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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2022

DELIVERED ON : 01.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.O.P.NOS.22832, 22811, 22795 AND 23676 OF 2021
AND

CRL.M.P.NOS.12459, 12468, 12452 & 13037 OF 2021

D.Ponniyen Selvan

.. Petitioner/A9 in Crl.O.P.No.22832 of 2021

M.K.Rajagopalan

.. Petitioner/A7 in Crl.O.P.No.22811 of 2021

Dr.A.S.Ganesan

.. Petitioner/A8 in Crl.O.P.No.22795 of 2021

M.Dhanasekaran

.. Petitioner/A11 in Crl.O.P.No.23676 of 2021

Vs.

Inspector of Police,
SPE:CBI:ACB, Chennai,
Rep. through its
Public Prosecutor.

.. Respondent in all the Crl.O.Ps

Prayer in all the Crl.O.Ps: Criminal Original Petitions have been filed under Section 482 Cr.P.C. seeking to call for the records in C.C.Nos.533, 530 and 532 of 2020 and 535 of 2021 pending on the file of the learned Chief Judicial Magistrate, Puducherry and quash the same.

For Petitioners
in all Crl.O.Ps.

: Mr.A.Ramesh, Sr.Advocate
for Mr.L.Swaminathan

For Respondent
in all Crl.O.Ps.

: Mr.K.Srinivasan,
Spl.P.P. (CBI)



COMMON ORDER

The issues involved in all these criminal original petitions are one and the same and hence they are heard together and disposed of by means of this common order.

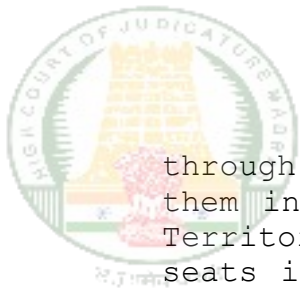
2. The petitioners who are arrayed as A9, A7, A8 and A11, have filed the above criminal original petitions seeking to quash the proceedings in C.C.Nos.533, 530 and 532 of 2020 and 535 of 2021, respectively pending on the file of the learned Chief Judicial Magistrate, Puducherry, for the offence punishable under Section 420 I.P.C.

3. The brief facts leading to filing of these quash petitions, are as follows:

(i) The petitioners are representing various medical colleges in the Union Territory of Puducherry. Based on source information that, the officials of Centralised Admission Committee (CENTAC) of Government of Puducherry and Management of seven medical colleges, both self financing as well as deemed to be universities have deliberately denied admission to the students who were selected in the counseling conducted by the CENTAC to the respective medical colleges and admitted students who were not selected by CENTAC, in various post graduate (PG) medical courses, a FIR has been registered against 13 named accused and other unknown officials of Government of Puducherry and CENTAC, in RC MA1 2017 A 0020, dated 18.09.2017, for offence under Section 120-B r/w Section 420 I.P.C. and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Out of the 13 accused, A1 to A6 are officials of CENTAC, and A7 to A13 are representing various medical colleges in the Union Territory of Puducherry.

(ii) The above FIR has been registered on the ground that, A1 to A6 entered into a criminal conspiracy with A7 to A13, in the month of March-July 2017, relating to the admission of students in the PG Medical Courses in the Union Territory of Puducherry and in furtherance of the criminal conspiracy, the accused public servants abused their official position and cheated the bona fide students who were issued with provisional admission certificate during counseling by CENTAC and denied them the seat which they were otherwise allocated after due admission process and facilitated the private medical colleges to admit students who were not sponsored by CENTAC, thereby allowed the private medical colleges to collect exorbitant fees and deprived admission to genuine candidates.

