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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 73 OF 2015.

DR. BINOD C. AGARWAL,
Major of Age, service, Indian National and resident of 8, ISRO Campus, Sector D1, Sterling City, Bhopal, Ahmedabad, 380 058 (Gujarat). .... Applicant.

Versus

1. STATE through Deputy Superintendent of Police, Central Bureau of Investigation, New Delhi

2. SPECIAL PUBLIC PROSECUTOR CBI, Panaji, Goa .... Respondent.

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A. V. , Advocate for the applicant.
Mr. M. Amonkar, Special Public Prosecutor *for the respondents.*

WITH
CRIMINAL REVISION APPLICATION NO. 54 OF 2015.

V.N. RAJASEKHARAN PILLAI s/o Late V.K. Narayan Pillai S-31, Medical Collage Road, Gandhinagar P.O. Kottayam, Kerala-686 008 .... Applicant.

Versus

1. STATE THROUGH CBI/ACU-1, New Delhi, Bambolim -Goa .... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the applicant.
Mr. M. Amonkar, Special Public Prosecutor *for the respondents.*

CORAM: MANISH PITALE, J.
Reserved on: 1st September, 2021.
Pronounced on: 28th September, 2021.

JUDGMENT:

1. These two revision applications have been filed by the original accused nos.7 and 8 to challenge order dated 7.7.2015, passed by the Court of Special Judge, Panaji, whereby direction has been given to frame charges against the applicants for offences under Section 420 read with Section 120B of the Indian penal Code (IPC) and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act).

2. According to the applicants, there is no material on record to raise any suspicion, much less grave suspicion, against them for framing the aforesaid charges. It is brought to the notice of this Court that the applicants were not named in the First Information Report (FIR) and they came to be added as accused, only when supplementary charge-sheet came to be filed by the respondent/Investigating Authority.

3. In the present case, an FIR came to be registered against six accused persons, including the then chairman of the Council of Architecture and his wife, on allegations that they along with other accused persons had indulged in wide spread corruption pertaining to the grant of permissions for starting courses of architecture in various institutions. Upon registration of the offences and transfer of investigation to Central Bureau of Investigation (CBI), a detailed charge-sheet was filed against the accused persons. Later, on 9.1.2014, a supplementary chargesheet came to be filed, wherein names of the applicants figured for the first time as being the part of the conspiracy of committing the said offences. On further investigation, the Investigating Authority claimed that material came on record indicating that in so far as the applicant in CRIR 73 of 2015 Dr. Binod C. Agarwal (Accused no.7), was concerned, there was clear case of *quid pro quo.* This was claimed on the basis that the accused no.1, the then chairman of the Council of Architecture, granted permission to a University i.e Himgiri Nabh Vishwavidyalaya (HNV) of which the said applicant (accused no.7) was the then Vice-Chancellor for starting course of architecture, in return for status of constituent college of HNV granted to an institute called Vidya Vardhan's Institute of Design, Environment and Architecture, Goa (IDEA, Goa), which was run by the wife of the accused no.1, who was herself arrayed as the accused no. 2.

4. In so far as the applicant in CRIR No.54 of 2015, is concerned, it was alleged that the said applicant (Accused no.8) was the Vice-Chancellor of the Indira Gandhi National Open University (IGNOU) and he had been instrumental in granting illegal affiliation to IDEA Goa with IGNOU in the absence of Memorandum of Understanding and violation of norms for granting affiliation. The Investigating Authority claimed that sufficient material was brought on record in order to array the applicants as accused nos. 7 and 8 and for framing charges against them under the aforesaid provisions of law. The investigating authority stated chronological sequence of the events in respect of both the applicants in the supplementary chargesheet, in order to highlight their role and their alleged involvement in committing the said crimes by hatching a conspiracy with accused nos. 1 and 2.

5. The Court of Special Judge heard the Investigating Authority as well as the applicants on the question of framing of charges and by the impugned order found that sufficient material was placed on record for framing charges against the applicants for the aforesaid offences. The Special Court found that the sequence of events highlighted by the Investigating Authority and material brought on record clearly indicated that the accused no. 7 (applicant in CRIR No.73/2015) acted in a manner indicating that there was a clear case of conspiracy and quid pro quo between him and the accused nos. 1 and 2. In so far as the accused no.8 was concerned, (Applicant in CRIR No.54/2015), it was found that sufficient material was brought on record to prima facie show that the Rules and Regulations were flagrantly violated in order to benefit accused nos.1 and 2, by misuse of office by the said applicant, being Vice-Chancellor of IGNOU.

