

(2013) 07 DEL CK 0326
In the Delhi High Court
Case No : Criminal M.C. 3999 of 2011

Dilip K. Bandopadhyay

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 227
Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 228, 482
Evidence Act, 1872 — Section 65B, 7, 8
Penal Code, 1860 (IPC) — Section 120B, 21, 420, 465, 468
Prevention of Corruption Act, 1988 — Section 2(xi)

Citation : (2013) 8 AD 33 : (2013) 202 DLT 150 : (2013) 139 DRJ 498

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Mukul Talwar and Mr. Sradhananda Mahapatra, for the Appellant;
Aseem Mehrotra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—Vide the present petitions, the petitioners seek quashing and setting aside the Criminal Complaint No. 21/1/11 titled as "Aditya College of Pharmacy & Science Vs. S.S. Mantha & Ors.", which was filed by the complainant/respondent No. 2 for the offences punishable u/s 420/ 468/ 471 read with 120-B of the Indian Penal Code, 1860 (for short "IPC"). Also seek setting aside of the order dated 15.01.2011 passed by the learned Metropolitan Magistrate, pursuant to which summons have been issued to the petitioners.

2. Since all the petitioners have challenged the same complaint and the impugned order, therefore, this Court has decided to dispose of all the petitions by a common judgment.

3. The allegations against the petitioners are that they entered into a criminal conspiracy with each other with a view to cheat the complainant and cause harm to the reputation of the College. In furtherance of this intention, the petitioners

forged the inspection report and the words "NOT RECOMMENDED" were added later on. The complainant led the pre-summoning evidence of two witnesses. One of the witnesses, i.e., Mr. Devender Gupta (CW1) is the Founder-cum-Chairperson of the College and other is Mr. Sitanshu Gupta (CW2), a friend of CW1.

4. Mr. Parag P. Tripathi, learned Senior Counsel appearing on behalf of the petitioners submitted that the above said witnesses in their oral evidence have merely tried to prove one telephonic conversation which is stated to have taken place on 21.08.2009 between Mr. Devender Gupta (CW1) and one Dr. Surinder Singh, the latter was one of the members of the Joint Inspection Team that had inspected the premises of the Complainant Institute on 20.08.2009.

5. He submitted, past history of the case is that on 21.05.2009, the premises of the Complainant Institute was inspected as a 1st inspection by the above Committee and since the said Committee found deficiencies, therefore, affiliation was denied. The Complainant Institute challenged the 1st inspection report vide W.P.(C) No. 9706/2009, which was dismissed by the learned Single Judge of this Court. The complainant challenged the same by way of LPA No. 384/2009, wherein the Division Bench of this Court directed that a joint inspection to be conducted by the All India Council for Technical Education (AICTE) and Guru Gobind Singh Indraprastha University (GGSIP University) as the 2nd inspection. Accordingly, on 20.08.2009, the joint inspection was conducted and same deficiencies, as were in the 1st inspection, were found again. A copy of the report was handed over to the Complainant Institute in the Court on 21.08.2009.

6. On 25.08.2009, the Complainant Institute had filed objections to the report. As the aforesaid LPA No. 384/2009 was disposed of without granting any relief, thus, the objections of the Complainant Institute were deemed to have been rejected.

7. Learned counsel pointed out that in collateral proceedings being W.P.(C) No. 12724/2009, Single Bench of this Court on 22.03.2010 directed yet another inspection of the Complainant Institute by Sh. C.K. Mahajan, a retired Judge of this Court. This was the third inspection.

8. On 27.03.2010, above named retired Judge found that the Complainant Institute was not fit to be run as an educational institute to conduct the B.Pharm Course. Accordingly, this Court while accepting the findings, admitted to the roll of the College should be transferred to some other Institute affiliated with the University. This order was made absolute on 11.05.2010.

9. Further submitted, the Complainant Institute filed an appeal being LPA No. 540/2010 challenging the order dated 11.05.2010, the same was dismissed on 15.07.2010.

10. Thereafter, the Complainant Institute filed contempt petitions, which were dismissed by this Court on different dates, i.e., 11.03.2010, 26.04.2010 and

16.08.2010.

11. Meanwhile, on 03.01.2009, complainant filed impugned complaint before the learned Magistrate against ten individuals including the petitioners.

12. Vide order dated 14.12.2009, not being satisfied with the pre-summoning evidence led by the complainant, the learned Trial Court directed the local police to investigate the allegations made in the complaint. Accordingly, after investigation, on 13.01.2010 the police filed their report in which they found that no case was made out.

