

(2015) 09 OHC CK 0005
In the Orissa High Court
Case No : CRLMC No. 968 of 2012

Bhagabati Charan Das and Others

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Chartered Accountants Act, 1949 — Section 24, 24-A, 26, 28
Criminal Procedure Code, 1973 (CrPC) — Section 149, 150, 151, 152, 154
Indian Medical Council Act, 1956 — Section 19
Penal Code, 1860 (IPC) — Section 120(B), 177, 420, 468, 471

Citation : (2015) 2 ILR Ori 727

Hon'ble Judges : Sanju Panda, J.

Bench : Single Bench

Advocate : A.K. Parija, S.P. Sarangi, P.K. Dash, J.S. Mishra and P.P. Mohanty, for the Appellant; S.K. Padhi, Senior Counsel for C.B.I., for the Respondent

Final Decision : Allowed

Judgement

Sanju Panda, J.—Petitioners in this 482 Cr.P.C. application assailed the order dated 3.2.2012 passed by learned Special C.J.M.,(C.B.I.), Bhubaneswar taking cognizance of offence under Sections 120(B) , 420 , 468 , 471 , 177 of the I.P.C. in SPE No. 5 of 2010 and issuing process as well as the F.I.R. bearing No. RC0152010S0019 dated 11.11.2010 and charge sheet No. 1 of 2012 dated 30.1.2012. Learned counsel for the petitioners submits that the allegation as found in the F.I.R. as well as in the charge sheet on which the C.B.I. seeks to prosecute the petitioners that the petitioners are deliberately concealed from the MCI Inspector about the status of seven junior residents/tutors during the second renewal inspection in order to obtain Nil Deficiency Report. The management had arranged number of faculties on ad hoc basis showing them as regular faculties with appointment orders, joining reports and declaration forms and made them to appear before the MCI Inspector on false representation to obtain the Nil Deficiency Report. It was alleged that during investigation it is found that seven doctors are regular employees of Government of Orissa. The

copies of requisite documents towards resident proof i.e. copies of Driving Licence and Resident/Nativity Certificate in respect of faculties to fulfill the requirements of MCI was arranged and those are forged documents which are never issued by the concerned authorities. So far as auditorium and deficiency in bed occupancy there is no evidence has been found to substantiate those allegations. Learned counsel for the petitioners further submits that in view of the aforesaid allegations made by the C.B.I. on the basis of establishment of Medical College Regulations, 1999 (Amended up to September, 2011), Clause 8(3) of the said Regulation deals with the grant of permission for establishment of a new Medical College. For better appreciation Clause 8(3)(1) is extracted hereunder:--

"8(3)(1) The permission to establish a Medical College and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical College and expansion of the hospital facilities are completed and a formal recognition of the Medical College is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.

The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

Provided that in respect of

(a) Colleges in the stage up to 2nd renewal (i.e. Admission of third batch):--

If it is observed during any regular inspection of the Institute that the deficiency of teaching faculty and/or residents is more than 30% and/or bed occupancy is > 60% such an Institute will not be considered for renewal of permission in that academic year.

(b) Colleges which are found to have employed teachers with faked/forged documents:--

If it is observed that any Institute is found to have employed a teacher with faked/forged documents and have submitted the declaration form of such a teacher, such an Institute will not be considered for renewal of permission/recognition for award of MBBS Degree/processing the applications for postgraduate courses for two academic years i.e. that academic year and the next academic year also."

2. The prosecution has not arrayed the seven junior doctors as accused persons who have supplied the documents relating to their employment i.e. Driving Licence, Resident/Nativity Certificate. Hence in absence of any materials available on record the petitioners have supplied the documents (referred to above) relating to seven junior doctors in a deceptive manner and produced

before the MCI, the proceeding against them liable to be quashed. In support of his contention he has cited the decision of the Madras High Court reported in State Vs. M.K. Rajagopalan, wherein the Court has held that:--

"The shortfall in faculties and submissions of fake/forged documents would only disentitle the Institution from getting renewal of permission. Also, the errant medical Doctors would be dealt with accordingly by the Medical Council, whereby the names of defaulters can be removed from the State Medical Register, thus debarring them from engaging themselves in the profession. Also, the Medical Council of India Act provides for withdrawal of recognition granted to such College as per Section 19 of the Act. Nowhere it is stated either in Medical Council of India Act or the regulations that such violation would result in penal consequences. The contravention of Rules and Regulations may be an offence against the statute, but is not a crime. It is pertinent to point that no complaint is preferred by Medical Council of India. Therefore, there is considerable force in the submission made by the learned counsel for the petitioners that there is no room or jurisdiction in any external agency to investigate into the affairs of any medical Institution coming within the purview of the Medical Council of India.

Apart from that, the learned Special Public Prosecutor for CBI could not point out, from the materials placed along with the charge sheet or from anywhere on the record from which it can be gathered, that prima-facie offences are made out against the accused persons. The Trial Court examined the materials placed on record on threadbare after referring to the statements recorded from various witnesses and decided to discharge the accused persons which in my view is justified."