6. Mr. S. G. Desai, learned Senior Counsel appearing on behalf of the applicant in CRIR 54 of 2015 (Accused No. 7) submitted that the said applicant was at the relevant time Vice-Chancellor of the HNV university. By inviting attention to the statute whereby the said university was set up i.e the Himgiri Nabh Vishwavidyalaya (University in the Sky) Act, 2003, the learned Senior Counsel submitted that the Vice-Chancellor never acted in his individual capacity and that all decisions taken by the Vice-Chancellor were pursuant to deliberations of the relevant committees of the University. It was submitted that perusal of the provisions of the said Act would show that every decision regarding opening of a particular course or department in the University or granting constituent college status or affiliation to any institution, was taken collectively by various committees of the University, with the association of the said applicant as the Vice-Chancellor. It was submitted that merely because certain events had taken place in a particular chronology could not lead to a conclusion that in the present case there was an aspect of *quid pro quo* or that the said applicant had entered into a conspiracy with the accused nos. 1 and 2 for illegally benefiting himself or them.

7. It was submitted that the Special Court completely failed to examine as to whether the ingredients of the said offences under the IPC and the PC Act could be prima facie found against the said applicant on the basis of the material brought on record along with the supplementary charge-sheet. It was submitted that there was nothing on record to show as to who was cheated by the applicant even if the contents of the chargesheet and the accompanying documents were to be accepted. It was submitted that none of the students of either the department of architecture of the said University or IDEA Goa had suffered any academic loss or otherwise any loss. There was nothing on record to show that the students were lured into parting with fees, for which they were not offered the course of architecture and there was absolutely nothing on record to show that any monetary benefit accrued to the said applicant. In so far as the provisions of PC Act are concerned, it was submitted that there was nothing to show that the alleged activities of the said applicant could fall within any of the categories specified under Section 13(1) (d) of the PC Act. Therefore, it was submitted that the Court below erred in directing framing of charges against the said applicant. Additionally, it was submitted that the question of sanction for prosecution of the applicant was not at all taken into consideration by the Court below while passing the impugned order.

8. Mr. S. D. Lotlikar, learned Senior Counsel for the applicant in Criminal Revision Application no.54/2015 (accused no. 8) supported the contentions raised on behalf of the accused no.7. He additionally submitted that there were no allegations of quid pro quo against the applicant he represented. It was further submitted that the Investigating Authority simply claimed that certain norms, rules and regulations were allegedly violated by the said accused no. 8 in the context of admission of students in IDEA Goa. Simply because the accused no. 1 and 2 happened to be associated with IDEA Goa, could not lead to the conclusion that any and every institution with which the said accused persons or IDEA Goa interacted, could be said to be part of any conspiracy. It was submitted that the material on record demonstrated that students deposited the fees to the account of IGNOU. There was not even an allegation that either the accused nos.1 and 2 or the applicant (accused no. 8) had personally financially gained in any manner by granting admission to the students in IDEA Goa. It was also a matter record that the academic interest of the students was taken care of by ensuring that they completed their course. On this basis, it was submitted that there was no material on record, to indicate any suspicion that could be raised against the said applicant. It was reiterated that none of the ingredients of the offences alleged against the applicant were made out on the basis of the material on record.

On this basis, it was submitted that the revision applications deserved to be allowed.

9. Mr. Amonkar, Special Public Prosecutor, appearing for the respondent submitted that the Court of Special Judge had properly appreciated the contents of the supplementary chargesheet and accompanying documents. The learned Special Public Prosecutor emphasized upon two charts stated in the supplementary chargesheet giving the details of the events in chronological order in respect of both the applicants, demonstrating the manner in which the conspiracy was hatched between accused no.1 and 2 on one hand and accused no. 7 and 8, the applicants before this Court, on the other hand. It was emphasized that conspiracies are hatched in secrecy and direct material is generally not available. As long as material brought on record raised grave suspicion against the applicants, order of framing charge was certainly justified. On this basis, the learned Special Public Prosecutor submitted that the revision applications deserved to be dismissed.

10. Before adverting to the rival contentions raised on behalf of the rival parties, it would be appropriate to refer to the position of law as regards the contentions raised for consideration. Since this Court is considering the question as to whether charges could have been framed against the applicants, it needs to be examined as to what are the factors to be taken into consideration, while assessing the material on record to conclude as to whether a case was made out for framing charges. It is settled law that at this stage, the Court is not expected to conduct a mini trial and that the material on record has to be appreciated to reach a conclusion as to whether a prima facie case is made out to send the accused to trial.

