

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM:

THE HONOURABLE DR.JUSTICE DR.G.JAYACHANDRAN

Crl.R.C.Nos.207 to 219 and 91 of 2017

State represented by
Deputy Superintendent of Police,
CBI, Anti Corruption Branch,
Chennai.

... Revision Petitioner in all CRP's

Vs.

Dr.Susheela Rajendran

.. Respondent / A-5 in Crl R.C.207/17

This Criminal Revision is filed under section 397 r/w 401 Cr.P.C. to set aside the impugned order dated 28.01.2016 passed by the Learned Additional District Munsif-cum-Judicial Magistrate - II, Karaikal in Crl.M.P.No.3892 of 2015, 5724/2014, 3893/2015, 1501/15, 521/15, 519/15, 520/15, 522/15, 518/15, 1502/15, 3895/15, 3894/15, 1500/15, 1503/15 (common order in Crl.M.P.Nos.518/2015, 519/2015, 520/2015, 521/2015, 522/2015, 1500/2015, 1501/2015, 1502/2015, 1503/2015, 3892/2015, 3893/2015, 3894/2015, 3895/2015, 5724/2014 in CC No.186 of 2013).

For Petitioner : Mr.K.Srinivasan,
Special Public Prosecutor for
CBI Cases(Pondicherry)

For Respondent : Mr.L.Swaminathan

ORDER

This Criminal Revision is filed to set aside the impugned order dated 28.01.2016, passed by the Learned Additional District Munsif-cum-Judicial Magistrate - II, Karaikal, dated 28.01.2016, in CrI.M.P.No.3892 of 2015 (common order in CrI.M.P.Nos.518/2015, 519/2015, 520/2015, 521/2015, 522/2015, 1500/2015, 1501/2015, 1502/2015, 1503/2015, 3892/2015, 3893/2015, 3894/2015, 3895/2015, 5724/2014 in CC No.186 of 2013).

2.The case of the petitioner/State is that, based on source information, Vinayaka Mission Medical College and Hospital represented by Dr.K.R.Srinivasan, Dean; Dr.A.Shanmuga Sudaram, Chairman, Vinayaka Missions Research Foundation (the then Thirumuruga Kirubananda Variyar Thavathiru Sundara Swamigal Medical Educational Charitable Trust), Salem; Dr.K.R.Srinivasan, Dean, Vinayaka Missions Medical College and Hospital, Karaikal; Dr.S.K.Basu, Member, Medical Council of India; Dr.T.K.Parthasarathy, Director (Medical), Sri Ramachandra Medical College and Research Institute, Chennai; Dr.C.A.Desai, former

Dean, D.J.Medical College, Ahmedabad and Dr.M.S.Kakre, former Dean, Tamil Nadu Medical College and BYL Nair Hospital, Mumbai, were arrayed as accused in the F.I.R., in this case.

3. According to the petitioner, the allegations in this case as per the charge sheet is that during the period 2009-2010, the above named accused at Karaikal, Chennai and other places, have entered into a criminal conspiracy to cheat the Medical Council of India (MCI), in the matter of arranging teaching faculty and clinical material to show that minimum requirement as per Medical Council of India Regulations, are available during inspection for continuation of recognition of M.B.B.S., Course by the MCI. In furtherance of the aforesaid criminal conspiracy, the accused persons have hired the Medical Practitioners who are not faculty members of the institute at the time of inspection and dishonestly showed them as if they are faculty members of Vinayaka Mission University and submitted false declaration forms, fabricated and forged experience certificate, appointment orders, attendance registers etc., and counter signed the MCI declaration forms vouching the correctness of the details furnished therein.

4.Dr.K.R.Srinivasan (A-3) Dean of Vinayaka Mission

Medical College and Hospital, Karaikal, submitted relevant

documents before the inspection team of MCI to dishonestly show that the said Institute was having requisite number of faculty members. The respondent (A-5) along with Dr.R.Thirunavukarasu (A-6) S.Baskar (A-7), Dr.P.Andappan (A-8) and Dr.S.V.Dhanasekaran (A-12) fabricated declaration forms and other documents submitted to the MCI inspection team in regard to 52 Doctors who were dishonestly shown as faculty members of the Medical College. The respondent along with A.Shanmugasundaram (A-2), Dr.A.S.Ganesan(A-4), Dr.R.Thirunavukarasu(A-6) and S.Baskar (A-7) enticed the Doctors to be shown as faculty members of Vinayaka Mission Medical College at the time of inspection by the MCI team. Dr.Susheela Rajendran (A-5) issued orders for payment of Rs.7000/- each to the Doctors who were falsely shown as faculty members of Vinayaka Mission Medical College. The respondents herein and A.Shanmugasundaram (A-2) abetted Dr.Y.Abraham(A-15) to create false appointment orders to show that Dr.K.Uthamalingam (A-13) then working as Dean of Vinayaka Mission Kirupananda Variyar Medical College, Salem, issued false experience and relieving order to the doctors to act as regular faculty members of Vinayaka Mission Medical College & Hospital. By their overt acts, the respondent dishonestly induced the Medical Council of India and Ministry of Health and Family Welfare, Government of India, in getting continuation of the recognition

given to the Medical College by the MCI. Hence, offences under Sections 420, 471 r/w 468 and 471 of IPC are made out against the accused persons, to be tried by Competent Court.

5. The accused persons filed petitions for discharge and the same has been entertained by the trial Court. Aggrieved by the order passed by the trial Court, discharging the respondents/ accused, the prosecution has come forward with the present revision petitions. The trial Court at length has gone into the facts of the case and has concluded that for any violations of regulations contemplated in Medical Council of India, 2000 and Medical Act 1956, it is for the MCI to take necessary action and Central Bureau of Investigation (CBI), who has registered the complaint and investigated, has no locus.

