

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM No.M-35209 of 2014 (O&M)

Vinay Rai

...Petitioner

VERSUS

State of Haryana

...Respondent

(2) CRM No.M-42419 of 2014 (O&M)

Rai Foundation College

...Petitioner

VERSUS

State of Haryana

...Respondent

Date of Decision:- June 01, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Rai, Senior Advocate with
Mr.Deepak Saini, Advocate
for the petitioners.

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

Mr.S.S.Sangwan, Advocate
for the complainant.

INDERJIT SINGH, J.

Both the cases are taken up together as the point for determination in both the cases is the same and both are arising from the same FIR.

The petitioners have filed these petitions under Section 482

Cr.P.C. against State of Haryana for quashing of FIR No.97/2014 dated

22.03.2014 under Sections 406 and 420 IPC registered at Police Station Udyog Vihar, District Gurgaon and notices dated 20.08.2014 and 18.09.2014.

Notice of motion was issued and learned State counsel as well as learned counsel for the complainant appeared and contested the petitions.

In the present case, challan has not been presented so far. Vide interim order dated 12.12.2014 passed by this Court, the presentation of challan has already been stayed. Therefore, it means that no final report has been submitted before the trial Court and the investigation will be treated as 'still pending'.

Learned counsel for the petitioners argued that firstly no offence is made out after perusing the FIR. He further argued that there is no allegation of cheating etc. against petitioner Vinay Rai. He next argued that son of the complainant namely Rahul Kaushik joined the diploma course with the Rai Foundation College and he completed the same in the year 2009 and the FIR has been registered on 22.03.2014. Learned counsel for the petitioner further contended that there is no question of awarding degree because it is a diploma course. He next contended that the victim has already approached the Consumer Court and the case with the National Consumer Court is pending. He also contended that Lokayukta report is already in the favour of the petitioners. Learned counsel for the petitioners argued that there was no intention to cheat from the very beginning nor there is any evidence to show entrustment of any type.

On the other hand, learned counsel for the complainant argued that complainant had paid ₹2,65,000/- as admission fees and other charges and the admission was in B.Sc. HMT (Hotel Management). But a fraud has

been committed and three important years of the life of the victim have been spoiled due to petitioner's cheating. He further argued that Vinay Rai is owner/Chairman of the Rai Foundation College and he is the main accused, who cheated the complainant. He next argued that the admission was given in B.Sc. but there was no affiliation for the same and fraud has been played.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the receipt (Annexure R-1) placed on the record shows that name of the programme was B.Sc. HMT. Learned counsel for the petitioners argued that at that time Rahul Kaushik also shown to have been studying at Kanpur. This fact has no affect on the present FIR. It is not the case of the present petitioners that Rahul Kaushik was absent from the course or he was not attending the same and on this ground degree/certificate has not been issued.

Furthermore, if the matter is pending before the National Consumer Court or the victim has also availed the remedy before the Consumer Court, in no way, it can be held that FIR is liable to be quashed. Similarly, report of Lokayukta given after enquiry, has no affect on this FIR as in this case, allegations in the FIR are to be investigated independently by the Investigating Officer.

At this stage, when the investigation is not complete, it cannot be held that no cheating has taken place or there was no intention of the petitioners to cheat from the very beginning etc. At this initial stage, this Court cannot determine the finding of facts as these are to be firstly seen by the Investigating Officer after collecting the evidence and if the challan is presented, then by trial Court. At this stage, this Court is only to see whether

from the perusal of the FIR, it can be held that any offence is made out or not. The perusal of the FIR shows that it cannot be held that no offence is made out.

Keeping in view the facts and circumstances of the present case, without discussing the facts in minute detail and without expressing any opinion on the merits of the case, I find that, in no way, it can be held at this stage, that filing of the FIR is abuse of process of law or amounts to miscarriage of justice.

Therefore, finding no merit in both the petitions, the same are dismissed.

June 01, 2016
Vgulati

(INDERJIT SINGH)
JUDGE