11. In the case of **Union of India Vs. Prafulla Kumar Samal and another, (1979)3 SCC 4**, the Hon'ble Supreme Court culled out certain principles to be applied at this stage by the Courts. The relevant portion of the said judgment reads as follows: -

> *10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
>
> *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.*
>
> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*
>
> *(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to*

consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

12. The aforesaid principles have been followed in subsequent judgments of the Hon'ble Supreme Court and in the case of ***Yogesh alias Sachin Jagdish Joshi Vs State of Maharashtra (2008) 10 SCC 394,*** it has been held at paragraphs 15 and 16 as follows:-

15. Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in

> *assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (See State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] and Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]*

13. In the present case, since both the applicants were at the relevant time serving as a Vice-Chancellors of the University and hence, were public servants, the question of sanction for their prosecution has been specifically raised in these applications. The Court of Special Judge held that sanction was not required because at the stage of framing charges such protection under Section 197 of the Cr.P.C. was not available when there was sufficient material to show prima facie case of criminal conspiracy between the accused nos. 1 and 2 on the one hand and the applicants (accused nos. 7 and 8) on the other. The Hon'ble Supreme Court, with reference to Section 197 of the Code of Criminal Procedure (Cr.P.C.), has held that when prosecution is sought to be initiated for offences under IPC, sanction for prosecuting a public servant would be necessary even though the said public servant has ceased to hold office. A distinction is made in case of ***State of Punjab Vs Labh Singh, (2014) 16 SCC 807,*** between the requirement under the PC Act and the IPC with regard to the question of sanction.

14. Although after the amendment carried out in Section 19 of the PC Act in the year 2018, there would be no distinction in prosecution launched under the PC Act and IPC against public servants on the aspect of sanction, since the present case is concerned with a situation prior to the 2018 amendment, the position of law clarified in the aforesaid case of ***State of Punjab Vs Labh Singh*** (supra) becomes relevant. In the said judgment it has been held at paragraphs 9 and 10 as follows: -

> *9. In the present case the public servants in question had retired on 13-12-1999 and 30-4-2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13-9-2000 and later on 24-9-2003. The public servants having retired from service there was no occasion to consider grant of sanction under Section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A. Venkataraman v. State [S.A. Venkataraman v. State, AIR 1958 SC 107 : 1958 Cri LJ 254 :*

1958 SCR 1040] while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with Section 19(1) of the PC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in S.A. Venkataraman [S.A. Venkataraman v. State, AIR 1958 SC 107 : 1958 Cri LJ 254 : 1958 SCR 1040] was adopted by this Court in C.R. Bansi v. State of Maharashtra [C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537 : 1971 SCC (Cri) 143] and in Kalicharan Mahapatra v. State of Orissa [Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411 : 1998 SCC (Cri) 1455] and by the Constitution Bench of this Court in K. Veeraswami v. Union of India [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] . The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the PC Act was concerned.

10. However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 CrPC is available to the public servant concerned even after retirement. Therefore, if

> *the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13-9-2000 and secondly on 24-9-2003, the Court could not have taken cognizance insofar as the offences punishable under the Penal Code are concerned. As laid down by this Court in State of H.P. v. Nishant Sareen [State of H.P. v. Nishant Sareen, (2010) 14 SCC 527 : (2011) 3 SCC (Cri) 836] , the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material.*

15. In the present case, even though the applicants ceased to hold the position of Vice-Chancellors when supplementary charge-sheet was filed, as they were roped in as accused nos.7 and 8, the question of sanction assumes significance. It also needs to be examined as to whether the Special Court was justified in holding that since a prima facie case of criminal conspiracy was made out, no sanction was necessary before proceeding against the applicants.

16. The present case would also necessitate examination of the question as to whether the ingredients of the offences alleged against the applicants could be said to be even prima facie made out on the basis of material on record. Section 120B of IPC is sought to be invoked by alleging conspiracy between the applicants i.e. original accused nos. 7 and 8 and the accused no.1 and 2. Conspiracy necessarily involves meeting of minds and there has to be some material to indicate such agreement and meeting of minds between the accused persons to commit the offences alleged. Criminal conspiracy is defined under Section 120A of the IPC and in the case of ***Yogesh @ Sachin Jagdish Desai*** (Supra), the Hon'ble Supreme Court referred to the same and held as follows: -

> *18. Section 120-A IPC defines criminal conspiracy. The section reads as under:*
>
> 19. *"120-A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—(1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*
>
> *Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."*
>
> *19. Section 120-B IPC provides for punishment for an offence of criminal conspiracy.*
>
> *20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is,*

therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi v. State of Maharashtra [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.

17. It is also alleged against the applicants that they committed offence under Section 420 of the IPC. The ingredients of the said offence can be found in the definition of cheating in Section 415 of the IPC. As per the said definition, when a person deceives another or fraudulently or dishonestly induces the other to deliver any property and such act causes or is likely to cause damage or harm to the person so deceived in body, mind, reputation or property, the offence of cheating is said to have been committed. Therefore, the essential ingredients are that a person must be deceived or dishonestly induced to deliver a property to the other. The material in the present case will have to be analyzed to examine as to whether such ingredients are found to be prima facie present so as to demonstrate that the applicants deserve to face trial for the said offence.

