2025:PHHC:159476

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

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CRM-M-35987-2015
Date of decision: 14.11.2025

D.Y PATIL VIDYAPEETH AND OTHERS ......Petitioners

VERSUS

STATE OF PUNJAB AND ANOTHER ....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. Pratham Sethi, Advocate,
Ms. Kritima Sareen, Advocate
for the petitioners.

Ms. Savi Nagpal, Asst. A.G. Punjab.

Mr. Sukhandeep Singh, Advocate for the respondent.

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VINOD S. BHARDWAJ, J. (Oral)

Seeking quashing of the Complaint Case No.1 dated 20.12.2006 titled as *"Raghbir Singh versus Padmashree Dr. D.Y. Patil Vidyapeeth, Deemed University, D.Y. Patil Vidyanagar, Nerul, Navi Mumbai and others"* under Section 406, 420 and 120-B IPC pending in the Court of Judicial Magistrate, 1st Class, Batala alongwith the summoning order dated 30.09.2015, the present petition has been filed.

2. The controversy before this Court emanates from the criminal complaint submitted by the respondent alleging cheating by an authorized

representative of the petitioner institute on the pretext of securing admission into the petitioner institute. The petitioner on the other hand submits that they have no concern with the person to whom money was paid by the complainant and no agent-principal relationship exists between them. It is also said that in the civil proceedings initiated by the respondents for recovery, petitioner's plea was accepted and suit against them was dismissed. Hence, once the petitioners have successfully defended themselves in Civil Court, they cannot be held criminally liable for the same transaction.

Submission by Petitioners

3. Learned counsel appearing on behalf of the petitioners submits that respondent No. 2 instituted the present complaint against the petitioners as well as one Sachin Shah (respondent No.4) alleging that, in the month of July 2006, respondent No. 4-Sachin Shah approached the complainant at Batala and represented himself to be the authorised representative of petitioners No. 2 and 3, who are members of the Managing Committee of Padmashree Dr. D.Y. Patil Vidyapeeth, Mumbai (Petitioner No.1). It is alleged that respondent No. 4 claimed that the petitioners were engaged in providing professional education and that he could arrange seats for students in professional colleges for courses such as MBBS, BDS, Engineering, etc., in the management quota, purportedly on the grounds of cancellation of seats and by getting them converted into the management quota seats under Section 3 of the Medical Council of India Act.

4. It is further submitted that, pursuant to such representation, the complainant was made to speak telephonically with the petitioners by respondent No.4-Sachin Shah (non-petitioner). Relying upon these assurances and inducements, the complainant is stated to have paid an amount of ₹7,75,000/- for

securing a seat in the MBBS course for Ms. Navjot Kawaljit Singh Kaur, the niece of the complainant, in the medical college run by petitioner No. 1-University. The amount was paid by way of demand drafts bearing No. 644360 dated 27.09.2006 for ₹2.50 lakhs; demand draft No. 644397 dated 17.10.2006 for ₹5 lakhs; and demand draft No. 644398 dated 17.10.2006 for ₹25,000/-, all drawn in favour of petitioner No. 1-University. These demand drafts were allegedly handed over to Sachin Shah and were duly encashed.

5. It is further alleged that an allotment letter dated 30.09.2006 was thereafter sent to him indicating finalisation of the admission of Ms. Navjot Kawaljit Singh Kaur against a cancellation seat converted into the management quota. A subsequent confirmation letter dated 11.11.2006 was also stated to have been received. Acting upon such confirmation, the complainant along with Ms. Navjot Kawaljit Singh Kaur approached the college run by the petitioners. After reaching there the petitioners refused to meet him or acknowledge the letters or the receipt of the payments. They denied granting of admission. Despite the assurances earlier extended by accused Sachin Shah, the petitioners not only refused to grant admission to Ms. Navjot Kawaljit Singh Kaur in the MBBS course for the academic year 2006–07 but also denied receipt of any money and to return the same. Hence, the complaint in question was filed.

6. It is contended that after the complainant led preliminary evidence, the petitioners were summoned to face trial for offences under Sections 406, 420 and 120-B of the Indian Penal Code, 1860, vide order dated 22.02.2007 passed by the learned Judicial Magistrate First Class, Batala. The petitioners challenged the said summoning order before this Court in CRM-M-27726-2007. Proceedings before the trial Court were stayed by this Court vide order dated 03.05.2007.

