

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.240 OF 2022

Nelkanth Namdev Misal	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.3498 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.240 OF 2022**

Nelkanth Namdev Misal	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Ms. Saima Ansari i/b Hulyalkar and Associates for the applicant.

Ms. M.R. Tidke, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2023

P.C.:

1. The applicant is the original accused who is tried for an offence punishable under Section 420, read with 34 of the Indian Penal Code, 1860. The Magistrate convicted and sentenced the applicant for an offence punishable under Section 420 read with 34 of the Indian Penal Code, 1860 and directed them to suffer simple imprisonment of six months and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment of two months. The appeal against the said judgment has been dismissed.

The prosecution case relevant for adjudication and the points involved are as under:-

Accused No.1 was a Principal of Mahatma Gandhi Naturopathy (Complementary Medicine) Rural Medical College, Umadi, Taluka Umadi, District-Sangli, administered by Vardhaman Education of Medical Association Centre. Accused No.2 is the President of Society who administered the said educational institution. Without getting recognition from the parent statutory body, the accused Nos. 1 and 2 admitted various students promising them conferment of B.A.M.S. A.M. and D.A. M. S. A.M. degrees. It was told to the students that the institution has recognition from Rajasthan University (Deemed). It was promised that the students who completed the medical course would be entitled to practice allopathy and other medicines. The accused accepted huge tuition fees.

2. On 29th July 2005, students of the said institution filed a complaint with the Collector and Superintendent of Police, Sangli. As a result, a committee was appointed to ascertain the recognition and permission from the State Government. During the said inquiry, it was revealed that the institution was not having recognition of the parent body.

3. Therefore, an additional Health Officer (Complainant) filed a complaint against the accused for an offence punishable under Section 420, read with 34 of the Indian Penal Code, 1860. After the completion of the investigation, a charge sheet was filed. Learned Magistrate framed the charge against the accused, and

after conducting the trial, the Magistrate found accused Nos.1 and 2 held guilty of the offence punishable under Section 420 read with 34 of the Indian Penal Code, 1860. The Appellate Court, based on material on record, confirmed the Judgment.

4. Learned advocate for the appellant submitted that the evidence on record is not sufficient to fulfill the essential ingredients of Section 420 read with 34 of the Indian Penal Code, 1860, as dishonest intention at the inception is absent. She submitted that the material documents are not proved with the result finding recorded by the courts below are born out of inadmissible evidence.

5. *Per contra*, the learned APP supported the Judgment. She invited my attention to the evidence adduced by PW-5 to PW-7, which corroborated the evidence of PW-4 Jalindar Chavan. She submitted that the fact of absence of recognition with the parent body had been proved. No permission to run the institution had been granted by the State of Maharashtra. Without recognition from the parent body constituted under the provisions of the Indian Medical Council Act, 1956, neither the University nor any other body had the authority to conduct or impart educational courses governed by Indian Medical Council.

6. During the trial, the prosecution examined Jalindar Chavan (PW-4), Baliram Gaikwad (PW-5), Sukhdeo Kokare (PW-6), and Anil Salmlge (PW-7). Jalindar Chavan (PW-4) stated that accused No.1 told him that after completing the course, he could practice anywhere in India. He also said that the State of Maharashtra had

recognized the course. Accused No.2 told him to pay Rs.45,000/- towards fees for three years, and Rs.12,000/- admission fees were paid. PW-4 proved receipts below Exhibit-70 to 78 issued towards acceptance of payment of fees by the accused. The evidence of Jalindar Chavan (PW-4) is corroborated by Baliram Gaikwad (PW-5), Sukhdeo Kokare (PW-6) and Anil Salmlge (PW-7) based on the oral evidence and the documentary evidence in the form of receipts below Exhibit 70 to 78 the trial Court recorded a finding on the fact that accused No.1 and 2 admitted student in their course and accepted fees from various students. The evidence on record is sufficient to record a finding that accused No.1 and 2 received huge amounts towards admission fees despite recognition from the parent's body, causing wrongful loss to the students and wrongful gain to the accused persons.

7. The accused raised a defence before the trial Court that the sanction of the Government was not necessary for conducting the Courses. However, it must be noted that the promise given to the students was of imparting education so they could practice as medical practitioners throughout India. The provisions of the Indian Medical Councils Act 1956 govern medical education. In the absence of recognition from the parent body, the accused persons, on the date of receipt of admission fees, were aware that neither they can confer degrees nor can a student granted admission be entitled to practice as a medical practitioner. Therefore, dishonest intention at the inception of acceptance of fees is evident.

8. Therefore, in my opinion, the courts below have not

committed any error in convicting and sentencing the accused persons for the offence punishable under Section 420, read with 34 of the Indian Penal Code, 1860. Therefore, there is no miscarriage of justice; the Criminal Revision stands dismissed. No costs.

9. In view of the dismissal of the Criminal Revision Application, the Interim Application does not survive and is disposed of accordingly.

(AMIT BORKAR, J.)