13. Learned senior counsel further submitted that an enquiry was conducted by an officer of the level of Assistant Commissioner of Police. The said ACP, inter alia, recorded the statement of said Dr. Surinder Singh, who was supposed to have admitted to Mr. Devender Gupta over the telephone that the words "NOT RECOMMENDED" were added later on.

14. In his statement to the Police, he categorically stated that "final conclusion "NOT RECOMMENDED" was mentioned before all the members of the Committee. It is submitted that Mr. Devender Gupta had telephonic discussion with me and I never told him that the report is tempered because the final conclusion "NOT RECOMMENDED" was made in the report before all the members signed it."

15. He has further stated that "as far as recording of my voice on telephone, we usually ignore such calls and try to get rid of this as soon as possible. So whatever the conversation has been cited by Mr. Devender Gupta is meaningless and without any substance and allegation".

16. Thereafter, the local police filed a report on 13.01.2010 with the opinion that no offence was made out. The learned Trial Court allowed the complainant to file the objections against the said report, which objections were in the nature of a protest petition.

17. Considering the report filed by the police and the evidence led by the complainant, the learned Trial Court vide order dated 15.01.2010 issued summons against six persons out of total implicated by the complainant.

18. The learned Trial Court passed the aforesaid order primarily on the ground that the police had not investigated the case properly and there is evidence against the petitioners to be summoned for the offences under Sections 465/ 469/ 471 read with Section 120-B IPC.

19. The petitioners have raised the issue of jurisdiction that the inspection report has received the imprimatur of the Division Bench of this Court and thus any allegations of forgery etc. could have been raised only before the said Bench, which is the subject matter of the complaint, was conducted on the express directions of a Division Bench vide its order dated 18.08.2009 in LPA No. 384/2009. The inspection was conducted on 20.08.2009 and the report was produced before the Division Bench, a copy whereof was also provided to the

complainant on 21.08.2009. As a result, the complainant filed their objections on 25.08.2009.

20. Accordingly, after perusing the inspection report and the objections, though the LPA was disposed of by this Court vide order dated 01.09.2009, however, no relief was granted to the complainant. Thus, the inspection report has received the imprimatur of this Court.

21. Learned counsel submitted that the allegations of forgery etc. against the inspecting team or any of the officers of the AICTE or the GGSIP University ought to have been raised before the Division Bench of this Court and not by way of a private complaint u/s 200 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."). The filing of the said complaint amounts to overreaching the process of this Court and is, therefore, contumacious.

22. He further submitted that perusal of the inspection report dated 20.08.2009 would show that last page is only a conclusion of the findings recorded in the preceding pages. Thus, the allegation of forgery is completely false as the words "NOT RECOMMENDED" is the only possible conclusion of what is recorded in the earlier pages of the report.

23. Learned counsel submitted that in other words even if the words "NOT RECOMMENDED" had not been written on the said report, the only conclusion that any reasonable person could have drawn from the finding of the report was that the inspection team did not find the Complainant Institute fit for affiliation as a teaching institute. Therefore, there was no need for any member of the team or anybody else to forge the words "NOT RECOMMENDED" on the last page of the inspection report.

24. To strengthen his arguments, learned counsel has relied upon a case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, wherein it was held as under:

Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court... The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the Accused...

25. Learned counsel further submitted that the Complainant Institute was inspected on three different occasions in quick succession. The first inspection was conducted on 21.05.2009, second inspection was conducted on 20.08.2009, which is the subject matter of the complaint and the third was conducted on 27.03.2010 by Justice C.K. Mahajan, a retired Judge of this Court, in pursuance of the orders of a Single Bench of this Court in W.P.(C) No 12724/2009.

26. The above noted retired Judge physically inspected the infrastructure and other facilities and thereafter filed his report dated 04.04.2010 before this Court, wherein he gave similar findings as were given in the joint inspection report

dated 20.08.2009.

27. For the convenience, comparison of the two reports is given below:-

28. Mr. Tripathi has argued that since findings of all the three inspecting committees were almost identical, the present case is clearly a case of no evidence, therefore, the complaint and the summoning order dated 15.01.2011 deserves to be quashed.