Ultimately, the said petition was allowed vide judgment dated 05.09.2012 and the summoning order was set aside. The matter was remanded to the Judicial Magistrate First Class, Batala, for passing a fresh order in accordance with law and after due compliance with Section 202 Cr.P.C.

7. Pursuant to the said remand, a fresh summoning order dated 30.09.2015 came to be passed by the learned Chief Judicial Magistrate, Batala. Aggrieved thereof, the petitioners have filed the present petition.

8. Learned counsel appearing on behalf of the petitioner submits that, on the respondent-complainant's own showing, it was one Sachin Shah who had approached him claiming himself as a representative of the petitioners and had assured the complainant that he could secure the admission of the complainant's niece in petitioner No. 1-University. It is alleged that the said Sachin Shah facilitated a telephonic conversation between the complainant and petitioners No. 2 and 3, pursuant to which an amount of ₹7,75,000/- was agreed to be paid by way of demand drafts drawn in favour of petitioner No. 1-University. Learned counsel contends that, as a matter of fact, petitioner No. 1-University has no relationship or privity, whatsoever with Sachin Shah, who is neither an authorised representative nor connected, in any capacity, with the petitioner-institution. Hence, an act of the respondent in giving money to a third party would not bind the petitioners to any civil or criminal action.

9. It is further submitted that respondent No. 2-complainant, along with his niece Ms. Navjot Kawaljit Singh Kaur, also instituted Civil Suit No. 107 of 2007 before the learned Civil Judge (Senior Division), Batala, seeking recovery of ₹8,74,000/- from the petitioners as well as from Sachin Shah, to whom the

demand drafts were allegedly handed over. All allegations forming the basis of the present complaint were also incorporated in the plaint.

10. It is pointed out that petitioners No. 1 to 3 filed a detailed written statement denying the liability and specifically pleading that they had no concern or connection with Sachin Shah and that, in the absence of any principal–agent relationship, they could not be held vicariously liable for any act or misconduct committed by respondent No. 4. It was also emphasised therein that Sachin Shah had allegedly misused the name of petitioner No. 1-University, on the strength of forged documents and by deceitfully opening a bank account in its name and receiving the payment in that account.

11. Learned counsel further submits that specific issues regarding the entitlement of respondent No. 2 to recover the said amount from the petitioners were framed by the civil Court.

12. After consideration of the entire evidence, the Civil Court returned a finding that the assertion of the respondent-complainant (plaintiff therein) to the effect that he had been made to speak telephonically with petitioners No. 2 and 3 (defendants No. 2 and 3 therein)—stood unsubstantiated. The Court categorically noted that neither the particulars of the alleged telephone call, nor the telephone number, nor any proof of the identity or voice of the person purportedly spoken to had been adduced or proved in evidence. The Civil Court further recorded that, during cross-examination, both the plaintiff and his witnesses unequivocally admitted that Sachin Shah had made only oral representations and had produced no documents whatsoever. It was, thus, held that, at no point prior to handing over the money, had the respondent-complainant interacted with anyone other than Sachin Shah, whether on the basis of any assurance or otherwise. In this backdrop,

the Court concluded that no presumption could be drawn to suggest that petitioners No. 1 to 3 had, in any manner, misrepresented or misled the complainant so as to induce him to part with money. The Civil Court also held that, in the absence of any privity of contract or any principal–agent relationship, no vicarious liability could be fastened upon the petitioners for the acts or misconduct of Sachin Shah. It was further observed that numerous complaints had been lodged against respondents No. 4 and 5 (defendants Sachin Shah and one Vaibhav Ravindra Sohani), alleging that they had duped several persons in a similar manner. Accordingly, while dismissing the claim for recovery against the present petitioners, the suit was decreed against Sachin Shah and Vaibhav Ravindra Sohani.

13. Learned counsel for the petitioners submits that the aforesaid judgment and decree dated 19.11.2014, passed by the learned Additional Civil Judge (Senior Division), Batala, was carried in appeal by respondent No. 2-complainant by way of Civil Appeal No. 24 dated 05.05.2016. The said appeal came to be dismissed vide judgment dated 10.03.2017 passed by the learned Additional District Judge, Gurdaspur. Learned counsel contends that, to the best of his knowledge, the said judgment has attained finality, as no notice of any further appeal or stay has been served upon him despite nearly nine years having elapsed since the appellate decision.