18. The other charge against the applicants pertains to the provisions of PC Act and according to the Court below, charge deserved to be framed against the applicants under Section 13(2) read with Section 13(1)(d) of the PC Act. Since Section 13 stood amended in the year 2018 and in the present case, the Court is concerned with a situation prior to the amendment, it would be appropriate to refer to the provision relevant to the facts of the present cases. Section 13(1)(d) of the PC Act, as it then stood, reads as follows**: -**

> *"(1)A Public servant is said to commit the offence of criminal misconduct-*
> *(a)....*
> *(b)....*
> *(c)....*
> *(d) if he, --*

> *(i) by corrupt or illegal means, obtain for himself or for any other person any valuable thing or pecuniary advantage; or*
> *(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or*
> *(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or ….”*

19. A bare reading of the above quoted provision would show that for a person to be charged with such an offence the material will have to at least prima facie raise grave suspicion about the person so charged having obtained by corrupt or illegal means for himself or any other person any valuable thing or pecuniary advantage, or in the case of a public servant by abusing his position having done such an act, without any public interest. The essential ingredient of the said offence is obtaining a valuable thing or pecuniary advantage for himself or any other person. It could be by corrupt or illegal means or by abuse of his position by a public servant. The material on record needs to be examined to ascertain whether the ingredients of the aforesaid offences can be said to be made out against the applicants before this Court.

20. The material on record will have to be examined on the touch stone of the above quoted principles laid down by the Hon'ble Supreme Court in ***Prafulla Kumar Samal*** (supra) and followed in number of judgments thereafter. The material will have to disclose grave suspicion against the applicants, which has not been properly explained, thereby indicating that framing of charges is justified. The Court will have to sift and weigh the material on record for examining whether a prima facie case is made out against the accused for the offences alleged against them. If the material on record raises only some suspicion but falls short of raising grave suspicion, the applicants will have to be discharged.

21. In the present case, the sequence of events reconstructed by the respondent/Investigating Authority in respect of the applicants i.e. accused nos.7 and 8 will have to be examined on the basis of the material on record to assess whether the Court of Special Judge was justified in framing charges against them.

22. In so far as the applicant in CRIR no.73 of 2015 (accused no.7) is concerned, the sequence of events is stated in the supplementary charge-sheet which is as follows: -

Date	Events
17-04-2006	Binod C. Agrawal, Vice-Chancellor of HNV, Dehradun applied to CoA for approval of its 5 years B. Arch. Course of HNV, Dehradun
20-04-2006	Smt. Nandita Shoni, Chairperson of Vidya Vardhan Trust, Goa applied for incorporation of IDEA as constituent college of IDEA, Goa.
25-04-2006	Smt. Nandita Sohoni, Chairperson of Vidya Vardhan Trust, Goa was informed by Binod C. Agrawal, Vice-Chancellor of HNV, Dehradun that HNV, Dehradun provisionally agreed and accepted Vidya Vardhan's, IDEA, Goa as a Constituent College of the University and final incorporation would be done after visit of committee to be set by the University.

01-05-2006	At the instance of Shri Vijay Srikrishna Sohoni, President of CoA, Sh. Vinod Kumar, registrar nominated Professor Mr. Rajan Sridhar, Head Department of Architecture, BMS College of Engineering, Bangalore as one member expert committee to examine the suitability of HNV, Dehradun for its proposal of B. Arch. Course.
06^{th} and 7^{th} June, 2006	Mr. Rajan Sridhar, one member expert team conducted verification of HNV, Dehradun during 6^{th} and 7^{th} June, |2006. In the verification report, it is mentioned that the college is yet to be constructed, teacher/faculty member yet to be recruited, the infrastructure of Architecture College is nil and it doesn't fulfill minimum standard of Architecture Education of CoA.
10^{th} July, 2006	Report of one member expert Professor Mr. Rajan Sridhar was circulated to members of the Executive Committee on 10th July, 2006 to offer their observation/comment before 14th July, 2006.
17-07-2006	Letter of Approval of CoA for the 5 years B. Arch. Course of HNV, Dehradun was issued for the academic year 2006-2007 for intake of 40 students.
15-09-2006	The Executive Committee of CoA ratified approval, granted to HNV, Dehradun on 17 July, 2006 in its 87^{th} meeting ex-post-facto.
09-10-2006	Smt. Nandita Sohoni, Chairperson of Vidya Vardhan Trust, Goa re-applied to HNV Dehradun after altercation | with Goa University, Goa for recognition of her | Architecture College, IDEA as a Constituent College of HNV, Dehradun.
19-10-2006	In the meeting held at HNV, Dehradun under the chairmanship of Sh. Vinod C. Agrawal to examine

