



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.7256 of 2017
and
Crl.M.P.Nos.5253 & 5254 of 2017

1. Shaalini

2. Sarangapani

3. Vandana

... Petitioners

Vs.

1. The State represented by
The Inspector of Police,
G-1 Police Station (West)
Ooty.

2.D.Prithiviraj

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.143 of 2016 pending on the file of the Judicial Magistrate Court, Ooty, and quash the same.

For Petitioners	:	Mr.P.R.Raman Senior Counsel for Mr.C.Seethapathy
For R1	:	Mr.S.Vinoth Kumar Government Advocate (Crl. Side)
For R2	:	Mr.M.R.Jothimanian

O R D E R

This Criminal Original Petition has been filed to quash the final report in C.C.No.143 of 2016 pending on the file of the Judicial Magistrate Court, Ooty, filed for the offences under

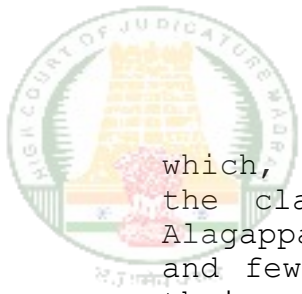


Sections 420 and 120B IPC.

2.The case of the prosecution is that the accused are running an Educational Foundation in the name of Merit International Education Foundation. The said Foundation has several institutions, including a College, namely, Merit International Institute of Technology at Ooty and they offer various courses. The accused, by giving promise that the College is affiliated to Anna University, Chennai, have lured the students to join their College. Believing the same, the de facto complainant joined B.E. Course in the said College and also completed his degree. After completing the B.E. Course, the College has not given any Certificate of Anna University, whereas, a certificate in the name of American International University has been issued and when the same was produced before the Anna University, it was informed that the said College functioning at Ooty is not all affiliated to Anna University and the Certificate issued by the said College will not be useful anywhere in India. The case of the de facto complainant is that, due to the dishonest promise and deception played initially by the accused, the de facto complainant had joined the College and wasted money, time and education. Hence, the accused are liable to be prosecuted. The prosecution has filed final report against the accused for the offences under Sections 420 and 120B IPC.

3.A1 is the Director of the Educational Foundation, A2 is the Dean of the Educational Foundation and A3 is the Executive Director of the Merit Foundation. The petitioners before this Court are A3 to A5.

4.It is the contention of the learned Senior Counsel appearing for the petitioners that the materials collected by the prosecution would not constitute any offence of cheating as against the petitioners herein/A3 to A5 and none of the witnesses have spoken anything about the present petitioners and there are no materials available on prosecution side to show that there was false promise or deception played by the accused from the very inception to lure the students to join the course. The learned Senior Counsel further contended that the students are aware of the fact that the Institution is having foreign tie-up and it had not published in their advertisement or prospectus that their Institution is recognized or affiliated to Anna University. It is the further contention of the learned Senior Counsel that the petitioner's Institution had entered into a Memorandum of Understanding with the Alagappa University, Karaikudi, to facilitate the students to get an additional qualification, and accordingly, the students were also given an opportunity to do their basic degree (UGC) for three years simultaneously through Alagappa University, Karaikudi, for



which, the petitioner's Institution was authorized to conduct the classes and examination as per the instructions of the Alagappa University. Merely because the de facto complainant and few other students did not get any job after completion of their studies, they have lodged a false complaint against the petitioner's Institution. Further, in the entire materials collected by the prosecution, there are no ingredients found to attract the offences under Sections 420 and 120B IPC. Therefore, the learned Senior Counsel submitted that the entire prosecution is liable to be quashed.

5.Per contra, the learned Government Advocate (Crl. Side), appearing for the 1st respondent Police, submitted that the prosecution has collected various materials and examined several witnesses and collected various documents. Whether or not the materials collected by the prosecution would attract the offence or whether they are sufficient to prove the offence cannot be looked into at this stage and it has to be seen only at the time of trial. Therefore, the question of quashing of final report does not arise at all.