14. Referring to the above, Counsel for the petitioner contends that the respondent-complainant having failed to establish the existence of an agent/principle relationship between the petitioners as well as Sachin Shah, the criminal liability for any act/misconduct of Sachin Shah cannot be vicariously fastened against the petitioners. Moreover, the respondent-complainant having

failed to establish the relationship and the privity between Sachin Shah and the petitioners, merely on the strength of the allegations, it will not be appropriate to force the petitioners to suffer incarceration in a criminal trial. Since, there is no evidence on the basis whereof the link of the petitioner in the commission of the offence could be established, the proceedings need to be quashed.

15. He contends that an order of summoning is not to be passed mechanically and merely on the self-serving allegation and that the Court is required to examine the evidence, as has come on record, before issuing a summon to a person to face criminal prosecution since every such order of summoning has severe implications on the liberties of an individual.

16. It is submitted that the burden cast upon a Court, while issuing process and summoning an individual to face criminal prosecution, is to ensure that the material on record discloses more than a mere existence of a prima facie case. Learned counsel contends that in the present case, even if the entire version of the respondent-complainant is accepted as gospel truth, there is not an iota of evidence to indicate that Sachin Shah ever facilitated any conversation between the complainant and the petitioners, or that any assurance emanated from the petitioners to respondent No. 2 at any stage. In the aforesaid circumstances, action by respondent No. 2-complainant, labouring under some impression or perceived assurance attributed to Sachin Shah cannot, by itself, provide a sustainable basis to compel the petitioners to undergo the ordeal of a criminal trial. To permit such prosecution to proceed would occasion travesty of justice and would be miscarriage unto itself. In support of his contention he places reliance on the pronouncements of Hon'ble Supreme Court in the cases of ***Jupally Lakshmikantha Reddy v. State of Andhra Pradesh & Anr. [2025 SCC OnLine***

SC 1950], JM Laboratories & Others v. State of Andhra Pradesh & Anr. [2025 SCC OnLine SC 208], Mahmood Ali & Others v. State of Uttar Pradesh & Others [(2023) 15 SCC 488] and ***Delhi Race Club v. State of Uttar Pradesh [(2024) 10 SCC 690].***

17. Counsel for the respondent, however, contends that the present petition warrants outright dismissal. It is argued that the respondent-complainant was not misled merely on the basis of the representations made orally by Sachin Shah, rather, the very documentation relied upon by Sachin Shah unmistakably bore the name, insignia, and resolutions of petitioner No. 1-Institute. It is further submitted that even a letter of allotment was issued on the letterhead of the University itself, thereby creating an appearance of complete authenticity. Moreover, the bank account through which the demand drafts were encashed had also been opened on the strength of documents seemingly pertaining to petitioner No. 1-University. In such circumstances no fault can be attributed to respondent No. 2-complainant for having handed over the demand drafts, as the supporting documents projected a credible and convincing representation of authority traceable to the petitioners.

18. Learned counsel further contends that the very fact that the disbursements were made by respondent No. 2-complainant in favour of petitioner No. 1-University establishes, at least prima facie, the involvement or participation of the petitioners in facilitating the commission of the offence by respondent No. 4. Had it not been for the documents that were so shown to the respondent-complainant, bearing the name and authority of petitioner No. 1-University, he would have never given any money. Counsel further submits that respondent No. 2-complainant has thus been not only deprived of his money but has also been

denied the admission assured to him, thereby compounding the injury suffered. Moreover, he has been pursuing the present proceedings for a considerable length of time and in these circumstances the real travesty of justice lies in the prejudice caused to the respondent-complainant, and not to the petitioners.

19. He further contends that the order of summoning is an interlocutory order against which the petitioners had an efficacious alternative remedy of filing a revision before the Court of Sessions. Thus, the present petition seeking quashing of the proceedings under Section 482 Cr.P.C. would not be maintainable. In support of his contention, he places reliance on the judgment of Patna High Court rendered in Criminal Revision No. 907 of 2024 titled as ***Laxmi Devi @ Suman Devi v. State of Bihar & Ors.*** as well as on the judgment of Madhya Pradesh High Court in M.Cr.C. No. 57102/2021 titled as ***Kailash v. Arjun Singh & Others.***

20. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents and judgments appended alongwith the present petition, with their able assistance.