6. According to the trial Court, Indian Medical Council Act which is a self content Code contains separate schemes to enquire into the misconduct of Medical practitioners as well as medical colleges and also empowers the Medical Council to take action against the erred college under the Act as well as regulations. No Penal provisions to prosecute for violation of rules and regulations of MCI is provided, therefore, violation of rules and regulations of MCI will not attract any penal action.

7. In support of his conclusion, the Trial Court has relied upon the judgment of this Court rendered in **CBI v. M.K.Rajagopalan**. This Court has no hesitation to allow the revision petitions, since, the reasoning given by the trial Court is perverse and absurd. When there is a strong evidence and prima facie material against the respondent/accused that they have forged documents, particularly, service experience records and dishonestly used it to show, as if they were the faculty members of Vinayaka Mission University to satisfy the MCI inspection team, imposing as if the institution has employed required numbers of faculty members, thereby not only cheating the MCI, but also the gullible prospective students who have joined and are likely to join the institution.

8. When there is prima facie material available disclosing grave offence committed which attracts the provisions of penal code such as sections 420, 468 and 471, the Court cannot look only into the regulations under the Medical Council Act and throw out the complaints on the ground that no penal provision is provided in that Special Act. Special Acts are only supplementary to the Penal Code and the Special Act, which is regulatory in nature cannot be any exclusion to the Penal Code. Since, the trial Court has miserably failed to understand the basic principle of Penal Law and has passed

erratic and perverse order of discharge, this Court finds no reason to sustain the said order and hence, the order of the trial Court is set aside.

9. Sections 4 and 5 of the Code of Criminal Procedure Code runs as under:-

" 4. Trial of offences under the Indian Penal Code and other laws.

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

10. While so a, myopic view on MCI Act and regulations alone turning a Nelson Eye to IPC and Cr.P.C. is erroneous and perverse. To throw out the final report on the ground that there is no penal provision in MCI is improper. The trial Court, ought to have gone into the material collected by the investigating agency during

the course of investigation and the nature of the charge laid against them. When specific case of cheating, making false document for the purpose of forgery are prima facie made out, discharging the accused for absence of penal provision in MCI Regulation could not countenanced or sustainable.

11. In the result, the impugned order dated 28.01.2016 passed by the Learned Additional District Munsif-cum-Judicial Magistrate - II, Karaikal in Crl.M.P.No.3892 of 2015 (common order in Crl.M.P.Nos.518/2015, 519/2015, 520/2015, 521/2015, 522/2015, 1500/2015, 1501/2015, 1502/2015, 1503/2015, 3892/2015, 3893/2015, 3894/2015, 3895/2015, 5724/2014 in CC No.186 of 2013) is set aside. The Criminal Revisions are allowed.

सत्यमेव जयते

10.10.2017

Note: Issue order copy on 11.10.2017

Speaking Order

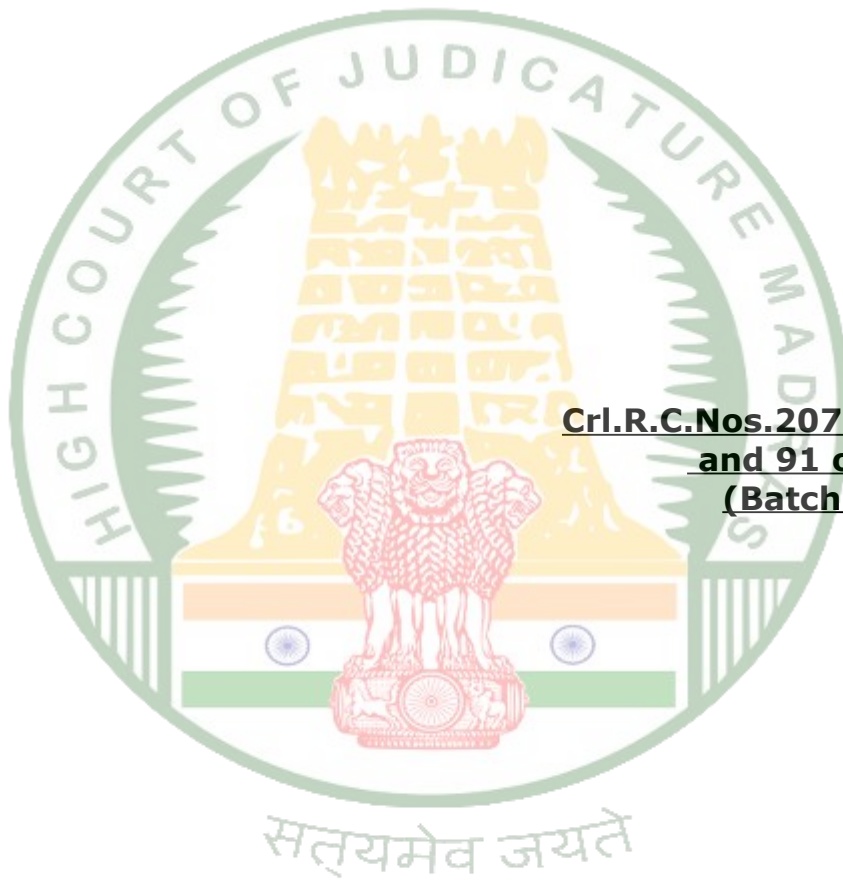
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DR.G.JAYACHANDRAN, J.,

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and 91 of 2017
(Batch cases)

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