	the application of Vidya Vardhan's, IDEA, Goa as Constituent College of HNV, Dehradun. It was decided by the | committee for on the spot inspection of Architecture College, IDEA, Goa.
17-18th November 2006	Sh. Kulbhushan Jain, Professor of Architecture at Taleem November, Research foundation, Ahmedabad and Sh. K. K. Verma, Registrar of HNV, Dehradun visited IDEA, Goa and they found that IDEA, Goa was suitable for granting constituent status of HNV, Dehradun.
20-11-2006	In the meeting held at Taleem Research Foundation, Ahmedabad chaired by Sh. Binod C. Agrawal, the| committee accepted the recommendation of S/Sh. Kulbhushan Jain and K K Verma accepted the recommendation of incorporation of IDEA, Goa as Constituent College of IDEA, Goa.
22-11-2006	Sh. K K Verma, Registrar, HNV, Dehradun informed Mrs. Nandita Sohoni, Chairperson, Vidya Vardhan Trust : about the decision of HNV, Dehradun incorporating IDEA, Goa as Constituent College of HNV, Dehrdun.
04-05-2007	HNV, Dehradun was further granted extension of approval for the academic session 2007-2008 for its B. Arch. Course by CoA on the same verification report of Mr. Rajan Sridhar which had pointed out that HNV, Dehradun didn't fulfill criteria of Minimum Standard of CoA.
30-01-2008	HNV, Dehradun was once again granted extension of approval for the academic session 2008-2009 for its B. Arch. Course by CoA on the same verification report of Mr. Rajan Sridhar which had pointed out that HNV, Dehradun didn't fulfill criteria of Minimum Standard of

	CoA.

23. The respondent claims that the said sequence of events reconstructed on the basis of the material on record is enough to show that the said accused no.7 deserves to face trial. The thrust of the allegations against the accused no.7 appears to be that he granted constituent college status to IDEA Goa with the HNV University of which he was the Vice-Chancellor. In return the Council for Architecture, of which accused no.1 was the chairman, granted permission for starting five year course of Architecture in the HNV University. It is claimed that since the accused no.1 was Principal of IDEA Goa, which was granted constituent college status with the HNV University and wife of accused no.1 i.e. the accused no. 2 was chairperson of the Trust which managed the IDEA Goa, there was a direct link established, demonstrating the conspiracy hatched between the accused no. 7 and accused nos. 1 and 2.

24. In this context, the learned Senior Counsel appearing for the said applicant i.e. accused no.7 submitted that the respondent has proceeded on the basis that being the Vice-Chancellor of the HNV University, the said accused single handedly granted the status of constituent college to the IDEA Goa and as *quid pro quo* managed to secure permission from the Council of Architecture for starting the five year course of Architecture in HNV university. In this context a perusal of the provisions of the statute that established the HNV University i.e. Himgiri Nabh Vishwavidyalaya (University in the Sky) Act, 2003 (the Act) assumes significance. A perusal of the same would show that the University functions through various committees of which the Vice-Chancellor is a member and chairperson. The

Vice-Chancellor is assisted by the Pro Vice-Chancellor, Dean of the faculty, Registrar and other Officers and although the Vice-Chancellor under Section 14(4) of the said Act is the Principal Executive and Academic Officer of the University exercising general supervision, the authorities of the University include Board of Governors, Board of Management, Academic Council and Finance Committee recognized under Section 20 of the said Act. The constitution of the said authorities is specified in Section 21 to Section 24 of the said Act. It is significant that Section 39 of the said Act provides for protection of the officers or the employees of the University from legal proceedings for anything which is done in good faith or intended to be done in pursuance of the provisions of the Act, Statute and Rules.

25. The material on record indicates that the said applicant i.e. accused no.7, at the relevant time being the Vice-Chancellor, was indeed involved and concerned with the activities of the HNV University, including the decision for giving status of constituent colleges to institutions. But, the material on record also indicates that the procedures envisaged under the said Act and Rules were followed before finalizing the decision granting constituent status to the college i.e. IDEA Goa. The material brought on record by the respondents itself show that there was a committee constituted by the foundation which established HNV University to visit IDEA Goa for a spot inspection so that the report prepared in pursuance thereof could be placed before the concerned authorities of the university for a decision in the matter.

26. Th material on the record also shows that HNV University had approached the Council of Architecture for starting the five year course of Bachelor of Architecture in the HNV University. The respondent brought material on record which includes exchange of communications between the HNV University, the Council of Architecture and IDEA Goa and it is claimed that the material indicated a case of *quid pro quo* where the said applicant i.e. accused no. 7 secured permission for opening the five year course of Bachelor of Architecture in the HNV University from the Council of Architecture, in exchange for granting constituent college status to IDEA Goa with which accused no.1 and 2 were closely associated. The respondent has proceeded on the basis that the said applicant i.e. accused no. 7 brought about such a situation single handedly. There is material on record which indicates that the members of the committee who had carried out the spot inspection and the Registrar of the HNV University had also participated in the said activity and yet only the applicant has been made an accused.

