



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36072-2018(O&M)
Date of Decision : March 11, 2024

SURESH SACHDEV AND ANOTHERPetitioners

VERSUS

STATE OF HARYANARespondent

CRM-M-11556-2019(O&M)

DHARAM PRAKASHPetitioner

VERSUS

STATE OF HARYANARespondent

CRM-M-22777-2019(O&M)

VINAY RAIPetitioner

VERSUS

STATE OF HARYANARespondent

CRM-M-39272-2018(O&M)

NIILM UNIVERSITYPetitioner

VERSUS

STATE OF HARYANA AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sanjay Kaushal,Sr. Advocate with
Mr. Deepak Saini, Advocate, for the petitioners.

Mr. Deepak Sabharwal, Sr. DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petitions, challenge is thrown to the registration of a same FIR, there being a common issue arises therein, are being amenable to be decided together.

2. The instant petitions, as cast under Section 482 of the Cr.P.C., proffer the hereinafter extracted relief, as craved by the petitioners, inasmuch as, quashing of the FIR No.08, dated 01.08.2018, under Sections 409, 420, 467, 468, 471 and 120-B of the IPC, registered with the State Vigilance Bureau, Ambala Division, Haryana (Annexure P-1).

BRIEF FACTS.

3. For the sake of brevity the facts are carved out from CRM-M-22777-2022.

4. The prosecution agency was set into motion upon a letter no.63/50/2017-1, dated 11.09.2017, of the Chief Secretary to Government of Haryana, Chandigarh, whereupon an Inquiry No.5, dated 15.09.2017 was registered by the State Vigilance Bureau, Division Ambala. Thereupon, an enquiry was conducted on allegations to the fact that from the office of Director, Higher Education Haryana, Panchkula, an amount of Rs.4,84,56,604/- pertaining the scholarship of students belonging to Scheduled Castes and Scheduled Tribes (SC/ST), were transferred in the bank accounts of NIILM University, Kaithal. The said amount was to be given by the Administrator, NIILM University, Kaithal, to the students belongings to SC/ST category for maintenance/scholarship, but the said

amount instead of providing to the entitled students were being embezzled and utilised by the Administrator of the university, for benefit of university. For that purpose, they have shown forged admissions of students belongings of SC/ST category in excess to the students belonging to the General Category in course/classes. For conducting a preliminary inquiry a committee under the chairmanship of Shrimati Simati Chaudhary, IPS, Superintendent of Police, State Vigilance Bureau, Haryana, Panchkula, was constituted, who investigated the charges levelled against the said university. Thereupon, the charges were found to be correct, and on the recommendations of the State Vigilance Bureau, instant FIR, was registered against 25 persons, including the present petitioners and the NIILM University.

**5. SUBMISSIONS OF LEARNED COUNSEL FOR THE
PETITIONERS**

- i) Learned counsel for the petitioners submits that the instant university is called as NIILM University, which is in fact a private university, established under the Act No.16 of 2011, of Haryana Private Universities Amendment Act, 2011.
- ii) They submit that the instant investigation which carried out in the instant FIR, is a second investigation, which is not permissible under the law.
- iii) It is further submitted by learned counsel for the petitioners, that on 13.03.2015, a team from the office of Lokayukta entered the campus of the university, and started conducting investigation and collected numerous documents from the representatives of the university.

iv) On 12.04.2015, the then Vice Chancellor of the University, was served with a summon dated 10.04.2015, alongwith a photocopy of an order dated 20.02.2015 (Annexure P-4), passed by Lokayukta, Haryana, to appear before the Inquiry Officer alongwith certain records as stated therein. Thereupon, Vice Chancellor of the University caused appearance before the Lokayukta.

v) Having aggrieved with the summoning order dated 20.02.2015, of the Lokayukta, the NIILM University, filed a writ petition bearing No.CWP-7208-2015, before this Court. During pendency of the present writ petition, the then writ bench directed the respondents-Lokayukta therein, to provide a copy of the complaint to the said University.

vi) They further submits that on the directions of the Lokayukta, an inquiry was carried out by the Inspector General of Police (Railway and Commando), Haryana (hereinafter referred IGP in short), into the affairs of the said University, on the basis of complaint dated 18.02.2015, written by one Pardeep Kumar and Mohanlal.

vii) The writ petition (*supra*), so preferred by the petitioners was dismissed by the Single Bench of this Court. Thereupon, having aggrieved by the dismissal of the writ petition (*supra*), the University preferred LPA bearing No.755 of 2017, which is pending consideration before a Division Bench of this Court, whereas, further proceedings before the Lokayukta, were ordered to be stayed.

viii) By referring the above said facts, learned counsel for the

petitioners submit that a parallel inquiry conducted by the State Vigilance Bureau, Haryana, is a sheer abuse of process of law. The registration of the impugned FIR and investigation with similar facts and allegations, is totally against the settled principle of law, and for that they placed reliance upon the judgments passed by the Apex Court in **T.T. Anthony Vs. State of Kerala and Ors. (2001) 6 SCC 181, CBI vs. Amitbhai Anil Chandra Shah and Anr. (2012) 10 SCC 545 and Akbaruddin Owaisi vs. State of A.P., 2014 CRLJ 2199**, wherein, it was held that there can be no second FIR, and there can be no fresh investigation on receipt of subsequent information of the same cognizable offence.