29. He has raised the legal issue that Section 65-B of the Indian Evidence Act, 1872 deals with the admissibility of the electronic record. The said provision squarely applies to the present case since the only evidence led by the complainant in his deposition is a so called tape recorded conversation between the Founder-cum-Chairman of the Complainant Institute and one member of the inspecting team.

30. He submitted that the said tape recorded conversation clearly falls within the definition of "electronic record", as defined by the Information Technology Act, 2000 and adopted by the Indian Evidence Act, 1972.

31. It is submitted that none of the conditions laid down in Section 65-B of the said Act were fulfilled by the complainant and its witnesses. Consequently, the said electronic record cannot be read in evidence and is liable to be ignored. The learned Court ought to have held that there was no evidence led by the complainant in support of the complaint in view of the conditions laid down in Section 65-B of the Indian Evidence Act, 1872.

32. He further raised another legal issue that no sanction was obtained from the Government of NCT of Delhi (GNCT of Delhi), which had appointed the petitioners. Section 197 Cr.P.C. specifically requires that before taking cognizance of any offence, the Court ought to have required the complainant to obtain previous sanction from the GNCT of Delhi. The petitioners can only be removed from their office only after obtaining the sanction of the GNCT of Delhi. The GGSIP University has been created by an Act of the State Legislature of the National Capital Territory of Delhi and the petitioner, Dilip K. Bandopadhyay is employed in connection with the affairs of the said State. Moreover, the local police duly enquired into the complaint by an officer of the level of Assistance Commissioner of Police.

33. He has argued that the Trial Court had found that there was not sufficient evidence led by the complainant and, thus, directed the local police to inquire into the matter. Consequently, the Trial Court could not have taken cognizance or issued summons unless the police report revealed any fresh evidence to incriminate the petitioners.

34. Learned counsel submitted that the complainant/respondent No. 2 has suppressed material facts deliberately that neither report dated 04.04.2010 submitted by Justice Mahajan (Retired) in Writ Petition (C) No. 12724/2009, nor the orders dated 11.03.2010, 26.04, 2010 and 16.08.2010 passed by this Court

dismissing the three contempt petitions were filed by the complainant before the learned Metropolitan Magistrate. Such a deliberate suppression of material documents which were available with the complainant tantamounts to committing a fraud on the Trial Court.

35. To strengthen his arguments, he has relied upon a case of Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, , wherein the Supreme Court has held that:

... Power u/s 482 has to be exercised sparingly and in the interest of Justice but allowing the criminal proceedings to continue even where the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power u/s 482 of the Code can be exercised...

36. Also relied upon Indian Oil Corporation Vs. NEPC India Ltd. and Others, , whereby the Apex Court has held that:

While no one with a legitimate cause or grievances should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a precaution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law....

37. In Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , the Supreme Court has held that:

In the present case, the facts indicated that the Complainant had not come to the Court with clean hands. The Complaint was nothing but a sheer abuse of the process of law and this is a case where power u/s 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in Bhajan Lal case thereby rendering the judgment indefensible. The judgment of the High Court is set aside, proceedings initiated by the Complaint lodged are quashed....

38. Learned counsel submitted that in the circumstances, the tape recorded conversation, even if it is assumed to be true and admissible in evidence, cannot be relied upon to summon the petitioners.

39. To strengthen his arguments on the issue mentioned above, learned counsel has relied upon a case of People's Union of Civil Liberties (PUCL) Vs. Union of India (UOI) and Another, , wherein the Apex Court held that:

Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone conversation in the privacy of one's home or office. Telephone tapping would, thus, infract Article 21

of the Constitution of India unless it is permitted under the procedure established by law....

40. Learned counsel submitted that the complaint filed by the complainant is just to harass and pressurize the petitioners.

41. The Hon"ble Supreme Court of India in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, held that:

No doubt the Magistrate can discharge the Accused at any stage of the trial if he considers the charge to be groundless, but that does not mean accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the Complaint does not make out any case against him and still he must undergo the agony of a criminal trial....

42. On the other hand, Mr. Aseem Mehrotra, learned counsel appearing on behalf of the complainant/respondent No. 2 submitted that the complainant made out a case for summoning of the petitioners as on 03.08.1999, the College was granted approval by AICTE for starting a B. Pharmacy Degree Course for the session 1999-2000 with 60 admissions. Thereafter, for the sessions 2000-01, 2001-02, 2005-06 and 2006-07, the College was granted extension of approval by AICTE with 30 admissions for each session.