(iii) It is further stated in the FIR that, the admission to the post graduate courses in the medical institutions were made



through the common counseling based on the marks obtained by them in National Eligibility Entrance Test (NEET). In the Union Territory of Puducherry, there are 318 post graduate / diploma seats in medicines and out of which 162 seats were earmarked as Government quota and the balance 156 seats were earmarked for management quota. The first phase of counseling was conducted by CENTAC on 11.05.2017, the second phase was held on 19.05.2017, a mop up counseling was held on 29.05.2017 and final counseling was held on 31.05.2017. Pursuant to the criminal conspiracy, the first phase of counseling was held without even notifying the fees payable by the students and the same was intimated only after completion of first phase of counseling. In furtherance of the conspiracy, after issuing provisional admission certificate, no efforts were made by A1 to A3 to verify the number of students admitted as against the students who were issued with the provisional admission certificate and they have also not taken into consideration of those students while calculating the vacancy position and they have wrongly stated in the website that all the students who were issued with the provisional admission certificate by CENTAC, were admitted by the respective medical colleges.

(iv) Further, in furtherance of the criminal conspiracy, after the Fees Committee revised the fees, the management of three self financing colleges refused admission to bona fide students who were issued with provisional admission certificate by CENTAC, instead admitted students who were not sponsored by CENTAC and collected huge fees that have been mentioned in the website of the respective medical colleges ranging from Rs.40 to 50 lakhs.

(v) In so far as deemed to be universities are concerned, a Division Bench of this Court by an order dated 16.06.2017, in W.P.No.14232 of 2017, directed the deemed to be universities to admit students who were issued with the provisional admission certificates by CENTAC, by collecting an initial fees of Rs.10 lakhs and the deemed to be universities were allowed to collect the balance fee depending upon the fee structure to be determined by the University Grants Commission (UGC). Despite the same, the deemed to be universities refused admission to the bona fide students, instead admitted students who were not selected by CENTAC.

(vi) Alleging that, the available materials would show that, A1 to A6 and other unknown Government servants of Puducherry, abused their official position and in furtherance of the criminal conspiracy entered with A7 to A13, facilitated the private medical colleges to admit students for the PG courses even though they were not sponsored by CENTAC, which resulted in



frustrating genuine students an opportunity of continuing higher education and ineligible students being admitted into those colleges. A1 to A13 in furtherance of the conspiracy, cheated bona fide students in the matter of admission in PG medical courses and gave admission to ineligible candidates by collecting exorbitant admission fees. A1 to A6 who are all public servants failed to follow the admission procedures and facilitated the management of the private medical colleges by abusing their official position. Hence, A1 to A13 have committed cognizable offence punishable under Section 120-B r/w Section 420 IPC and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act. Hence the FIR has been registered. After investigation, separate final reports have been filed only against the petitioners/accused for offence punishable under Section 420 IPC and the other accused namely A1 to A6, the officials of CENTAC were dropped, on the ground no material available against them for the above mentioned offence.

4. Earlier the matter was pending in the Court of Chief Judge, Puducherry, which is the Special Court, dealing with cases arise under Prevention of Corruption Act. After filing the final reports, the cases were transferred to the Court of Chief Judicial Magistrate, Puducherry, and the learned Chief Judicial Magistrate, has taken cognizance of the offence and issued process. To quash the above proceedings, the petitioners are before this Court with these petitions. Out of the four petitioners, three petitioners represent the medical colleges of deemed to be universities in Puducherry and the petitioner in CrI.O.P.No.23676 of 2021, is representing a self financing medical college, affiliated to Pondicherry University. The quash petitions have been filed on the following grounds:

(i) For the medical colleges run by deemed to be universities, no Fees Fixation Committee (hereinafter referred to as the 'Committee') has been constituted by the Government of Puducherry and no fees has been fixed for the above medical colleges. The Government of Puducherry and CENTAC have issued various orders / notifications, stating that the fee fixed by the Committee is not applicable to the deemed to be universities and the students were directed to pay the fees as fixed by the deemed to be universities in their prospectus and made it clear that the Fees Fixation Committee fixes the fees only for three self financing medical colleges affiliated to Pondicherry University. Further, the students who have been provisionally selected by CENTAC, have not paid the fees as prescribed by the deemed to be universities. The statements of Government officials recorded during investigation clearly shows that the fees fixed by the Committee is not applicable to the deemed to be universities.