21. The Hon'ble Supreme Court had held in the matter of ***B.S. Joshi Vs State of Haryana and another***, reported as ***(2003) 4 SCC 675*** that powers under Section 482 Cr.P.C. has no limits, hence, utmost care and caution is required to be exercised by the Court. The Supreme Court further held in the matter ***Harshender Kumar D. Versus Robati Lata Kolay and others*** reported as ***(2011) 3 SCC 351*** that the High Court may also consider documents in defence, in exercise of its inherent powers to prevent injustice or abuse of process or promote justice. If the evidence is not beyond doubt or is based on suspicion or where documents relied upon in defence are uncontroverted or public documents, they can be relied upon

by the High Court.

22. In relation to the test to be satisfied while summoning an accused, the Supreme Court held in the matter of ***Delhi Race Club Ltd. and others Versus State of U.P. and others*** reported as ***(2024) 10 SCC 690*** that Magistrate is required to examine meticulously, the contents and the evidence to determine whether the offence is made out or not. Issuance of summons being a serious matter, is not to be done mechanically and should be done only upon a satisfaction on the ground for proceeding further. A Magistrate does not act as a mere post office while issuing process. Relevant extract of the judgment reads thus:

> *"23. This Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*
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> *24. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on*

the part of Appellants 2 and 3, respectively, herein who are none other than office-bearers of Appellant 1 Company. When Appellant 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office-bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office-bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers.”

23. Reference also needs to be made to the judgment in the matter of ***M/s. JM Laboratories and Others versus State of Andhra Pradesh and Another*** reported as ***2025 SCC Online SC 208***. The relevant extract thereof reads thus:

“*8. In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh", we have observed thus:*

"33. It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for Issuing the process against the accused persons.

34. In this respect, it will be relevant to refer to the following observations of this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749 (supra):

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.

The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 4 SCC 609, Mehmood Ul Rehman v. Khazir Mohammad Tunda (2015) 12 SCC 420 and Krishna Lal Chawla v. State of Uttar Pradesh (2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us

(Gaval, J.) was a Member, in the case of Lalankumar Singh v. State of Maharashtra 2022 SCC OnLine SC 1383 (supra), has observed thus:

"38. The order of Issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (l.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it *is unlikely to result in a conviction.*

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense Importance. It Is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detalled reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

39. A similar view has been taken by this Court in the case of Ashoke Mal Bafna (supra).

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."

9. In the present case also, no reasons even for the namesake have been assigned by the learned Magistrate. The summoning order is totally a non-speaking one. We therefore find that in light of the view taken by us in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "INOX Air Products Limited Now Known as INOX Air Products Private Limited v. The State of Andhra Pradesh", and the legal position as has been laid down by this Court in a catena of judgments Including in the cases of Pepsi Foods Ltd. v. Special Judicial Magistrate, Sunil Bharti Mittal v. Central Bureau of Investigation, Mehmood Ul

Rehman v. Khazir Mohammad Tunda and Krishna Lal Chawla v. State of Uttar Pradesh, the present appeal deserves to be allowed."

24. The next issue which would be significant is as to what would be the relevance and impact of the Civil Court judgment in the recovery suit. In the matter of ***K.G. Premshanker Versus Inspector of Police*** reported as ***(2002) 8 SCC 87,*** the Supreme Court reiterated the effect of decision of Civil Court on the criminal proceedings noticing Section 40 to 43 of the Evidence Act, 1872. The same reads thus:

> *"16. In our view, the submission of learned Additional Solicitor-General requires to be accepted. Sections 40 to 43 of the Evidence Act provide which judgments of courts of justice are relevant and to what extent. Section 40 provides for previous judgment, order or a decree which by law prevents any court while taking cognizance of a suit or holding a trial, to be a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial. Section 40 is as under:*
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> > *"40. Previous judgments relevant to bar a second suit or trial. The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to h hold such trial."*
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> *17. Section 41 provides for relevancy of certain judgments in probate. matrimonial, admiralty or insolvency jurisdiction and makes it relevant or conclusive as provided therein.*
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> *18. Section 41 reads thus:*
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> > *"41. Relevancy of certain judgments in probate, etc., jurisdiction. A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial,*

admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof-

that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

19. Section 42 with illustration reads thus:

"42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41. Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A *denies.*

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists."