43. Pursuant to order dated 21.02.2007 passed in W.P.(C) No. 13751/2006, this Court directed the University not to insist upon the factors which are covered by AICTE Act or Regulations. Accordingly, the college was granted extension of approval by AICTE for session 2007-08; and University granted provisional affiliation to the College and made 27 admissions to the College. Thereafter, on 19.05.2008, College was granted further extension of approval by AICTE for two years, i.e., session 2008-09 and 2009-10 with 30 admissions.

44. Learned counsel further submitted that for the session 2008-09, inspection report of the University shows College was awarded 1708 marks out of 2000. University made admissions of 30 students for the sessions 2008-09 through centralized counseling. Thereafter, in June, 2009, College was inspected by the University and it awarded 335 marks out of 900 towards building and 645 marks out of 1000 towards faculty and infrastructure.

45. The University did not recommend for admission for the session 2009-10, though AICTE approval was for the session 2008-09 and 2009-10. He submitted that the non-grant of admission was subject matter of challenge in W.P.(C) No. 9706/2009, wherein joint inspection was ordered on 20.08.2009, in which the words "NOT RECOMMENDED "were mentioned. Thereafter, Justice C.K. Mahajan (Retd.) was appointed to carry out the inspection, who submitted his report, which was accepted by this Court and the students were transferred to other College.

46. The complainant filed its complaint on 05.11.2009 with the grievance that

the report dated 20.08.2009 was tampered with, in which summons have been issued against the petitioners and other accused persons.

47. The respondent No. 2 had led pre-summoning evidence by examining the Chairman of the College and another witness to prove that the words "NOT RECOMMENDED" were added later on. In the pre-summoning evidence, a tape recorded conversation which was recorded in a CD was exhibited to prove that the Chairman of the College had spoken to three experts in regard to the inspection carried out on 20.08.2009 and that these experts had categorically stated that the words "NOT RECOMMENDED" were not there when they signed the report.

48. Learned counsel has asserted that the conversation between the Chairman of the College and three experts, who were part of the inspecting team, is crucial for deciding the subject matter of the present petition. The conversation between the Chairman of the College and Dr. Surinder Singh, an expert from AIIMS is crucial as he stated that words "NOT RECOMMENDED" were not written by them.

49. Moreover, the conversation between the Chairman of the College and Prof. P.K. Sahu also shows that the report was written by three persons. The conversation further also shows that the University officials were annoyed with the College. The last paragraph of the conversation with Prof. P.K. Sahu notes that Prof. Sahu says that the Vice-Chancellor was annoyed with the Chairman of the College and being experts they cannot write "recommended". Thus, the evidence which the complainant led unequivocally establishes that the words "NOT RECOMMENDED" were not there, when at least two experts, i.e., Prof. P.K. Sahu and Dr. Surendra Singh had signed it, which establishes that it had been tampered with.

50. Learned counsel submitted that the other accused Nos. 3 and 7 have not challenged the summoning order. Therefore, the order of the learned Magistrate does not call for any interference.

51. He submitted that both the experts do not deny the conversation as under:-

- a) That they spoke to the Chairman of the College;
- b) They do not dispute that the transcript/conversation was not spoken between them and the Chairman of the College;
- c) They do not say that the conversation set out in the transcript is not correct;
- d) That their voice has been tampered or has been dubbed or erased.

52. Learned counsel submitted that in view of the above facts, the only conclusion that the Chairman of the college and the experts spoke what has been stated in the transcript.

53. He further submitted that there was positive evidence in shape of recorded conversation. The IO had misdirected himself in carrying the investigation. The

entire emphasis of the investigation was whether College had approval or not, which is evident from the status report. The second status report dated 07.01.2010 is based on the statements of two experts, namely, Prof. R.K. Khar and Dr. Surendra Singh, which was contrary to what they spoke to the Complainant.

54. Though objections to the enquiry report were filed on 21.01.2010, the learned Magistrate heard the complainant but did not pass orders thereon.

55. On maintainability of the complaint, the test is whether the allegations in the complaint disclose a criminal offence or not. Learned counsel has relied upon a case of Indian Oil Corporation Vs. NEPC India Ltd. and Others, .

56. The view taken in the above cited case has been reiterated in Amit Kapoor Vs. Ramesh Chander and Another, , wherein in paragraph 26, the Apex Court has observed as under:-

This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to "stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not neither dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction.