(ii) According to the petitioners, the fee structure of medical colleges of deemed to be universities is transparent and the same is displayed in the notice board of CENTAC during counseling and none of the students have given any complaint as against the medical colleges regarding the fees structure fixed by them. The CBI has erroneously proceeded equating the medical colleges coming under the ambit of deemed to be universities with other private unaided colleges, knowing fully well that the deemed to be universities are of an all India character and the concept of state quota does not applicable to them. The Government misguided the students, for which, the medical colleges are not responsible and the various affidavits filed by the Government before this Court and the Hon'ble Supreme Court clearly shows that the fees fixed by the Fees Committee clearly excluded the deemed to be university medical colleges.

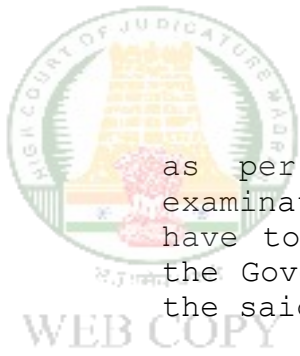
(iii) It is further contended that the allegations made against the petitioners are at any rate does not prima facie make out an offence punishable under Section 420 I.P.C. and absolutely there is no material to show that the petitioners have practiced any deception, inducement with fraudulent and dishonest intention to cheat the students and they have not made any promise to the students.

(iv) That apart, the petitioners are only trustees of the Trust which runs the medical colleges, and if at all any offence is committed, it is only by the Trust, without making the Trust as an accused, in the absence of any specific allegation against any of the petitioners, that they have personally committed the offence of cheating, no criminal prosecution can be initiated against them.

5. The respondent CBI has filed counter affidavit inter alia stating as follows:

(i) The petitioner's college have deliberately violated the directions of the Hon'ble Supreme Court, Government of India, Medical Council of India and University Grants Commission in respect of admission to the PG courses in medical colleges. The candidates whose names were forwarded by CENTAC were denied admission in the Medical Colleges and around 95 students who were not selected by CENTAC were given admission in the respective colleges by collecting huge fees from them.

(ii) It is further stated that, as per the regulations, the admissions were to be made strictly on the basis of merit which has to be determined by a competitive examination. Out of the total seats available in the college 50% of the seats should be filled by the State Government and 50% has to be filled by the concerned medical colleges on the basis of merit list prepared



as per the marks obtained by the candidates in the NEET examination. A combined counseling for filling up 50% seats have to be conducted by the designated authority established by the Government, so far as Government of Puducherry is concerned, the said task was entrusted with the CENTAC.

(iii) It is further stated that there are three deemed to be universities and three self financing medical colleges in the Union Territory of Puducherry and they are collecting huge admission fees as against the fees fixed by the Fees Committee and the medical colleges did not admit students provisionally selected by CENTAC, on the other hand, admitted students who have been discharged by the Medical Council of India. The candidates were given admission prior to the dates of counseling by collecting huge amount of fees.

(iv) Further, in violation of the instructions, the accused colleges did not follow the procedure of giving admission as per the merit list prepared on the basis of NEET marks. Though the accused colleges are part of the counseling process, the students selected by CENTAC were refused admission, as they could not pay the exorbitant fees and many students did not opt for the deemed to be universities as their fee structure was very high. In order to collect huge fees, they have admitted students who have paid the fee demanded by them and thereby cheated the students who were qualified as per norms such as obtaining high marks in NEET exam and selected through common counseling conducted by CENTAC. Hence, the respondent CBI filed final report against the petitioners / accused for offence punishable under Section 420 IPC.

6. Mr.A.Ramesh, learned senior counsel appearing for the petitioners would contend that, out of the four colleges herein, three medical colleges are deemed to be universities and one college is a self financing college affiliated to Pondicherry University. The fees fixed by the Fees Committee constituted by the Puducherry Government is only applicable to the self financing colleges affiliated to Pondicherry University and it does not applicable to the deemed to be university medical colleges.