3. Mr. S.K. Padhi, learned Senior Counsel for the C.B.I. submits that the aforesaid decision inapparent to the present case and it was not correctly decided as per the principles settled by the Apex Court in the case of Jaysukh Bavanji Shingalia Vs. State of Gujarat, under the Mines and Minerals Development and Regulation Act as well as in the case of Institute of Chartered Accountants of India The Institute of Chartered Accountants of India Vs. Vimal Kumar Surana and Another, . It was held in the aforesaid decision that the police is empowered and duty bound under Section 149 to 152 and 154 Cr.P.C. to lodge an F.I.R. under IPC and Cr.P.C. investigate it and file charge sheet irrespective of the procedures under MMDR Act (even if police suo motu registers the FIR as in one of the present cases and even if complaint is not filed by person authorized under MMDR Act).

In the case of Institute of Chartered Accountants (supra) it was held that where a person is alleged to have committed offences under Sections 24 , 24-A and 26 of the Chartered Accountants Act, 1949 in personation as CA etc. is also under IPC but in absence of complaint under Section 28 before Magistrate's Court no cognizance of offences punishable under Sections 24 , 24-A and 26 could be taken. Prosecution under IPC can still be commenced against him and it cannot be disallowed on the ground that 1949 Act is a special statute vis-?-vis IPC.

Therefore in the present case even though the MCI has not made any complaint CBI can proceed with the prosecution.

4. The learned counsel for the petitioners in reply to the aforesaid submission submits that the decisions relied on by the counsel for the CBI are distinguishable as both the acts the MMDR Act and Chartered Accountants Act there is a provision for prosecution in the said parents act. Therefore the consequences of those penal provisions prosecution can proceed under the general provision i.e. IPC. or under the same statute where inbuilt provision was available.

5. Learned counsel for the C.B.I. also placed reliance in the case of Rohilkhand Medical College and Hospital, Bareilly Vs. Medical Council of India and Another, wherein it was held that permission of the Central Government was pre-requisite for establishment or increasing the number of seats in a medical college. However mere fact that the C.B.I. has registered a case against few officers of the Ministry of Health and Family Welfare, New Delhi and also against the Chairman of the College is not a ground to revoke the permission already granted for the additional intake of students for the academic year 2013-14 with malafide intention and violation of natural justice. In that case the C.B.I. in its charge sheet points out serious infirmities in the report submitted by the Central team which conducted the inspection of the college but the said was distinguishable as in the present case the MCI has not taken any action as provided under the Regulations 8(1)(3)(d) of Regulations 2013. Court has expressed its concern regarding any entrance test conducted by private educational institutions must be one enjoined to ensure the fulfillment of twin object of transparency and merits and no capitation fee be charged and there should not be profiteering. C.B.I. had to charge sheet none other than the then Union Minister of Health and Family Welfare, itself which depict how the educational system in this country is deteriorating.

6. Considering the above fact and circumstances and as both the acts the MMDR Act and Chartered Accountants Act there is a provision for prosecution in the said parents act, rightly the Court has not inclined to interfere with the same in the decisions State (NCT of Delhi) and Institute of Chartered Accountants of India(supra). In the case at hand no action taken by the M.C.I. and there is no materials on record which reveals that the petitioners are knowing fully well about the facts reflected in the documents supplied by the seven junior teachers (the doctors) have deceptively used the documents before the M.C.I. during its inspection. Those documents rather produced by those seven doctors who are suppose to give their self declaration which the petitioners have bonafidely believed to be true and accepted those documents and produced before the M.C.I. In absence of those persons who have supplied the documents hence the ingredients of Section 420 I.P.C. has not fulfilled and no criminal charges attributes towards the petitioners.

7. Law is well settled that offence of cheating cannot be said to have been made

out unless the following ingredients are satisfied.

"(i) that the accused deceived some person;

(ii) that such inducement was intentional;

(iii) that the person so induced did or omitted to do something;

(iv) that such act or omission caused, or was likely to cause damage or harm to that person is body, mind, reputation or property."

In the present case no act of inducement on the part of the petitioners have alleged by opposite party. No allegation has been made that the petitioners have an intention to cheat the opposite party from the very inception rather the seven junior tutors/doctors have produced those documents which are self declaratory and they were not impleaded as accused persons in the charge sheet. Hence in their absence initiation of proceeding against the petitioners is vitiated.

The MCI neither alleged nor recorded any finding that fake documents are produced before it. There is no inbuilt provision in the M.C.I. regulation for punishment accordingly the proceeding initiated against the petitioners are liable to be quashed. This Court sets aside the impugned order and quashes the proceeding in SPE No. 5 of 2010 pending before the learned Special C.J.M. (C.B.I), Bhubaneswar in exercise the jurisdiction under Section 482 of the Cr.P.C.