

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20237 of 2017 and
Crl.M.P.Nos.12153 of 2017 & 1115 of 2018

1.Srividya.S.

2.Lakshmi

... Petitioners

Vs

1. The Inspector of Police,
Thirukazhkundam Police Station,
Kanchipuram District.

2. The Inspector of Police,
District Crime Branch,
Kanchipuram District.

3. Nasser Hamidavi Zegheiri

4. The Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.

R4 is suo moto impleaded as per
the order of this Court dated 23.04.2018.

... Respondents

Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records relating to the FIR in Crime
No.278 of 2017, pending on the file of the 1st and 2nd
Respondents, filed against the petitioners, and quash the same.

For Petitioners : Mr.P.R.Raman, Senior Counsel
for M/s.Ojas Law Firm

For R1 & R2 : Mr.C.Iyyapparaj
Addl. Public Prosecutor

For R3 : Mr.R.C.Paul Kanagaraj

For R4 : Mr.G.Karthikeyan,
Assistant Solicitor General of India

O R D E R

This Criminal Original Petition has been filed to call for the records in Crime No.278 of 2017, on the file of the 1st and 2nd Respondent police and quash the same.

2. The Asan Memorial Dental College and Hospital, Chengalpattu, affiliated to the Tamil Nadu Dr.M.G.R. Medical University, Chennai, admitted fifteen Iranian students to the B.D.S. Course for the academic year 2016-17 under the NRI quota. Admittedly, during that period, the Central Government was insisting that students will become eligible for admission, only if they clear the NEET Examination. However, certain exemptions were being given by the Supreme Court and this Court from time to time in this regard, but, ultimately, it became crystal clear that, students who had not cleared NEET Examination will not be eligible for continuing their studies. This necessitated in Asan Memorial Dental College and Hospital directing the students to discontinue their studies in compliance with the directives of the University. Under such circumstances, one Iranian student by name Nasser Hamidavi Zegheiri, filed a petition in CrI.M.P.No.1673 of 2017 before the Judicial Magistrate, Thirukalukundram, under Section 156(3) of Cr.P.C. alleging that he had totally paid a sum of Rs.22,00,000/-, through one Mohammed Kouser, to Asan Memorial Dental College and Hospital, towards capitation fee, tuition fee and other charges, for getting admission; he has been served with a letter dated 19.11.2016 calling upon him to discontinue his studies and thereby, he has been cheated by Mohammed Kouser and the Asan Memorial Dental College and Hospital.

3. On the directions of the learned Judicial Magistrate, Thirukalukundram, the Sub Inspector of Police, Thirukalukundram Police Station, registered a case in Crime No.278 of 2017 on 24.05.2017 under Section 420 of IPC against Mohammed Kouser (A1), Srividhya (A2), Lakshmi (A3), Anish Antony (A4) and Sebin Sebastian (A5), for quashing which, A2 and A3 are before this Court.

4. During the hearing of this case, Asan Memorial Dental College and Hospital submitted that they had admitted fifteen Iranian students and that they are ready and willing to return the fees paid by fourteen of them. On the information provided by this Court, the Consul General, Consulate General of Islamic Republic of Iran, Hyderabad, personally came to this Court and represented on behalf of the Iranian students.

5. On 11.06.2018, this Court passed the following order.
"This petition has been filed seeking to call

for the records in Thirukazhukundam P.S. Cr. No.278 of 2017 and quash the same.

2. On 26.04.2018, this Court passed the following order:

"On a complaint lodged by one Mr.Nasser Hamidavi Zegheiri, an Iranian student alleging that he had paid a sum of Rs.25,00,000/- for getting admission to B.D.S course in Asan Memorial Dental College, Keerapakkam, Chengalpattu, the first respondent police registered a case in Cr.No.278 of 2017 on 24.05.2017 under Section 420 I.P.C., against the Management of Asan Memorial Dental College, challenging which, this quash petition has been filed.

2. During the pendency of this petition, Mr.P.R.Raman, learned Senior Counsel appearing for Asan Memorial Dental College submitted that the College is ready and willing to return the fees paid by not only the de-facto complainant, Nasser Hamidavi Zegheiri, but also to other Iranian students.