7. The learned senior counsel referred to the Government Order dated 17.04.2017, wherein, it is clearly stated that the Fees Committee has been constituted only to fix the fees for self financing private medical colleges and the fees structure in respect of medical colleges under deemed to be university will not come under the purview of the Fees Committee and the candidates were requested to verify the fees structure from the website of the concerned deemed to be university.



8. The learned senior counsel referred to a Note issued by the CENTAC dated 11.05.2017, and submitted that, the candidates were also instructed to deposit the tuition fees as fixed by the concerned deemed to be university at the CENTAC office, failing which, the seat allotment will be cancelled. He further referred to another order of CENTAC dated 30.05.2017, directing the management of the medical institutions other than deemed to be universities to strictly collect the fees recommended by the Fees Committee vide its order dated 24.05.2017. The learned senior counsel, also referred to another notice issued by the Government dated 31.05.2017, stating that the private self financing medical colleges should strictly follow the fees fixed by the Fees Committee and the fees fixed by the Fees Committee is not applicable to the deemed to be universities.

9. Referring to the above communications, the learned senior counsel would submit that, the fees fixed by the Fees Committee is not applicable to the medical colleges coming under the deemed to be universities and they are permitted to fix their own fees and the students were directed to pay the fees as fixed by the respective deemed to be university.

10. The learned senior counsel further submitted that as per the order passed by the Hon'ble Supreme Court, at the time of admission for PG medical courses, the students should deposit the fees in demand draft favouring the concerned deemed to be university and the CENTAC shall forthwith forward the demand draft to the concerned deemed to be university. Admittedly, the deemed to be universities have issued prospectus, wherein, they have fixed the fees, and the same was also uploaded in their respective website and the fees structure of the deemed to be universities have been put up in the CENTAC notice board.

11. The learned senior counsel further submitted that, it is not the case of the prosecution that the candidates who were selected by CENTAC have paid the entire tuition fees as prescribed by the deemed to be universities and those amount has been transferred to the respective deemed to be universities by the CENTAC at the time of admission. In such circumstance, the deemed to be universities have no obligation to admit those students in their medical colleges. Further, according to the learned senior counsel, the last date for admission to the PG medical courses is 31.05.2017 and on that date, number of students selected through CENTAC have not paid the requisite fees and they have not joined the college. In such circumstance only, the petitioner's colleges admitted students who were selected in the NEET examination, for which they are permitted.



12. According to the learned senior counsel, so far as the order passed by the Division Bench of this Court dated 16.06.2017 in W.P.No.14232 of 2017 is concerned, the Division Bench directed the students to deposit Rs.10 lakhs, against that order, the Hon'ble Supreme Court by its order dated 07.09.2018 in W.P.(Civil)No.949 of 2018, has ordered status quo and there is no question of petitioners cheating those candidates selected through CENTAC and that they have admitted unqualified candidates by collecting huge fees.

13. The learned senior counsel further submitted that, so far as the petitioner in Crl.O.P.No.23676 of 2021 is concerned, it is a self financing medical college affiliated to Pondicherry University. In respect of self financing colleges are concerned, Committee fixed the fees at Rs.14 lakhs and only one student by name Dr.A.Ashwin, has paid the fees and none of the students selected by CENTAC, have paid the fees fixed by the Fees Committee, and that demand draft has also not reached the college before 31.05.2017, the cut-off date for admitting the students. That apart, absolutely there is no material to show that this petitioner demanded exorbitant fees. In such circumstance, no offence under Section 420 IPC is made out against this petitioner also.

14. The learned senior counsel further contended that, all the colleges were run by Private Trusts, in which the petitioners in Crl.O.P.Nos.22811 and 22795 of 2021 are only trustees, and petitioner in Crl.O.P.No.22832 of 2021, is only a Civil Engineer working in the college, he is not the Registrar as stated by the prosecution, and he is no way connected with the admission process, and there is no allegation against him that he personally demanded fees and involved in the admission process. None of the prosecution witnesses in their statement have stated that the petitioners have made a promise to the candidates and the petitioners were directly involved in the admission process and cheated the candidates. That apart, the Trust being a corporate body, has not been made as an accused in this case, in such circumstances, the petitioner, being trustees of the Trust, cannot be made vicariously liable for the offence said to have been committed by a corporate body, i.e., the Trust.