6.The learned counsel for the 2nd respondent/de facto complainant would contend that the entire prosecution cannot be quashed at this stage. It is the contention of the learned counsel that, only on the false promise and deception played by the Educational Institution, poor students have joined the College under the belief that the College got affiliated to the Anna University. Only after completion of studies, it came to light that no such affiliation is ever obtained and the students were made to believe such false representation of the College authorities, which is clearly a case of cheating. Therefore, at this stage, the Court cannot make a roving enquiry and cannot quash the proceedings and prayed for dismissal of this petition.

7.This Court gave its anxious consideration to the rival submissions and also perused the entire materials available on record.

8.It is well settled law that, whether or not the materials unearthed by the prosecution would prove the allegations made against the accused, cannot be decided by this Court, while exercising jurisdiction under Section 482 Cr.P.C. The allegations leveled against the accused are required to be proved or disproved before the Court of Law. The general proposition that, the materials collected would not constitute any offence and therefore, entire final report can be quashed, cannot be applied mechanically in all cases. Every case has to be seen on its own facts and circumstances.

9.The main crux of the prosecution case is that the



students were lured to join the courses in the petitioner's Institution under the belief that the College got affiliated to Anna University, however, later, the same was found to be false. It is relevant to note that the prosecution have examined as many as 25 witnesses and also have collected several documents. Whether the statements of the witnesses recorded under Section 161 Cr.P.C. will make out the case or not cannot be decided at this stage. Whether or not any deception has been played by the present petitioners/A3 to A5 from the inception, is a matter of evidence. Moreover, whether the present petitioners/A3 to A5 had any role directly in deceiving the students or not is also to be seen only at the time of trial. Merely because some ingredients are lacking in the statements of the witnesses under Section 161 Cr.P.C., the same itself is not sufficient to infer that the prosecution would always fail. There may be situation (s) during the course of trial, where new facts may emerge, or further investigation also may be required in certain aspects, or the Court may also summon any witness or call for any documents, though not examined or not collected by the prosecution, by exercising powers under Section 311 Cr.P.C. Therefore, this Court cannot conduct a roving enquiry at this stage itself and decide the matter.

10. In *State of Madhya Pradesh v. Yogendra Singh Jodan* and another reported in (2020) 12 SCC 588, the Hon'ble Apex Court has held that, powers under Section 482 Cr.P.C. cannot be exercised where allegations are required to be proved in the Court of Law and has also held that the entire issue as to whether the offence under Sections 420 and 120B IPC was made out or not, cannot be decided by the High Court at pre-trial stage.

11. In *Rajeev Kourav v. Baisahab and others* reported in (2020) 3 SCC 317, the Hon'ble Apex Court has held that the statement of witnesses recorded under Section 161 Cr.P.C., being wholly inadmissible in evidence, cannot be taken into consideration by the High Courts while adjudicating a petition filed under Section 482 Cr.P.C.

12. Further, in *Priti Saraf and another v. State of NCT of Delhi* and another reported in (2021) SCC Online SC 206, the Hon'ble Apex Court has held that the grounds raised by the accused can be their defence during the course of trial and cannot be taken by the High Court to quash the criminal proceedings.

13. Therefore, considering the gravity of the charges and in the light of the judgments of the Hon'ble Apex Court cited supra, this Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot decide whether or not the offence has been made out, from the materials collected by the prosecution



including the statements under Section 161 Cr.P.C. at pre-trial stage, nor can it decide the complicity of the present petitioners/A3 to A5 with the charges framed against them. All these aspects have to be seen only in the trial and not at this stage. Therefore, this Court is not inclined to quash the criminal proceedings.

14. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

15. At this juncture, the learned counsel appearing for the petitioners seeks indulgence of this Court to grant an order dispensing with the personal appearance of the petitioners. Considering the submission of the learned counsel and also the nature of the offence, the personal appearance of the petitioners before the trial Court is dispensed with, except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., passing of judgment, or on any other date as may be required by the trial Court.

16. The trial Court shall proceed with the trial and dispose of the matter as expeditiously as possible, on its own merits and in accordance with law.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Ooty.
2. The Inspector of Police,
G-1 Police Station (West),
Ooty.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.63178

Cr1.O.P.No.7256 of 2017

RLP(CO)
SU(09/12/2021)