27. It is significant that the said conspiracy alleged under Section 120B of the IPC is said to have been hatched by the accused no.7 with the accused nos.1 and 2 for committing the offence under Section 420 of IPC and Section 13(2) read with Section 13(1) (d) of the PC Act. It needs to be examined whether the material on record and chronological sequence of events claimed by the respondent show that a criminal conspiracy was indeed hatched between the said accused persons. As stated by the Hon'ble Supreme Court in the judgment in the case of ***Yogesh alias Sachin Jagdish Joshi***, basic ingredients of offence of criminal conspiracy are that there has to be an agreement between two or more persons relating to doing an illegal act or doing an act by illegal means for which meeting of minds of two persons or more is a *sine qua non.*

28. Perusal of the above quoted sequence of the events narrated in the supplementary charge-sheet would show that the respondent has proceeded on the basis that the material available on the record demonstrates that the said applicant i.e. accused no. 7 single handedly brought about the said situation of *quid pro quo,* thereby indicating a criminal conspiracy with the accused nos. 1 and 2.

29. At this stage, it is significant to note that the accused no.7 was not arrayed as an accused when the original chargesheet was filed and that it was only in the supplementary charge-sheet filed later that the allegation of conspiracy was levelled against him. In the meanwhile, the case stood transferred from Delhi to Goa on an order passed by the Hon'ble Supreme Court. The material on record ought to demonstrate meeting of minds of the accused no. 7 with accused no.1 and 2 for the purpose of performing an illegal act or an act through illegal means. The accused no. 7 is alleged to have committed offence under Section 420 of IPC and Section 13(2) read with Section 13(1) (d) of the PC Act. It is for this reason that the material on record needs to be appreciated to examine as to whether ingredients of said offence are at all made out against the said applicant i.e. accused no. 7.

30. But, before examining the said aspect of the matter, it would be appropriate to refer to the material brought on record against the applicant in CRIR 54 of 2015, i.e. accused no. 8, because the said applicant is also accused of criminal conspiracy with accused nos. 1 and 2 to commit offence as alleged against the accused no. 7. It is after adverting to the material relevant for pressing charges against the accused no. 8 for criminal conspiracy that it would be appropriate to examine whether the ingredients of the offences under Section 420 of IPC and Section 13(2) read with Section 13(1) (d) of PC Act, are made out against both the applicants i.e. accused nos. 7 and 8.

31. A perusal of the supplementary chargesheet shows that as against the said applicant i.e. accused no. 8, the sequence of events allegedly showing conspiracy hatched between him and accused nos. 1 and 2 reads as follows: -

Chronological statement on Vidya Vardhan's IDEA, Goa association with IGNOU, New Delhi for Bachelor of Architecture Course.

Dates	Events
15-07-2008	Sh. Shashibhushan, former, M. P. on his letter pad introduced Vidya Vardhan's, IDEA, Goa to Prof. V. N. Rajasekharan Pillai, VC, IGNOU, New Delhi for its affiliation of 5 years B, Arch. Course with IGNOU.
08-08-2008	A meeting was held among the officials of IGNOU, New Delhi, Vidya Vardhan's, IDEA, Goa and Vastukala Academy, New Delhi for deciding on MOU to be signed with IGNOU, New Delhi for Bachelor of Architecture Course in the premises of IGNOU, New Delhi. In the meeting, it was decided that Vastu Kala Academy, New Delhi and IDEA, Goa could start admission of students for B. Arch. Course for July, 2008 session in association with IGNOU, New Delhi. Sh. K. Laxman, the then Registrar of IGNOU, New Delhi intimated IDEA, Goa to complete admission process of B. Arch. Course for July, 2008 session by 31-08-2008.

13-08-2008	MOU between IDEA, Goa and IGNOU signed by Sh. K. Laxman, the then Registrar of CoA and Smt.Nandita Sohoni, Chair-person of Vidya Vardhan's Trust, Goa at IGNOU, New Delhi.
25-11-2008	A Joint Co-ordination Committee was constituted at IGNOU, New Delhi to look into the implementation of conditions of MOUs signed between IDEA, Goa. Mr. Vijay Sohoni, Director, Vidya Vardhan Institute, Goa, Prof. Ajit Kumar, Director, SOET, Dr. Manoj Kulshrestha, Reader, SOET, Dr. Munish K. Bhardwaj, Programme Coordinator, B. Arch, SOET, Vice-Chairman, Prof. Omprakash Mishra, Pro Vice-Chancellor, IGNOU, New Delhi were members of the Committee.
12-02-2009	A meeting was held in the office of IGNOU, New Delhi participated by Sh. V. S. Sohoni, President of CoA and Principal of IDEA, Goa, V. N. Rajsekharan Pillai, Vice-Chancellor of IGNOU, Sh. O. P. Mishra, Pro Vice-Chancellor of IGNOU, New Delhi, Dr. M. K. Bhardwaj, Course Co-ordinator and Dr. Manoj Kulshrestha of SOET, IGNOU, New Delhi. It was decided in the meeting that Dr. M. K. Bhardwaj and Dr. Manoj Kulshrestha would visit IDEA, Goa to enquire about its infrastructure and manpower for the smooth conduction of B. Arch. Course. The Committee never went for this inspection at that time.
17-11-2009	MOU with Vidya Vardhan's, IDEA, Goa was terminated by Sh. U. S. Tolia, the then Registrar intimated IDEA, Goa that no new

