

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-9536-2015 (O&M)

Date of decision: November 30, 2016.

Lovkesh Bhayana and others

... **Petitioners**

v.

CBI, SCB, Chandigarh and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Aman Pal, Advocate for the petitioners.

Shri Sumeet Goel, Advocate, Standing Counsel for CBI.

Shri Siddharth Pandit, Advocate for respondent No.2.

**A.B. Chaudhari, J.** (Oral):

By the present petition, there is a challenge to the revisional order dated 20.1.2015 passed by the Special Judge, CBI Court, Chandigarh at the behest of the petitioners by which the revision filed by respondent No.2 – co-accused was allowed and the Sessions Court declared that the petitioners were not juvenile and liable to be tried as such with respondent No.2 in the regular court.

The offences for which the petitioners are being tried are under Section 420, 467, 468, 471, 120-B IPC. The allegations made by the prosecution are that the petitioners had submitted fake and forged certificates for taking admission to the BE 1<sup>st</sup> year in PEC University of Engineering and Technology under DASA Scheme, 2009-10 as foreign nationals belonging to the foreign country Nepal and thus cheated the

administration. The certificates of Nepali citizenship, secondary certificates, migration certificates, character certificates, they are all alleged to be fabricated and forged certificates.

It is not in dispute that at the date when admission was taken by the petitioners in the said college, they were below the age of 18 years and as such were juvenile. The revisional court found that they continued to undertake the studies in the course in which they had taken admission till 4.10.2010 by which date their admissions were cancelled. It is also not in dispute that if the date 4.10.2010 is taken into consideration as an indicator of continuing cause of action, the petitioners would be major and as such triable by the regular court.

The question that falls for consideration before this Court is thus framed as under:-

“Whether the offences alleged against the petitioners would amount to continuing cause of action till 4.10.2010 or the offence of cheating, forgery, fabrication, etc. would be completed on the date of submission of those false, bogus and forged certificates for getting admission into the college?”

To answer the above question, the learned revisional court has referred to Section 420 and other provisions of the IPC and held that after submission of forged and fabricated certificates, the petitioners having taken admission, continue to undertake their studies and all other benefits including hostel facility etc. till the cancellation of their admission on 4.10.2010, and therefore the injury caused by the petitioners continued at least till that date and therefore considering the said date, the petitioners

would not be juvenile. This reasoning is supported by counsel for respondent No.2 who submitted that it is obviously so because the petitioners had indulged in taking advantage of their own wrong, namely, taking admission and other benefits and therefore there was continuing cause of action till their admissions were actually cancelled on 4.10.2010. Counsel for the CBI has supported the impugned order also.

Learned counsel for the petitioners relied on the decision of the Supreme Court in the case of Udai Shankar Awasti v/s State of U.P. And another, 2013(2) SCC 435, and in particular paragraphs 14 and 16. I quote para 14 and 16 therefrom, which read thus:-

“14. In M/s. Raymond Limited & Anr., Etc. Etc. v. Madhya Pradesh Electricity Board & Ors., Etc. Etc., AIR 2001 SC 238, this Court held as under:

“It cannot legitimately be contended that the word "continuously" has one definite meaning only to convey uninterrupted ness in time sequence or essence and on the other hand the very word would also mean 'recurring at repeated intervals so as to be of repeated occurrence'. That apart, used as an adjective it draws colour from the context too.”

“16. Thus, in view of the above, the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the offence continue, i.e., endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue.”

Having given my thoughtful consideration to the entire matter and having regard to Section 420 and other provisions of the IPC for which

the petitioners have been charged and having gone through the decision of the Apex Court, I think the offence of cheating was committed and completed no sooner the petitioners submitted their fake and fabricated certificates as NRI before the authorities and the admission was completed.

It is true that the petitioners continued to take advantage of their own wrong till their admission was cancelled or till 4.10.2010, but then in the light of ratio of the decision of the Apex Court, mere continuance of injury due to the commission of offence would not result into continuing cause of action. That appears to be the sound principle of law, else would defy the logic about the extension of the principle of curtailing the offence for all times to come. It is not the case of the prosecution that the petitioners had thereafter repeatedly committed the said offence factually by indulging into submission of fake certificates during their studies as NRI.

The concept of continuing of offence pressed by learned counsel for the respondent thus cannot be brought into play and if the said statement is accepted, the same would act ad-infinitum which is never the object behind the provisions for which the offences are provided.

To sum up, in my opinion, no sooner the petitioners committed the offence of cheating, the offence seems to be complete and thereafter even if the injury caused continued upto 4.10.2010, that would not make continuing cause of action.

In the result, revisional order will have to be set aside. Hence, the following order:-

i) CRM-M-9536-2015 is allowed;

ii) rule is made absolute in terms of the prayer clause and the  
impugned order dated 20.1.2015 is set aside and quashed.

November 30, 2016.  
*kadyan*

[ **A.B. Chaudhari** ]  
**Judge**

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No