15. The learned senior counsel further submitted that even though the prosecution has come out with a case that, there is a conspiracy between the public servants namely CENTAC officials and the management of the medical colleges and in furtherance of the said conspiracy, they have committed the offence. Now that the prosecution has omitted all those public servants viz., A1 to A6 and with a mala fide intention has foisted case against



the petitioners for offence punishable under Section 420 IPC, which is not maintainable at all in the eye of law. The materials available on record do not constitute an offence under Section 420 IPC, and the proceedings are liable to be quashed. In support of his contention, the learned senior counsel relied upon various judgments, which will be referred to in the later part of this order.

16. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the CBI, would vehemently contend that, the petitioner's medical colleges did not admit candidates who were selected by CENTAC. They have demanded huge fees, more than that fixed by the Fees Committee from the candidates selected by CENTAC, thereby denied them admission, thereafter they have selected ineligible candidates, who were not selected by CENTAC, and admitted them.

17. The learned Special Public Prosecutor further submitted that a promise has been made by the entire system for giving admissions to the students. The medical colleges are part of the system, and breached the promise, thereby, they have committed an offence punishable under Section 420 IPC.

18. The learned Special Public Prosecutor, took this Court through various statement of the witnesses in each case to show that the students selected by CENTAC, were denied admission and fees fixed by the medical colleges were exorbitant and against the fees fixed by the Fees Committee.

19. The learned Special Public Prosecutor, further submitted that this Court by an order dated 16.06.2017, has fixed the fees at Rs.10 lakhs tentatively, even thereafter, the petitioners did not admit the students and demanded more fees from them, thereby violated the orders passed by this Court and they have admitted ineligible students who have not come through CENTAC by collecting exorbitant fees. Thus, according to the learned Special Public Prosecutor, the petitioner colleges have cheated the students by denying admission to the eligible candidates who were selected through CENTAC and on the other hand, admitted ineligible candidates on their own by collecting exorbitant fees from them. According to the learned Special Public Prosecutor, the materials available on record clearly shows that the petitioners have committed the offence punishable under Section 420 IPC and the Court below has also by correctly applying its mind took cognizance and there is no reason to interfere with the same.

20. I have considered the rival submissions and also perused the materials available on record carefully.



21. The allegation against all the petitioners is that, they have denied admission to the students who were selected by CENTAC by demanding huge fees, thereafter, admitted ineligible students, on their own, thereby they have cheated eligible candidates who were selected by CENTAC and committed an offence punishable under Section 420 IPC.

22. Before dealing with the respective contentions of the learned counsel for the parties, it would be useful to refer to the relevant provisions of IPC.

23. Cheating is defined under Section 415 IPC, which reads as follows:

"Section 415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section "

24. To constitute an offence of cheating, there should be a fraudulent or dishonest inducement of a person by deceiving him and the person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived. Thus, fraudulent or dishonest inducement and a guilty intention is an essential ingredient for the offence under Section 415 IPC.

25. Section 420 IPC, deals with cheating and dishonestly inducing delivery of property, which reads as follows:

"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term



which may extend to seven years, and shall also be liable to fine."

26. To convict a person for an offence under Section 420 IPC, it should be shown that the accused must commit an offence of cheating and the person who is stated to have been cheated must be deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. Thus, cheating is an essential ingredient for committing an offence under Section 420 IPC. That apart, to constitute an offence of cheating, the intention to deceive should be in existence at the time inducement was made. It is also necessary to show that the person had fraudulent or dishonest intention at the time of making the promise. Further, to hold a person guilty of committing an offence of cheating, it has to be shown that the inducement must be dishonest or fraudulent and that the inducement should be intentional.