57. On the principles for quashing of criminal proceedings, the learned counsel has relied upon a case of Amit Kapoor (supra), wherein it has been held as under:-

7.1. Though there are no limits of the powers of the Court u/s 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.8. Where the allegations made as and they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in

such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction, u/s 228 and/or u/s 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.16. These are the principles which individually and preferably cumulatively(one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction u/s 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

58. Learned counsel has further relied upon a case of S. Pratap Singh Vs. The State of Punjab, , wherein the Supreme Court has observed that:-

The question before the Supreme Court was whether record of the conversation on a tape-record is admissible in evidence for any purpose. The facts of the case were that the Appellant was a Civil Surgeon in the employment of the State Government who was placed under suspension and an inquiry was ordered against him against his misconduct. The Appellant filed a writ petition in the High Court challenging the order placing him under suspension and other orders. The challenge in the writ petition was that the Appellant was placed under suspension on account of malafides which he attributed against the Chief Minister. The Appellant in his writ petition referred to various talks between himself and the Chief Minister's wife, which he tape recorded. The writ petition was dismissed by the High Court. However, the Supreme Court reversed the judgment of the High Court and referred to talks between the Appellant and Chief Minister's wife which were detailed in paragraph, 15 of the judgment, to hold that the records are

genuine and conversation took place as recorded.

In paragraph 76, in the minority judgment: the Court held that "Tape recordings can be legal evidence by way of corroborating the statements of a person who deposes that the statements of a person who deposes that the other speaker and he carried on that conversation or even of the statement of a person who may depose that he over-heard the conversation between the two persons and what they actually stated had been tape-recorded. Weight to be given to such evidence will depend on other factors which may be established in a particular case. It cannot be held, and it has not been so held by the Court below, that the record of the t-conversation on a tape record is not admissible in evidence for any purpose and therefore we need not say anything more about it.

59. Learned counsel has also relied upon a case of R.M. Malkani Vs. State of Maharashtra, , wherein the Supreme Court in paragraph 23 summarised the legal position as under:-

23. Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s 8 of the Evidence Act. It is *res gestae*. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible u/s 7 of the Evidence Act.

60. Also relied upon the case of Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra, , wherein the conversation between the accused and other persons in another country was used for convicting the accused person.

61. Thus, it is settled law that a tape recorded conversation is relevant and admissible in evidence.

62. Learned counsel has argued that the petitioners have tried to submit that they are public servants and in the absence of any sanction, they could not be tried. He submitted that this point was not argued before the Court whereas it has been raised in the written submissions. Even otherwise, this submission is misconceived inasmuch as the petitioners do not fall within the definition of "Public Servant", as defined u/s. 21 of Indian Penal Code, 1860. The definition of "Public Servant" under the IPC and Prevention of Corruption Act, 1988 is entirely different. While Section 2(xi) of the Prevention of Corruption Act, 1988 defines "Public Servant" to include Vice-Chancellor, Professor, Reader of any University, the definition of "Public Servant" u/s 21 of IPC does not define Vice-Chancellor or any other employee of University to be a Public Servant, therefore, there is no merit in the instant petitions and they may be dismissed with heavy costs.

63. I have heard learned counsel for the parties. Case of the respondent/

complainant is that the petitioner entered into a criminal conspiracy with each other with a view to cheat the complainant and cause harm to the reputation of the College. In furtherance of this intention, the petitioners forged the inspection report and the words "NOT RECOMMENDED" were added later on. To this effect, the complainant filed the complaint before the Trial Court and vide order dated 15.01.2011, the learned Magistrate issued summons against the petitioners. Earlier for the session 1999-2000, the College was granted approval by AICTE with 60 admissions and thereafter, for the sessions 2000-01, 2001-02, 2005-06 and 2006-07, the College was granted extension of approval by AICTE with 30 admissions for each session. Thereafter, the College was granted extension of approval by AICTE for session 2007-08 and University granted provisional affiliation to the College and accordingly made 27 admissions to the College. On 19.05.2008, the College granted further extension of approval by AICTE for two years, i.e., sessions 2008-09 and 2009-10 with 30 admissions.

64. Despite the favourable inspection carried out by AICTE, the University did not recommend for admission for the session 2009-10. The complainant challenged the same vide W.P.(C) No. 9706/2009, wherein joint inspection was ordered on 20.08.2009, in which the words "NOT RECOMMENDED" were added later on.

