi Evam Prodyogik Adhiniyam, 1958 is running under the control of the Department of Agriculture Education, Government of UP. Earlier, by letter dated 28.01.2003, the Vice Chancellor of the University made a request to seek permission from His Excellency the Chancellor to run certain courses in the University. By reply dated 14.02.2003, the Principal Secretary of the Chancellor had stated as follows: 'There is no legal binding in the statute to seek the permission of His Excellency the Chancellor to run the courses. From the letter dated 28.01.2003, it appears that the courses have been approved by the Academic Council in its meeting held on 22.11.2002. Subsequently, the proposal to run the courses has also been approved by the Board of Management of the University on 24.12.2002. Therefore, the Principal Secretary was directed to say that the courses which have been approved by the Academic Council of the University may be run as per the rules at University level and there is no objection to the Chancellor's office in this reference.' Following the said instructions given in the said letter, the Distance Education Programme was got approved by the Academic Council in the meeting held on 27.04.2004 and, in the subsequent meeting of the Board of management held on 07.06.2004. The agenda and the proceedings of the meeting were forwarded to the Chancellor on

12.08.2004 for information of His Excellency the Chancellor. No objection was received from the office of His Excellency, the Chancellor and therefore, the Distance Education Programme was started by the University. The University had applied to the Distance Education Council for approval of the courses and had deposited the required fee to the tune of Rs.7.40 lakhs. However, the programme was stopped by His Excellency the Chancellor and the money so deposited was taken back. The complainant's/first respondent's Academy approached the University for the Registration of study centre during March, 2005. The centre was provisionally registered and provisional authorization letter was issued to the complainant/first respondent by the University on 27.03.2005 subject to inspection and receiving all requisite documents. The centre of the 1st respondent/complainant remained alive only for 2½ months and during that period, no student was registered as per the record of the University. Since His Excellency the Chancellor is the highest authority and the office of the Chancellor has directed, vide letter dated 03.06.2005, all the Universities of the State including Agriculture University to close down the Distance Education Programme, the programme was closed in due compliance of the said orders. Since no student was registered at the study centre of Sai Academy of the first respondent and as the University has not received any money in the form of fee from the study centre of the first respondent, the question of return of money did not arise. However, the 1st respondent/complainant had deposited Rs.45,000/- in the name of the Comptroller of the University as authorization fee is true; and it is lying in deposit in the account of University. Therefore, nothing deliberate was done and no attempt was made to cheat the Director of the Sai Academy i.e., 1st respondent/the complainant. The petitioners/A1 to A5 are only Professors and employees of the University and the uncontroverted allegations made in the complaint and the charge sheet and the evidence

collected do not disclose *prima facie* commission of any offence much less the alleged offence under Section 420 IPC. Therefore, the continuation of proceedings against the accused is an abuse of process of the Court.”

6. The case of the first respondent in the counter filed with material documents is only a reiteration of his case in the complaint which is already extracted supra. It is also stated in the counter as follows: - ‘On obtaining certain information by having resort to the provisions of the Right to Information Act it has come to light that without relevant permissions from the DEC, the distance education programme was started only under the impression that they would later get the permission. The Indira Gandhi National Open University (IGNOU) had informed this respondent that the CSAUAT has so far been not recognized by DEC to offer programmes by distance mode and that the University is not empowered by itself or otherwise to run distance education programmes and distance education study centres outside the UP on or before 01.08.2005. Mere taking a stand that the programme has been closed basing on the order of the Chancellor is unsustainable as the programme was started without relevant permissions from the authorities concerned. The petitioners/A1 to A5 herein have given advertisement in newspapers with dishonest intention and to cheat the first respondent and the students. Therefore, A1 to A5 have cheated the first respondent. Having enrolled students at the study centre, the 1st respondent had returned their amounts with great difficulty. A6 had also stated that he was cheated by the accused herein by way of collection of Rs.2 lakhs of cash from him and Rs.10 lakhs of Bank Guarantee. The A6 is only a facilitator and therefore, the first respondent agreed to quash the proceedings against the said accused. There is no merit in the petition filed by A1 to A5.