	activity like admission and other things will be carried out at the institute.
20-03-2010	Sh. Vijay Srikrishna Sohoni Director, IDEA. Goa intimated IGNQU, New Delhi through e-mail to continue association with IGNOU for its 5 years Bachelor of Architecture Course.
24-06-2010	Dr. M. K. Bhardwaj, Programme Co-ordinator, B. Arc. Course put up proposal to initiate process of signing MoU with IDEA, Goa, alongwith Vastukala Academy, K R Manglam School of Architecture and Planning, GK-1, New Delhi once again and provide them permission to start new admission for July, 2010 session.
29-06-2010	Proposal to permit IDEA, Goa to start admission process for July, 2010 session put by Dr. M. K. Bhardwaj was finally approved by the then Vice-Chancellor Sh. V. N. Rajasekharan Pillai.
17-07-2010 and 18-07-2010	Three members expert team namely Dr. Manoj Kulshrestha, SOET, IGNOU, Dr. M. K. Bhardwaj, SOET, IGNOU and Mrs. Anjali Krishna Sharma, Professor of Architecture at Gurgaon, Expert visited IDEA, Goa to physically verify the infrastructure and manpower for its B. Arch. Course. They found deficiency in the infrastructure at IDEA, Goa and made suggestion for its improvement. Letters sent to IDEA, Goa but were not responded. No MOU was signed thereafter.
July, 2010	IDEA, Goa admitted 22 new students in B. Arch. Course and submitted fees of Rs.16,

	50,000/(Sixteen lac and fifty thousand rupees only) for 22 new students to IGNOU as per fees sharing agreement.
03-08-2010	CBI registered this case no. RCAC12010A0002 against Sh. Vijay Srikrishna Sohoni, President of CoA & others relating to IDEA, Goa and CoA.
12-05-2011	Vidya Vardhan's, IDEA, Goa intimated IGNOU about its merger with IDEA, Nashik and its association with Yashwantrao Chavan Maharashtra Open University (YCMOU), Nashik for its 5 year B. Arch. Course.

32. The said accused no.8 was the Vice-Chancellor of IGNOU at the relevant time and it is alleged that affiliation to IDEA Goa was illegally granted by the accused no.8 as the Vice-Chancellor of the IGNOU.

33. It is interesting that in the case of the accused no. 8 there is no allegation of *quid pro quo,* but it is emphasized that affiliation to IDEA Goa and permission to take admission in the IDEA Goa was granted despite non-eligibility of IDEA Goa for conducting course of Architecture. It is alleged that said accused no. 8, being the Vice-Chancellor of IGNOU, ensured that IDEA Goa went ahead with taking admission of students, despite the fact that the said institution was not eligible for affiliation and that such permission was granted even before memorandum of understanding was executed between IGNOU and IDEA Goa. For the purpose of leveling such charge against the accused no.8, the respondent has relied upon certain communications exchanged between the parties. A perusal of the same would show that such communications were issued pursuant to deliberations and meetings conducted wherein various officers of the IGNOU, including the accused no. 8 had participated. The material itself shows that communications were issued by the Registrar of the IGNOU in pursuance of the joint committee meeting in which the said accused no.8 participated as the Vice-Chancellor and other officers also participated. In pursuance of such communication, IDEA Goa took admission of students and the fees was directly paid to the IGNOU, as the counselling was conducted by IGNOU. The question is whether such material indicates that accused no. 8 single handedly caused admission of the students to be taken in the IDEA Goa and whether such activities either caused pecuniary loss to the IGNOU or illegal pecuniary advantage to the accused no. 8 or anyone else. In any case, the material on record ought to raise a grave suspicion that the said accused no. 8 and accused nos. 1 and 2 had a meeting of minds and acted in concert in order to commit the aforesaid offences under Section 420 the IPC Section 13(2) read with Section 13(1) (d) of the PC Act. This Court is of the opinion that merely stating events in chronological order and reaching conclusions about conspiracy would not be enough and that in the present case the material does not raise grave suspicion against the said accused no. 8 for the offence of criminal conspiracy under Section 120B of the IPC.

34. It is crucial that such alleged meeting of minds and criminal conspiracy should be for committing the said offences for which accused nos. 7 and 8 have been charged. As noted above, the ingredients of Section 420 IPC are specific and they need to be made out, at least prima facie, on the basis of material on record for sending the applicants i.e. accused nos. 7 and 8 to face trial.