20. Thereafter, Section 43 in terms provides that judgments, orders or decrees, other than those mentioned in Sections 40, 41, 42 are irrelevant unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some provisions of the Act.

21. The final judgment, order or decree of a competent court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction would be relevant if it confers upon or takes away from any person any legal character or it declares any person to be entitled to any such character or to be entitled to any specific thing, not as against any specified person but absolutely. It further specifically provides that such judgment or decree is conclusive proof of what is provided therein such as legal character etc. As against this under Section 42, the relevancy of the judgments, orders and the decrees in a previous proceedings is limited if they relate to matters of public nature relevant to the enquiry and such judgments, orders or decrees are not conclusive proof of that which they state. Illustration to Section 42 makes the position clear.

Xxxx xxxx xxxx xxxx xxxx xxxx

"30. What emerges from the aforesaid discussion is (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of res judicata may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may

not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is whether judgment, order or decree is relevant, if relevant its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

25. Hence, before proceeding further, it would necessary to refer to the judgment dated 19.11.2014 passed in Civil Suit No.107 of 2007 for recovery by the respondent-complainant. The petitioners herein were defendants No.1 to 3 in the said civil suit. The issue framed was also in respect of liability of petitioners to pay the amount as prayed for as Issue No.1 and also considered the issue of

negligence on the part of the Bank.

26. While recording finding on issue qua recovery and liability of petitioners, the Civil Court held as under:

> *"21. The present case has been filed by the plaintiffs for recovery of Rs. 8,74,000/- as they made this payment to the defendants number 2 to 4 when defendant number 4 assured that he can get a seat in MBBS "course for the plaintiff number 2. To prove the allegations against the defendants, plaintifls have examined seven witnesses. The allegations are that one Sachin Shah representing himself to be an authorized ugent of defendants number 1 to 3 came to Batala and assured the plaintiff number I that if he pays Rs. 7,75,000/- to him, then his niece plaintiff number 2 would get admission in MBBS course. It is further alleged that this representation was also made by defendants number 2 and 3 to defendant number I on his telephone and mobile in the presence of PW1 and PW2. Now, the most important thing to be produced by the plaintifls is call detail that defendants number 2 and 3 called on mobile phone of the plantitis, but no official trom the Telephone company has been examined or call details list is provided. During their cross-examination, witnesses of the plaintiffs admitted that Sachin Shah made oral representation and no document was shown by him and they specifically admitted that except Sachin Shah no other person assured admission in MBBS seat to the plaintiff number 2. So, it can not be presumed that detendants number 2 to 4 misrepresented or mislead the plaintiffs to pay a big amount of money to them. During his cross-examination, PW7 admitted that he cannot tell the mobile number of Sachin Shah and further the fact that he is not in possession of any document to prove that defendant number 4 represented himself to be agent of defendants number 1 to 3. Now these Witnesses i.e. PW6 and PW7 who are victims at the hands of detendant number 4 are not in possession of details of phone*

number of defendant number 4, but fraud has been committed by way of payment of money through bank demand drafts and this payment has been proved on record by PW4 Mohammad Mubin Shaikh and PW3 Jaswant Singh Bhullar. These drafts have been enchased by defendant number 4. It has been specifically stated by PW4 that drafts of Rs. 7,75,000/- which were deposited by defendant number issued through defendant number 5 were encahsed by their bank through clearance from Punjab and Sind Bank, RCC Bombay. So, when the amount has been encashed by the defendant number 5 then defendants number 1 to 3 cannot be held to liable to make the payment to the plaintiffs.

22. Secondly, there is no privity of contract between the plaintiffs and defendants number 1 to 3 and defendants number 6 to 8 i.e. these defendants neither assured the plaintiff that they would get a seat in MBBS course for plaintiff number 2 nor they received the payment from them and defendant number 5 got those drafts encashed by depositing the same in his bank account and it was credited to the account number 1789 of defendant number 1.