7. At the time of hearing, the learned counsel for the petitioners/A1 to A5 made submissions in line with the case pleaded by the said accused. The learned counsel for the first respondent had also made submissions in line with the case pleaded in the complaint and the counter. The learned counsel for the first respondent and the learned Public Prosecutor had submitted that the averments in the complaint, the charge sheet and the evidence collected make out a *prima facie* case in regard to the commission of offence of cheating and that the accused without any authority had issued a prospectus and had made the 1st respondent/complainant to make a deposit of Rs.45,000/- by way of demand draft in response to the advertisement in daily newspaper 'Vaartha' through A6, who is the facilitator, for establishment of study centre at Palvoncha and that the accused 1 to 5 had also issued a provisional authorisation letter to the 1st respondent/complainant and that on receipt of such authorisation letter, the complainant/first respondent had started distance education study centre of CSAUT at Palvoncha by giving wide publicity and had started enrolling the students and that in the month of June, 2005, A1 had intimated that vide the order dated 07.06.2005 that the Distance Education Study Centres are cancelled with immediate effect and that even the amount of Rs.45,000/- deposited by the first respondent was not returned to him and that therefore, the ingredients of penal provision of law are attracted and that the truth or otherwise of the contentions of the complainant/first respondent has to be decided after full fledged trial and that, therefore, this is not a fit case for quashing the proceedings against the accused. On the other hand, the learned counsel for the petitioners had submitted as follows: 'The petitioners who are bound by the orders of the Chancellor had no option but to obey the orders. The averments in the petition and the facts and circumstances urged by the petitioners make out a strong case for quashing the proceedings against them. No case, much less a *prima*

facie case attracting the ingredients of the penal provision of the offence alleged is made out. The entire case facts show that A1 to A5 had acted in a *bona fide* manner. Further, A1 to A5 never directly dealt with the first respondent. The first respondent was dealing only with A6, the facilitator. The said facilitator had already paid Rs.1 lakh to the first respondent. The continuation of proceedings against A1 to A5 is an abuse of process of Court and law, more particularly, in view of the compromise between A6 and the first respondent and in the light of the vital fact that this Court had approved the compromise and quashed the proceedings in this very case against A6.

8. POINTS:

8. (a) I have perused the complaint and the charge sheet. L.W.4, who is said to be a student, and who was said to have been enrolled at the study centre of the first respondent had not filed any complaint against any one of the accused. Any amount collected from any student enrolled with the study centre of the first respondent was in turn forwarded to the University. Even as per the contents of the complaint, the complainant/first respondent had accepted to run the study centre on the advise of A6, who is the facilitator at New Delhi. There is no direct contact between the petitioners/accused 1 to 5 and the first respondent in the matter of running the study centre. In the reply dated 14.02.2003, the Principal Secretary of the Chancellor had stated as follows:

‘....There is no legal binding in the statute to seek the permission of His Excellency the Chancellor to run the courses. It appears from your letter that the courses have been approved by the Academic Council in its meeting held on 22.11.2002 and subsequently, the proposal to run the courses have also been approved by Board of Management of the University on 24.12.2002.

I have been directed to say that the courses which have been approved by the Academic Council of the University may be run as per rules at University level and there is no objection to the Chancellor’s office in this reference.’

Following the said instructions given in the said letter, the Distance

Education Programme was got approved by the Academic Council in the meeting held on 27.04.2004 and also in the subsequent meeting of the Board of management which was held on 07.06.2004. The agenda and the proceedings of the meeting were forwarded to the Chancellor on 12.08.2004 for information of His Excellency, the Chancellor. No objection was received from the office of His Excellency, the Chancellor and therefore, the Distance Education Programme was started by the University. The petitioners/accused 1 to 5 have placed on record the letter of the Principal Secretary of the Chancellor addressed to the Vice Chancellor of University and also the proceedings of the meeting of the Academic Council and the letter dated 14.06.2004 of the Finance Comptroller and Secretary Board of Management, wherein it is stated that as per the decision in the meeting, the Board of Management has given its consent to start the courses in Distance Education on Information Technology, Management, Engineering and other Sciences. Further, in the said letter the Board of Management has also directed to submit a progress report. In fact, the agenda and the proceedings of the meeting of the Board of Management were also forwarded to the Excellency the Chancellor and no objection was received from the office of His Excellency and therefore, the Distance Education Programme was started by the University. Further, the University had also made a deposit of Rs.7.40 lakhs and had applied to the District Education Council for approval. However, the programme was stopped by His Excellency. The centre of the 1st respondent/complainant had remained alive only for 2½ months and during that period, no student was registered as per the record of the University. Since His Excellency, the Chancellor is the highest authority and the office of the Chancellor vide letter dated 03.06.2005 had ordered all the Universities of the State including Agriculture University to close down the Distance Education Programme. The programme was closed in due compliance of the said