35. In so far as Section 420 of the IPC is concerned, the first question would be as to who in the present case was the person deceived or fraudulently or dishonestly induced for delivering any property to the said accused persons. The material would also have to prima facie show that such person who had been either deceived or dishonestly induced had suffered damage or harm. There is nothing in the supplementary chargesheet and the material filed therewith to raise a grave suspicion against accused nos. 7 and 8 of having committed the offence under Section 420 of IPC. This is because the acts alleged against them on the basis of the material brought on record do not show the ingredients of the offence of cheating as defined under Section 415 of the IPC. When the very ingredients of the said offence are absent, it would be inappropriate to hold that charge could be framed against them for said offence in order to face trial.

36. In so far as the offence under Section 13(2) read with Section 13(1) (d) o f the PC Act is concerned, the material on record ought to raise a grave suspicion indicating that the said accused nos. 7 and 8 had committed offence as defined under Sections 13(1)(d) of the PC Act and that the ingredients thereof were prima facie made out. A perusal of the Section 13(1) (d) of the PC Act, quoted above, would show that crucial ingredient of the said offence is that the person accused, either himself or for any other person obtains a valuable thing or pecuniary advantage. It could either be by corrupt or illegal means or by a public servant abusing his position. In the present case, the material placed on record in the supplementary charge-sheet does not indicate any pecuniary advantage obtained by the said accused persons or any other person. It is not the case of the respondent that for doing the acts alleged against the accused nos. 7 and 8, they received any amount or pecuniary advantage. The material on record shows that the fees deposited by students who took admission in IDEA Goa, was deposited in the account of the university i.e. IGNOU. The process of counselling was undertaken by IGNOU and students paid the amount directly to IGNOU and IDEA Goa was not paid it's share for the reason that Memorandum of Understanding was not executed. There was not even an allegation that such money was diverted or illegally siphoned of by the accused no. 7 as the Vice-Chancellor of the HNV university or accused no. 8 as the Vice-Chancellor of IGNOU.

37. The Hon'ble Supreme Court has held in the case of P. Satyanarayana Murthy Vs. District Inspector of Police and another (2015) 10 SCC 152, that proof of demand of illegal gratification is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the PC Act. In the present case the material on record does not indicate demand of illegal gratification against the applicants. In fact, there is nothing on record to show any valuable thing or pecuniary advantage obtained by the applicants either for themselves or for anybody else.

38. The allegation was also not to the effect that students were never imparted any education in lieu of the fees deposited by them. On the contrary, the academic interest of the students was taken care of by ensuring that they were given an opportunity to complete the course for which they had taken admission. Therefore, it is difficult to understand how it could be said that the said accused nos. 7 and 8, as public servants, had obtained any valuable thing for themselves or any other person, leave alone any pecuniary advantage. The material on record does not raise grave suspicion as regards the said offence. Therefore, it is found that ingredients of the offence under the PC Act cannot be said to be prima facie made out against the aforesaid accused nos. 7 and 8.

39. On the question of sanction, the Court below proceeded on the basis that no sanction was required for the reason that the material on record prima facie demonstrated criminal conspiracy hatched by the said accused nos. 7 and 8 for cheating as well as corruption. The Court of Special Judge has not discussed the contention that sanction under Section 197 of the Cr.P.C. was required as the allegations levelled against the said accused persons were in respect of the acts undertaken by them in their official capacity.

40. The nature of the material brought on record and the allegations levelled against the said accused persons clearly indicate that such acts were performed by them in their official capacity as the Vice-Chancellors of the respective universities. In this respect, it may be correct to say that official acts would not include corrupt action but the nature of the allegations made in the present case are such that they are inextricably link with the office held by the said accused nos. 7 and 8 at the relevant time. Their action could be alleged to be on merits deficient or improper but such action would still continue to be the acts undertaken in their official capacity. Apart from this, law on necessity to take sanction under Section 197 of the Cr.P.C. even when a public servant ceases to hold office is clearly laid down and reiterated by the Hon'ble Supreme Court in ***State of Punjab Vs Labh Singh*** (supra), relevant portion of which has been already quoted above. Applying the said position of law to the facts of the present case, it becomes quite clear that sanction for prosecuting the accused nos. 7 and 8 for the offences under IPC was necessary and that no sanction was obtained. The only reason given by the Court of Special Judge while rejecting the contention raised on behalf of the accused nos. 7 and 8 on the question of necessity of sanction was that prima facie case of criminal conspiracy was made out. But, the reason is found to be unsustainable. This Court has already found that the supplementary chargesheet and the material brought on record therewith falls short of raising grave suspicion against accused nos. 7 and 8 in respect of the offences alleged and therefore, the reason given by Court below on the question of sanction cannot be accepted. This is another reason why the impugned order deserves to be set aside.

41. In view of the above, it is found that the impugned order passed by the Court of Special Judge framing charges against the applicants under Section 420 read with Section 120B of the IPC and Section 13(2) read with Section 13(1) (d) of the PC Act, is unsustainable and deserves to be set aside.

42. Accordingly, the Revision Applications are allowed, the impugned order is set aside and the applicants are discharged.

MANISH PITALE, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK Date: 2021.09.28 17:27:04 +05'30'