27. The Hon'ble Supreme Court in Samir Sahay alias Sameer Sahay Vs. State of U.P. reported in (2018) 14 SCC 233, has held in paragraph 21 as follows:

"21. In the first information report even allegation of making assurance was not made against the appellant but was made against Major P.C. Sahay (Retd.), father of the appellant. There was no allegation that the appellant fraudulently or dishonestly induced the complainant to deposit money. This Court in Arun Bhandari v. State of U.P. [Arun Bhandari v. State of U.P., (2013) 2 SCC 801 : (2013) 2 SCC (Cri) 21], has held that it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. An earlier two-Judge Bench judgment of this Court in State of Kerala v. A. Pareed Pillai [State of Kerala v. A. Pareed Pillai, (1972) 3 SCC 661 : 1972 SCC (Cri) 705], was quoted with approval in para 21. Paras 21, 22, 23 and 24 which are relevant are to the following effect : (Arun Bhandari case [Arun Bhandari v. State of U.P., (2013) 2 SCC 801 : (2013) 2 SCC (Cri) 21], SCC pp. 811-12)

"21. Before we proceed to scan and analyse the material brought on record in the case at hand, it is seemly to refer to certain authorities wherein the ingredients of cheating



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have been highlighted. In *State of Kerala v. A. Pareed Pillai* [*State of Kerala v. A. Pareed Pillai*, (1972) 3 SCC 661 : 1972 SCC (Cri) 705] a two-Judge Bench ruled that : (SCC p. 667, para 16)

'16. ... To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise [and] such a dishonest intention cannot be inferred from [a] mere fact that he could not subsequently fulfil the promise.'

22. In *G.V. Rao v. L.H.V. Prasad* [*G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] , this Court has held thus : (SCC pp. 696-97, para 7)

'7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrao Manilal Akhaney v. State of Bombay* [*Jaswantrao Manilal Akhaney v. State of Bombay*, AIR 1956 SC 575 : 1956 Cri LJ 1116] , a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* [*Mahadeo Prasad v. State of W.B.*, AIR 1954 SC 724 : 1954 Cri LJ 1806] , that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.'

23. In *S.W. Palanitkar v. State of Bihar* [*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] it has been laid down that : (SCC p. 250, para 21)



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'21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.'

24. In the said case while dealing with the ingredients of criminal breach of trust and cheating, the Bench observed thus : (S.W. Palanitkar case [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] , SCC p. 246, paras 9-10)

'9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by, (ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.""



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28. In Prof.R.K.Vijayasarathy Vs. Sudha Seetharam reported in (2019) 16 SCC 739, the Hon'ble Supreme Court has held in paragraphs 15 to 20 as follows:

"15. Section 415 of the Penal Code reads thus:

"415.Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person



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deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."

29. In Archana Rana Vs. State of Uttar Pradesh reported in (2021) 3 SCC 751, the Hon'ble Supreme Court has held in paragraphs 7 and 8 as follows:

"7. Having heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent State and having gone through the averments in the complaint and the charge-sheet, even if the averments made in the complaint are taken on their face, they do not constitute the ingredients necessary for the offence under Sections 419 and 420 IPC. As observed and held by this Court in R.K. Vijayasarathy [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.



Committee, the candidates may be requested to verify the fee structure from the website of the concerned Deemed University Medical / Dental college."

33. It was followed by another Note issued by the CENTAC on 11.05.2017, the relevant portion is extracted hereunder:

"Candidates who have been allotted seats in Deemed Universities are instructed to Deposit the "Demand Draft" towards Tuition Fee (As prescribed by the concerned Deemed University) on 16/05/2017, at the CENTAC OFFICE Failing which the seat Allotted Stays Cancelled."

34. Yet another Notification issued by the Puducherry Government regarding admission of students in PG courses, dated 30.05.2017, reads as follows:

"4. As far as fee is concerned, the management of the institutions other than Deemed to be Universities are directed to strictly collect only the official fees as recommended by the Fee Committee in its order dt.24.05.2017, which is subject to revision."