order. Therefore, the facts and circumstances stated make it manifest that on a plain reading, the complaint and the final report do not disclose the necessary ingredients attracting the provision of Section 420 of the IPC. There is neither allegation of fraudulent inducement nor dishonest inducement and deception in regard to delivery of any property to any person attracting the application of the penal provision. No amount was paid to A1 to A5. The deposit was made with the University and the amount is still lying with the University. A1 and A2 have retired from service. A3 is only a finance Comptroller. A4 and A5 are professors. Therefore, nothing deliberate was done nor an attempt was made to cheat the Director of the Sai Academy i.e., the complainant/first respondent herein.

8. (b) Section [415](#) of the Indian Penal Code defines cheating to mean:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Further, in a decision of the Supreme Court in **VIR PRAKASH SHARMA v. ANIL KUMAR AGARWAL AND ANOTHER**^{[\[1\]](#)}, while dealing with a similar case, the Supreme Court referred to the relevant ratio in the decision in **Hridaya Ranjan Prasad Verma Vs. State of Bihar (2000CriLJ2983)** which is as follows:

“On a reading of the section it is manifest that in the definition there are set forth two separate classes of facts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person

deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

8. (c) On the application of the aforesaid principle to the facts of the present case on hand, this Court finds that even after taking the averments in the complaint in entirety, no case is made out against the petitioners/accused 1 to 5 for the offence punishable under Section 420 of the IPC. It is also appropriate to note that the first respondent filed a similar complaint and on such complaint C.C. No.252/2007 was taken on file by a learned Judicial Magistrate of First Class, Kothagudem against the accused in that case. One of the accused i.e., A1 is the Vice Chancellor of the Institute of Advanced Studies in Education, a deemed University recognized by the University Grants Commission and A2 therein was the then Director of Distance Education of the said deemed University. When the said accused moved an application before this Court for quashing the proceedings against them in the above calendar case, this Court has taken the view that no case is made out against the said accused under Section 420 of the IPC and that allowing the prosecution based on the complaint of the first respondent is nothing but

an abuse of process of law and that the same would lead to miscarriage of justice and therefore, allowed the criminal petition Nos.2806 and 2830 of 2008 and quashed the proceedings against the said accused in C.C. No.252/2007. The case of the present petitioners/A1 to A5 stands on a better footing as the University was established under the provisions of Uttar Pradesh Krishi Evam Prodyogik Adhiniyam, 1958. Further, in the case on hand A6, the facilitator, had already paid Rs.1 lakh and pursuant to a Memorandum of Understanding entered into between A6 and the 1st respondent showing the terms of compromise, the Criminal Petition filed by A6 was allowed by this Court and the proceedings in the present calendar case against A6 were quashed by allowing the petition of A6. Only a provisional authorisation was given to the first respondent and no final authorisation was communicated to him and therefore, the first respondent cannot be heard to say that the authorisation for the study centre was finally issued. Therefore, he must be aware that he was acting only on provisional approval and that final approval is yet to be given for his study centre. He had acted on the provisional authorisation knowing the consequences. Thus, looking at the matter from the point of view of facts and law, this Court finds that there is acceptable merit in the contentions of the petitioners/A1 to A5.

9. Therefore, in the well considered view of the Court, continuation of proceedings against the petitioners/A1 to A5 is an abuse of process of law and the continuation of proceedings would lead to miscarriage of justice. Hence, this Court finds that this is an evidently a fit case to exercise the jurisdiction under Section 482 of the Cr.P.C. and quash the proceedings against the petitioners/A1 to A5 in C.C.No.253 of 2007 on the file of the learned II Additional Judicial First Class Magistrate, Kothagudem. The proceedings in the said CC against the petitioners/A1 to A5 are accordingly quashed.

10. The Criminal Petition is, accordingly, allowed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SEETHARAMA MURTI, J

19th January, 2015

sj

[\[1\]](#) (2007)7 SCC 373