23. The most important point is the statement of PW4 that there are various complaints against defendant number 5 as he represented himself to be treasurer of defendants number 1 to 3. He also admitted that the payment was not made to the defendants number 1 to 3. So, when they have not received the payment then they cannot be held liable to repay it. Although an argument has been raised by the learned counsel for defendants that suit for recovery of illegal money is not maintainable, but money paid by the plaintiff on false assurance of defendant number 4 cannot be held to illegal because they believed that defendant number 4 is authorized agent of defendants number 1 to 3 and they acted in a bonafide manner. The witnesses of defendants have been cross-examined at length, but nothing useful has come out of it and *it could not be proved that alleged confirmation letter Ex.P26 was sent by defendants number 1 to 3 nor it is proved that Fax number 0-22 27709576 belongs to the defendants number 1 and 2.*

24. From the evidence produced on record by both the parties and from the totality of facts and circumstances of the case it appears that defendant number 4 made false representation to the plaintiffs that he can get admission in MBBS Course for plaintiff number 2 and they made the payment to him. Thereafter, defendant number 5 representing himself to be treasurer of defendants number 1 to 3 encashed the drafts and duped the plaintiffs. So, only defendants number 4 and 5 can be held liable for recovery of amount claimed by the plaintiffs. The defendants number 6 and 7 are not negligent in opening the bank account of defendant number I because their only duty was to get the account opened in their bank. Whatever documents are given by the account holder are taken into consideration at the time of opening the account, and the bank does not verify documents relating to the identity. So no negligence can be attributed to them. Accordingly, all these issues are decided in favour of plaintiffs and against the defendants."

27. It was finally held as under:

"*On the basis of my aforementioned discussion and findings on the issues, the suit of the plaintiffs is hereby dismissed qua defendants number 1 to 3 and defendants number 6 to 8. However, it is decreed qua defendants number 4 and 5 for recovery of Rs. 8,74,000/-, with costs. Defendants number 4 and 5 are directed to make the payment within 6 months, failing which, plaintiffs would be entitled to get future interest at the rate of 6% per annum, which will start accruing after expiry of period of 6 months. Decree sheet be prepared. File be consigned to record room, Batala."*

28. The said judgment and decree is uncontroverted and has already attained finality.

29. It is further established from the complaint that all the allegations and claims have been identical. Thus, the issues determining nature of relationship between the petitioners and respondent Sachin Shah vis-a-vis the respondent-complainant has been determined finally between the parties.

30. Hence, when an allegation is weighed against a judgment, undoubtedly a concluded judgment that has attained finality would outweigh an allegation, on the same issue. The learned Magistrate, while passing the order of summoning takes note of the recovery suit decided on 19.11.2014 but in the context of the allotment and confirmation letter Ex.P25 and Ex.P26, however, completely ignores the decree or the findings recorded in the judgment with respect to exoneration of the petitioners herein. The same thus reflects non-consideration of relevant facts. The said document viz the Allotment letter dated 30.09.2006 (Ex.P25 in the Civil Suit) and the Confirmation letter dated 11.11.2006 (Ex.P26 in the Civil Suit) have been held to be forged letters by Sachin Shah and have not been issued by the petitioners herein, as per the Civil Court judgment. The findings thus become relevant and binding *inter-se* between the parties on the fact in issue.

31. A person would not be tried criminally merely because someone is cheated by a third person in the name of the first party. The requirement for criminal prosecution is that the person sought to be prosecuted committed the said offence or is liable with the aid of common intent, object or conspiracy. When none of the above exists, a mere occurrence of an offence by one, is not sufficient to try another for the same merely because the offender used the named of the

former for committing the offence.

32. Invariably, the Civil Court has already adjudicated upon the very same subject matter and issues that constitute the foundation of subsequent criminal proceedings. Once the Civil Court, upon full consideration of pleadings and evidence, has conclusively determined that no relationship, privity, or nexus existed between the petitioners and the alleged wrongdoers, the respondent No. 2 cannot, after having failed to obtain relief in the civil proceedings, re-agitate the same cause through criminal proceedings on an identical set of facts and allegations. To permit such recourse would amount to allowing the respondent-complainant to revive a cause that has already been adjudicated against him in the civil proceedings. The criminal proceedings cannot be employed as a means to circumvent or indirectly overturn the civil Court's findings, nor can it be used as an instrument to secure what could not be achieved through civil proceedings. I am afraid that permitting the respondent-complainant to pursue the present criminal proceedings would defeat the very purpose and sanctity of civil adjudication. The respondent-complainant having failed to establish his case even on the touchstone of preponderance of probabilities, which is the lesser standard of proof required in civil proceedings, the case of the petitioners would not be at a better footing in a criminal proceedings, where the burden of proof must be discharged beyond reasonable doubt.