3.In view of the above representation made by the learned counsel appearing for the petitioners, this Court sent information to the Consulate General of the Islamic Republic of Iran,pursuant to which, Mr.Mohammad Haghbin Ghomi, Consul General and Mr.Syed Tamjeed Hyder, Public Relations Officer (P.R.O) are present before this Court today.

4. Mr.G.Karthikeyan, learned Assistant Solicitor General of India submitted that he has been instructed to inform the Court that Government of India will do everything possible to help the Iranian students for getting back their money. He had also produced a list containing the names of 15 Iranian students who have to be refunded by Asan Memorial Dental College. The said list was tallied by the list submitted by the Asan Memorial Dental College.

5.However, with regard to the student by name Danial Vazirzadeh, it is the case of Asan Memorial Dental College that he had neither paid any fees nor had he attended classes though admission was given to him.

6. This Court would look into this aspect a little later. Asan Memorial Dental College has admitted that they have to pay a total sum of Rs.53,40,000/- (Rupees Fifty Three Lakhs Fourty

Thousand only) to 14 Iranian students, out of which, they have paid a sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) to Nasser Hamidavi Zegheiri, on the last date of hearing. Thus, a total of Rs.47,90,000/- (Rupees Forty Seven Lakhs Ninety Thousand only) is due to 13 students. The list also gives the break-up figure of each student.

7. However, Mr.R.C.Paul Kanagaraj, learned counsel appearing for Nasser Hamidavi Zegheiri and the Consul General disputed the amount payable by Asan Memorial Dental College and submitted that individual students have to be paid more than the amount referred to in the list.

8. At this juncture, this Court does not want to go into that aspect also, since this Court is of the view that at the outset, the students should get back at least the admitted amounts immediately. It is reported that 13 students have gone back to Iran as their Visa had expired. Mr.Mohammad Haghbin Ghomi, Consul General and Mr.Syed Tamjeed Hyder, Public Relations Officer (P.R.O.) submitted that the Iran Consulate is in touch with Iranian students and their families and is ready to receive the amounts on behalf of the Iranian students from Asan Memorial Dental College and ensure that the amount reaches the students in Iran. They also stated that the Iran Consulate has a bank account in the name of the Consulate General of Islamic Republic of Iran in Syndicate Bank, Banjara Hills Branch, Hyderabad.

9. In view of the above, this Court directs Asan Memorial Dental College to draw the Demand Drafts in favour of the Consulate General of Islamic Republic of Iran as stated above and produce the same before this Court on 11.06.2018.

10. Post on 11.06.2018."

3. On instructions, the learned Government Advocate (Crl. Side) submitted that the case in Tirukazhkundam Police Station Cr. No.278 of 2017 has been transferred to the file of the District Crime Branch, Kanchipuram, on the orders of the Superintendent of Police, Kanchipuram District.

4. Today, Mohammad Haghbin Ghomi, Consul General of Islamic Republic of Iran, Hyderabad, Mr. Syed Ali Mohammed, Translator, Mr.S. Thennarasu, Deputy

Superintendent of Police, District Crime Branch, Kanchipuram, are present before this Court.

5. The Consulate General has addressed a communication dated 30.04.2018 to the Registrar General of this Court which reads as under:

"With reference to the Court hearing held on 26.04.2018 pertaining to Crl.O.P. No.20237 of 2017, on orders of Hon'ble Justice, the Consulate General of the Islamic Republic of Iran - Hyderabad, hereby submits this letter to the Hon'ble Court as an undertaking to collect refunds of the admission fees paid by 14 Iranian students (details enclosed) to ASAN MEMORIAL DNETAL COLLEGE in 2016-2017.

As per the order dated 26.04.2018, the said college shall give a demand draft as a refund to the total admission fees of these 14 Iranian students (details enclosed) to the Consulate General of the Islamic Republic of Iran - Hyderabad.

The Consulate General of the Islamic Republic of Iran - Hyderabad has all the particulars of these 14 Iranian students and is in contact with their families and hereby undertakes that the refunded amount shall be transferred to the respective students or their families in Iran."