ix) Learned counsel for the petitioner-Vinay Rai in CRM-M-22777-2019, submits that he was appointed as Chancellor of the NIILM University on dated 22.03.2016, whereas, admittedly the alleged offence is pertaining to period of 2013-2015, i.e. much before joining of the petitioner to said University. Thus, the petitioner has nothing do with the alleged offence. He further submits that the tenure of the petitioner-Vinay Rai, as a Chancellor started on 22.03.2016, which ended on 15.03.2019. For which he has placed reliance upon a letter/order dated 22.03.2016, of the Secretary to Governor of Haryana.

x) Learned counsel for the other petitioners also alleged that there is no challenge to the FIR, on the ground that there is no specific allegation against them. Therefore, the registration of the instant FIR against them, is nothing but a totally abuse of process of law.

xi) Finally, it is averred by the petitioners that as per the

allegations total embezzled amount is Rs.6,75,700/-, which they voluntarily deposited on an interim direction issued by this Court order dated 11.09.2018. Therefore, now the pendency of the proceedings against the present petitioners is nothing but a sheer abuse of process of law.

6. SUBMISSIONS OF THE LEARNED STATE COUNSEL

i) On the other hand, learned State counsel, vociferously opposed the prayer made by the petitioners and submits that all the issues which have been raised by the petitioners are in fact disputed questions of facts, which cannot be adjudicated under the instant petitions filed under Section 482 Cr.P.C.

ii) He further submits that the instant FIR was registered on an Inquiry No.5, dated 15.09.2017, carried out by the State Vigilance Bureau, Haryana, on the order of the Chief Secretary to Government of Haryana, and on a complaint received from the Director, Higher Education, Haryana.

iii) He further submits that during the investigation, a total 25 accused, which includes 17 brokers and 8 officers, and employees of University, are found to be involved in the said case. After conclusion of investigation final report was filed on dated 31.07.2023.

iv) He further submits that since the final report has been filed before the learned trial Court concerned, the grievance, if any, could be raised before that court concerned.

v) He further submits that during the investigation of the

present case, documents relating to claim of scholarship amount of SC/ST students studying during the years 2012-13, 2013-14, and 2015-16, under the Post Matric Scholarship Scheme, to the Department of Higher Education, Haryana, Panchkula and Vijay Bank, Kaithal by NIILM University, Kaithal was recovered by the police and the statements of 368 students belonging to Scheduled Castes of the said University were recorded under Section 161 Cr.P.C. During the investigation 271 students joined investigation, and out of them, 84 students given their statement that they never studied in the said University. Out of those 84 students, 36 students stated that during this period they were studying in other instituted and other students they given paper of first semester, second semester, fourth semester and sixth semester. Out of 187 students only 25 students attended classes in the said University, and those too, attended few classes.

7. ANALYSIS

This Court has examined the submissions made both learned counsel for the parties, and is of the view that no case is made out for this Court to exercise its powers under Section 482 Cr.P.C. to quash the instant FIR, in view of the observation made hereinafter:-

- i. The said University is a private university and the petitioner-Vinay Rai is a Founder-cum-Chairman of the Rai Foundation of the Northern Institute of Integrated Learning in Management, (NIILM) University, and during the investigation the documents so collected, it is clearly

spelled out that petitioner-Vinay Rai, is the main beneficiary of all the scams.

ii. From the record, it transpires that the Director, Higher Education, Panchkula, had transferred amount of Rs.4,84,56,604/- pertaining to the scholarship of students belonging to SC/ST in the bank account of NIILM University, which was supposed to be disbursed to SC/ST students for their maintenance and scholarship. However, instead of disbursing the said amount to the eligible students, with the active role of the brokers and by showing the forged admissions of students belonging to SC/ST category in excess to the students belonging to the general category students, the said amount was embezzled by the said University.

iii. From the inquiry from Kuldip singh son of Om Prakash resident Bhero Khero, District Jind, it has been found that he knows Ms.Kamana Khetrapal, NIILM, University, Kaithal, and through her, he got the admission for approximately 600 students belonging to SC/ST category in NIILM, University, Kaithal, for which they have received approximately Rs.45,00,000/- as commission from NIILM, University, Kaithal. Further during the investigation, it has been found from Ms.Kamana Khetrapal, that she was appointed as Incharge of admission

department for the year 2013-14 by the Vice-Chancellor and for this purpose, she use to go Jind for the purpose of getting the admission of the students in the University, and she also got deposited the documents of 250 students from the category of SC/ST through aforesaid Kuldip Singh in the said University and after verification of the documents of those students, admission was given to them.