35. The Puducherry Government issued another notification regarding admission of students in PG courses, dated 31.05.2017, that is on the last date for admissions, reads as follows:

"4. As far as fee is concerned, the management of the institutions other than Deemed to be Universities are directed to strictly collect only the official fees as recommended by the Fee Committee in its order dt.24.05.2017, which is subject to revision."

36. A cursory reading of all these notifications issued by the Puducherry Government and CENTAC, it is clear that the fees fixed by the Fees Fixation Committee is only applicable to the institutions other than the deemed to be universities and the candidates who were selected to the medical colleges under deemed to be universities, have to pay the fees fixed by the respective deemed to be universities.

37. So far as the payment of fees is concerned, as per the interim orders passed by the Hon'ble Supreme Court, in W.P. (Civil)No.244 of 2017 in Education Promotion Society of India Vs. Union of India, dated 04.05.2017, the students who were selected for PG medical courses, at the time of counseling itself should deposit the tuition fee by way of Demand Draft payable to the concerned deemed to be universities and the



deemed to be universities are entitled to receive applications till 08.05.2017, and the counseling should commence from 11.05.2017.

38. It is the case of the prosecution that, the candidates who were selected by CENTAC were not admitted by the accused medical colleges, but they have admitted ineligible candidates collecting huge fees. From the perusal of the records, it could be seen that, the deemed to be universities, were permitted to fix their own fees, and the respective deemed to be universities, have separately fixed the fees and the same was also uploaded in their respective college websites. Perusal of statements of witnesses recorded by the prosecution, it could not be seen that the candidates who were selected by CENTAC have paid the fees as fixed by the deemed to be universities and those fees were sent to them. In the absence of any such material, it cannot be held that the deemed to be universities colleges have deliberately denied admission to the students selected by CENTAC and they have admitted some other ineligible candidates and deliberately denied admission to the candidates selected by CENTAC. From the statement of the candidates, who were selected by CENTAC and not admitted by the colleges, it is seen that they have not paid the fees as fixed by the deemed to be universities. When the candidates failed to pay the fees fixed by the deemed to be universities, they have every right to deny admission to those candidates. Unless and until the fees fixed by the deemed to be universities is paid by the candidates, they have no obligation to admit the candidates merely because they have been selected by CENTAC. Whether the fees fixed by the deemed to be universities is reasonable or exorbitant is not a question, that arises for consideration before this Court. There is no prima facie material available to show that the petitioners have intentionally induced the students with dishonest or fraudulent intention.

39. Now the question is, whether by denying admission to those candidates, the petitioners have committed an offence of cheating. Admittedly, all the deemed to be universities have fixed their own fees and none of the candidates selected by CENTAC have paid the fees as fixed by them, no material available to show that there was a fraudulent or dishonest intention on the part of the petitioners, denying admission in their college, which is an essential ingredient for the offence under Section 420 IPC and in the absence of the same, the petitioners cannot be held to have committed an offence punishable under Section 420 IPC.

40. So far as the orders passed by this Court fixing fees of Rs.10 lakhs is concerned, the above order has been passed by

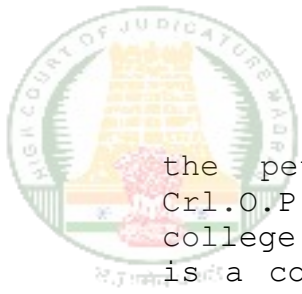


this Court only on 16.06.2017, i.e., after the expiry of the last date for admission, namely 31.05.2017 and by the time the order was passed, most of the admission was over. That apart, according to the petitioners, the Hon'ble Supreme Court in its order dated 07.09.2018, in W.P.(Civil) No.949 of 2018, has ordered status quo as it existed on 07.09.2018. In such circumstances, it cannot be held that the petitioners have violated the orders passed by this Court and failed to admit the students by collecting fees as fixed by this Court.