6. Pursuant to the order dated 26.04.2018 passed by this Court, Asan Memorial Dental College and Hospital, handed over a demand draft bearing no.801553 dated 05.06.2018 drawn on South Indian Bank, T. Nagar Branch, Chennai, for a sum of Rs.47.90 lakhs in favour of the Consulate General of Islamic Republic of Iran in the open Court, to the Consul General.

7. In the list appended to the said communication dated 30.04.2018, the name of 14 Iranian students, including Nasser Hamidavi Zegheiri figure. Of course, in the said list, the name of Daniel Vazirzadeh does not figure as he had not paid any amount to Asan Memorial Dental College and Hospital. It may be pertinent to reiterate here that Nasser Hamidavi Zegheiri has already been paid Rs.5.50 lakhs on 24.04.2018 before this Court.

8. The Deputy Superintendent of Police, District Crime Branch, Kanchipuram submitted the case diary and

on a perusal of the same, it appears that the police have zeroed in on a broker who has played an active role in the affair. Further, on account of the order of stay granted on 22.09.2017 and finally extended on 17.01.2018, the police have not been able to proceed further with the investigation.

9. In view of the above, the order of stay granted on 22.09.2017 and finally extended on 17.01.2018 is modified to the effect that the Investigating Officer can proceed with the investigation to nab the brokers involved in the transaction.

Post on 02.07.2018 at 2.15 p.m."

6. Mr.P.R.Raman, learned counsel for the petitioners submitted that even according to the de facto complainant, he had given money to a broker by name Mohammed Kouser, who has cheated the de facto complainant and for the amount received by the broker, the petitioners cannot be held criminally liable, inasmuch as there was no deception at inception. He elaborated his contention by saying that the Iranian students were given admission lawfully under the NRI quota and only on account of the stipulation to clear NEET Examination, the authorities had to discontinue their studentship. Thus, he contended that there was no deception at inception for criminally prosecuting the Institution. He further submitted that Srividhya (A2), the 1st petitioner, is the Office Administrator and Dr.Lakshmi (A3), the 2nd petitioner, is the Academic Director in the Asan Memorial Dental College and Hospital, and in the complaint drafted by the de facto complainant, he has deliberately made false averments to the effect that the amount was fixed in the presence of the petitioners and that he was asked to pay a sum of Rs.20,00,000/- in the counter. According to the petitioners, the Institution had collected only Rs.5,50,000/- from the de facto complainant, which has also been repaid by them, and if he had paid any amount in excess to the broker, the College cannot be held criminally liable for that.

7. The learned Additional Public Prosecutor on instructions submitted that the investigation conducted so far does not implicate the petitioners and that only if Mohammed Kouser is arrested, will a correct picture appear. As of now, the de facto complainant has not been able to produce any tangible material to show that he had paid Rs.20,00,000/- directly to the College. The College had admitted that they had received Rs.5,50,000/- from the de facto complainant which they have repaid to him and also to other Iranian students through their Consul General, Consulate General of Islamic Republic of

Iran.

8. Learned counsel for the de facto complainant asserted the allegations in the FIR and submitted that the FIR should not be quashed at the threshold and that the Police should be given an opportunity to proceed with the investigation to its logical conclusion.

9. This Court gave its anxious consideration to the rival submissions. The admission of the Iranian students under NRI quota cannot be said to be per se illegal. The College had to discontinue their studentship since they had not cleared the NEET Examination. Though there are no prima facie materials as against the petitioners herein, as of now, the FIR cannot be quashed at the threshold and some opportunity should be given to the police to apprehend the broker and thoroughly interrogate him in order to find out if payments were made to the Institution.

10. Under such circumstances, this petition is closed with a direction to the respondent police to take effective steps to nab the brokers, within a period of six months and if still, there is no progress in the investigation, liberty is given to the petitioners to approach this Court for quashing the FIR. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gms/mkn

To

1. The Inspector of Police,
Thirukazhkundam Police Station,
Kanchipuram District.
2. The Inspector of Police,
District Crime Branch,
Kanchipuram District.

3. The Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.

4. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.20237 of 2017

TR(21/08/2018)



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