iv. Further during the course of investigation it was also found that NIILM, University, Kaithal, Jaganath University, Balavgarh and Baba Masthnath University, Asthak Bohar, Rohtak, have also received scholarship money for the students belonging to the SC/ST under the above mention scholarship scheme during the period from the year 2011 to 2015, however, the fees structure of Jagannath Univeristy, Balavgarh and Baba Masthnath University, Asthak Bohar, Rohtak is comparatively very low to that of NIILM, University, Kaithal.

v. It has been found during investigation by the office of Higher Education, Punchkula that as per the provision of Section 36 of Private University Act, 2006, has put capping on fees structure, and NIILM, University, Kaithal, has not got done their yearly auditing as per Section 43 and for that no legal action has been taken against NIILM, University, Kaithal under Section 44-A of

Haryana Private University Act, 2006 by Higher Education Department.

vi. The investigation so conducted, further revealed that for the years 2013-14 and 2014-15, from State Government, total amount of Rs 5,26,25,306/- has been received for the scholarship and maintenance amount for the students belonging to SC/ST. The amount of Rs.17,42,886/- issued in respect of maintenance allowances by Higher Education Department, Haryana, Punchkula, in favour of students belonging to SC/ST caste, were deposited in Vijaya Bank, Kaithal by opening their personal account through NIILM Univeristy, Kaithal. But the maintenance allowances deposited in the account of the students were transferred back in the account of NIILM Univeristy, Kaithal, in connivance between University and the officials of the bank without the consent of the students.

vii. From the investigation, it clearly transpires that one of the accused-Kamna Khetarpal, Incharge of Admission Department and Former Vice-Chancellor and Registrar of NIILM University, in connivance with each other in order to give undue benefit to the owner/Chancellor of the University, Vinay Rai, and the Administrator of the University, gave the greed of commission of 35% to some of the brokers and got forged admissions of the students

belonging to SC/ST category and by showing the forged admissions of those students embezzled the scholarship amount of Rs.6,75,700/-.

viii. Further, this Court has also examined the submissions made by learned counsel for the petitioners regarding registration of instant FIR during the pendency of proceedings before Lokayukta, which was also challenged before this Court by filing a Civil Writ Petition bearing No.7208 of 2015, and is of the view that pendency of any inquiry before the Lokayukta, cannot debar the investigation agency to inquire into any cognizable offence and thereupon registration of FIR. It is not a case of registration of two FIRs for the same offence, rather only one FIR has been registered though some inquiries, if any, pending on a complaint made by a private person before the Lokayukta. And after conclusion of the investigation in the instant FIR only one final report has been filed and the petitioners are required to face trial only in the instant FIR case. Therefore, it cannot by any stretch of imagination, be termed as case of double jeopardy or the petitioners being prosecuted twice for the same offence. Therefore, the submission made by learned counsel for the petitioners is highly misconceived submission, and the same is rejected.

ix. Learned counsel for the petitioner for Vijay

Rai, by referring to the order dated 22.03.2016, has submitted that he was only appointed as a Chancellor of the University, after the alleged period of embezzlement, therefore, by any stretch of imagination, he can be arrayed as an accused, is also an incorrect assertion, as in fact from the investigation, it is revealed that petitioner-Vinay Rai, is a Founder-cum-Chairman of the Rai Foundation of the Northern Institute of Integrated Learning in Management, (NIILM) University, and in fact *de-facto* owner of the said private University. Therefore, he the main beneficiary of any embezzlement having been committed by the said University and amount has been transferred in the account of the University.

x. Further the issue which raised before this Court are purely disputed question of facts which cannot adjudicated by this Court by exercising its powers under Section 482 Cr.P.C. Learned counsel for the petitioners failed to point out any exceptional circumstances which required this Court to exercise its inherent powers under Section 482 Cr.P.C.

xi. The contention of the petitioner that they have deposited Rs.6,75,700/-, which was allegedly embezzled, has been deposited to show their *bona fide* is also in fact a mis-quoted and mis-stated figure of the embezzled amount.

Learned State counsel in its reply categorically mentioned that the accused persons not only embezzled the maintenance allowance Rs.17,42,886/- of the said students by illegally transferring it back into their bank accounts in collusion with the bank officials. The amount of Rs.6,75,700/- regarding non-refundable fees received in the name of only 12 students belonging to SC/ST category, who joined vigilance inquiry. In fact, the figure is much more higher than the embezzlement of fees with regard to 12 students.

Further, even if they deposited back the embezzled amount in the accounts of the said students, it would not absolve the petitioners for being tried for their criminal acts.

8. *Prima facie* it is case where the amount which was meant for the upliftment of the SC/ST students has been embezzled by the said University for its own benefits, which is a serious and grave allegation. Therefore, this Court refrains itself to exercise its powers under Section 482 Cr.P.C. Consequently, the instant petitions are **dismissed**, being devoid of any merits.

9. However, the liberty is reserved for all the petitioners to raise all such pleas, before the learned trial Court concerned, at an appropriate stage of the trial.

10. All pending application(s), if any, also stands disposed of.

11. Anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.
12. A photocopy of this order be placed on the files of the connected cases.

March 11, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No