41. So far as the petitioner in Crl.O.P.No.23676 of 2021, is concerned, it is a self financing college, governed by the fees fixed by the Fees Fixation Committee. The learned counsel appearing for the respondent relied upon the statement of one Dr.A.Ashwin, that even though he had paid the prescribed fees of Rs.14,00,000/- by way of demand draft to the CENTAC office on 30.05.2017, and the petitioner namely Mr.Dhanasekar has demanded Rs.45,00,000/- and denied admission. However, it could be seen from the records that, even though he stated to have paid the prescribed fees by way of Demand Draft before the CENTAC office, the Demand Draft did not reach the college before the cut off date of 31.05.2017, and he was informed by one Mr.K.V.Raman, at the office of CENTAC, that the Demand Draft was not sent to the college before the cut off date and it was sent on the next date, in such circumstance only he was denied admission. Except this statement, there is no other material available against the petitioner Mr.Dhanasekar. In the said circumstances, as per the orders passed by the Hon'ble Supreme Court the fees was not sent to the college before the cut off date, and for that the college cannot be blamed. Now it is stated that, the said Dr.A.Ashwin was given adequate compensation, and he was also admitted in the PG course in the next academic year. So far as other candidates who were denied admission, admittedly not paid the fees fixed by the Fees Fixation Committee. In this case also it cannot be held that the petitioners have committed an offence under Section 420 IPC.

42. That apart, the original case of the prosecution is that, there was a conspiracy between the petitioners and the public servants, namely, CENTAC and Government officials and in furtherance of the said conspiracy, the offence has been committed. However, that theory has not been established and the public servants were dropped from the case, the petitioners alone have been charged for the offence under Section 420 IPC, and even for that, there is no material available on record prima facie make out that offence.

43. The next contention of the learned senior counsel is that, only private trusts are managing the medical colleges, and



the petitioners are only trustees, and the petitioner in CrI.O.P.No.22832 of 2021 is only a Civil Engineer working in the college. As the offence has been committed by the Trust, which is a corporate body, and in the absence of any allegation that the petitioners are in-charge and responsible for the affairs of the Trust, they cannot be made as an accused.

44. Further according to the learned senior counsel, absolutely there is no material available to show that the petitioners were involved in the admission process and they have personally demanded huge fees and denied admission to the candidates. The learned senior counsel relied upon a judgment of this Court in Abraham Memorial Educational Trust Vs. C.Suresh Babu reported in 2012 (2) MWN (Cr.)(DCC) 161 (Mad.), wherein, it has been held that the Trust is have a status of juristic person and it can prosecute / be prosecuted. Since the Trust has not been prosecuted, petitioner trustees cannot be vicariously made liable and they cannot be prosecuted. The learned senior counsel also relied upon some other judgments in support of his contentions. As this Court has already held that prima facie no offence has been made out against the petitioners under Section 420 IPC, there is no necessity to decide this issue in the instant case.

45. Considering all the materials available on record, this Court is of the considered view that the materials available on record do not contain the ingredients necessary for the offence under Section 420 IPC, as no case is made out against the petitioners and allowing the trial to continue will only lead to abuse of process of Court, in such circumstances, this Court inclined to quash the criminal proceedings against the petitioners in C.C.Nos.533, 530 and 532 of 2020 and 535 of 2021 pending on the file of the learned Chief Judicial Magistrate, Puducherry.

46. In the result, the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kk



To

1. The Inspector of Police,
SPE:CBI:ACB, Chennai,
2. The Public Prosecutor (CBI Cases),
High Court, Madras - 104.
3. The Chief Judicial Magistrate,
Puducherry.

+4ccs to M/s.L.Swaminathan, Advocate, S.R.No.22100

+1cc to M/s.K.Srinivasan, Advocate, S.R.No.22019

Crl.O.P.Nos.22832, 22811, 22795
and 23676 of 2021 and Crl.M.P.Nos.
12459, 12468, 12452 & 13037 of 2021

JP-II (CO)
RLP(18/04/2022)