33. Now adverting to the case further, it is evident from perusal of the allegations leveled, even if they are accepted on the face value, yet, the allegations would boil down to the solitary assertion that Sachin Shah allegedly made respondent No. 2-complainant speak to some unidentified individual who were projected by Sachin Shah to be petitioners No. 2 and 3 herein, and that, thereafter,

the demand drafts in question were handed over by the complainant to Sachin Shah. The second aspect would be in relation to the Bank Accounts that had been opened in the name of petitioner No. 1 with another bank, into which the demand drafts handed over by the respondent-complainant were deposited and duly encashed.

34. The said allegations, in my opinion, cannot be given much weight after the judgment of Civil Court. The same is at best a suspicion and does not prove as to who did the respondent actually talk to. Besides, the account was held by the Civil Court to be not that of the petitioner No.1 Institute and instead was on forged documents that had not been verified by the bank. The petitioners herein thus become victims of a forgery committed of their name and documents. The same does not make them accomplices.

35. Adverting to the second aspect that the respondent No.2-complainant has been cheated of the money on the strength of the misrepresentation made by Sachin Shah, which such misrepresentation was fostered on the strength of the documents shown by him pertaining to the petitioner No.1-University. While this Court is cognizant of the fact that respondent No. 2-complainant may indeed have suffered a financial loss by paying money in the name of petitioner No. 1-University, such loss, by itself, cannot furnish a legally sustainable foundation to subject the petitioners to criminal prosecution. The mere payment of money, unaccompanied by any material establishing the petitioners' involvement in or attribution to the alleged acts of inducement or deception, cannot be treated as sufficient to fasten criminal liability upon them.

36. It is settled position in law that for any person to be prosecuted for a criminal offence, there must be material indicative of his direct involvement in the

commission of such offence. The essential ingredients of an offence under Section 420 IPC cannot be invoked in the absence of a demonstrable act of deception attributable to the accused himself. The impressions nurtured by the petitioner on the strength of the forged documents produced by Sachin Shah cannot be a reason for fastening such criminal liability on the petitioner. The primal facie relationship between Sachin Shah and the petitioner as an agent and principle was required to be established before the petitioners could be said to be complacent to the commission of the offence. The impressions nurtured, if any, were unilateral. A mistake which is unilateral entails consequences only for the person who carries such impression and the consequences of such unilateral mistakes cannot trickle down on the person qua whom such impressions were carried.

37. I find that the contention advanced by the petitioner and the reliance placed by him on the judgments of the Madhya Pradesh High Court as well as the Patna High Court would not advance his case any further. So far as the issue of maintainability of the present proceedings is concerned, a mere existence of an alternative remedy under Section 397 would not debar this Court of its powers under Section 482 Cr. P.C. The same being inherent, can be exercised notwithstanding alternative remedies being available to a person.

38. Besides, a period of 10 years has elapsed after the institution of the present petition. The objection raised by the respondent is, at best, preliminary in nature, and the prolonged pendency of almost a decade before this Court is, in itself, sufficient to disregard such a technical plea regarding the availability of an alternative efficacious remedy by way of revision before the Court of Sessions.

39. It is bounden duty of the Court to oversee that a proceeding does not become a punishment for a person. Where the documents establish innocence of a

party, the interest of justice would mandate curbing the incarceration in the bud instead of wasting precious judicial time and effort on the same. Delayed declaration of innocence through protracted incarceration itself defeats justice. Compelling such person to face agony of a complete trial and earn an acquittal itself displays travesty of justice, which a Court is required to delete.

40. Consequently, the present petition is allowed. The Criminal ***Complaint No. 1 dated 20.12.2006*** titled as ***"Raghbir Singh versus Padmashree Dr. D.Y. Patil Vidyapeeth, Deemed University, D.Y. Patil Vidyanagar, Nerul, Navi Mumbai & others"*** under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 as well as the **summoning order dated 30.09.2015 are set aside** qua the petitioners herein.

(VINOD S. BHARDWAJ)
JUDGE

NOVEMBER 14, 2025
Vishal Sharma

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