65. Case of the petitioners is that on 21.05.2009, the premises of the Complainant Institute was inspected by the Committee, which found deficiencies, therefore, affiliation was denied. The Complainant Institute challenged the said inspection report vide W.P.(C) No. 9706/2009, which was dismissed by the learned Single Judge of this Court. The complainant challenged the same by way of LPA No. 384/2009, wherein the Division Bench of this Court directed that a joint inspection to be conducted by AICTE and GGSIP University. Accordingly, on 20.08.2009, the joint inspection was conducted and the same deficiencies, as were in the Ist inspection, were found again.

66. On 25.08.2009, the Complainant Institute filed objections to the report. The aforesaid LPA No. 384/2009 was disposed of without granting any relief, thus, the objections of the Complainant Institute were deemed to have been rejected.

67. Vide order dated 22.03.2010, in collateral proceeding being W.P.(C) No. 12724/2009, Co-ordinate Bench of this Court directed another inspection of the Complainant Institute by Justice C.K. Mahajan, retired Judge of this Court. On 27.03.2010, above named retired Judge found that the Complainant Institute was not fit to be run as an educational institute to conduct B.Pharm Course. Accordingly, this Court while accepting the findings, passed an order dated 05.05.2010 in W.P.(C) No. 12724/2009 that students admitted to the roll of the College should be transferred to some other Institute affiliated with the University.

68. Being aggrieved, the complainant filed an appeal being LPA No. 540/2010 challenging the order dated 11.05.2010. The same was dismissed on 15.07.2010. Thereafter, the Complainant Institute filed contempt petitions which

were dismissed by this Court on different dates as noted above. Meanwhile, on 03.01.2009 complainant filed impugned complaint before the learned Magistrate against ten individuals including the petitioners. Not being satisfied with the pre-summoning evidence led by the complainant, the learned Trial Court vide order dated 14.12.2009 directed the local police to investigate the allegations made in the complaint. Accordingly, after investigation, on 13.01.2010 the police filed their report in which they found that no case was made out against the petitioners.

69. It is pertinent to mention here that enquiry was conducted by an officer of the level of Assistant Commissioner of Police. The said officer recorded the statement of Dr. Surinder Singh, who was supposed to have admitted the conversation with Mr. Devender Gupta over the telephone that the words "NOT RECOMMENDED" were added later on. Whereas, he categorically stated that final conclusion "NOT RECOMMENDED" was mentioned before all the members of the Committee. He further submitted that Mr. Devender Gupta had telephonic discussion with him and he never told him that report is tempered because the final conclusion "NOT RECOMMENDED" was made in the report before all the members signed it. He even stated in his statement that as far as recording of his voice on telephone, they usually ignore such calls and try to get rid of this as soon as possible. So whatever the conversation has been cited by Mr. Devender Gupta, i.e., the complainant is meaningless and without any substance and allegation.

70. Considering the report dated 13.01.2010 filed by the police with the opinion that no offence was made out, the learned Trial Court allowed the complainant to file the objections against the said report. In view of the report filed by the police and the evidence led by the complainant, the learned Trial Court vide order dated 15.01.2010 issued summons against six persons out of total ten implicated by the complainant primarily on the ground that the police had not investigated the case properly and there is evidence against the petitioners to be summoned for the offences under Sections 465/ 469/ 471 read with 120-B IPC.

71. Undisputedly, the joint inspection was conducted pursuant to directions issued by a Division Bench of this Court vide its order dated 18.08.2009 in LPA No. 384/2009. The issue before this Court is that whether the words "NOT RECOMMENDED" were added subsequently after signing the report by all the members. Though on perusal of the conversation it transpires that Dr. Surender Singh had stated in telephonic discussion that the Vice-Chancellor of the University was not happy with the Institute and words "NOT RECOMMENDED" were not written when they signed the report. But on perusal of the inspection reports, one joint inspection carried out by AICTE and the University and another by Justice C.K. Mahajan, retired Judge of this Court, one can make out that the Complainant Institute could not be extended any approval. The discrepancies found in two reports have been shown in the comparative chart in para 28 above of this judgment.

72. On perusal of the telephonic conversation between Dr. Surender Singh and Mr. Devender Gupta, the complainant, it seems that the complainant is very friendly with Dr. Surender Singh and Professor P.K. Sahu, members of the Inspection Team. It appears that they never wanted to displease the complainant, therefore, Dr. Surender Singh in a casual manner has stated that the words "NOT RECOMMENDED" were added later on. They did not mention the words "NOT RECOMMENDED" and the same have been written later on. If the said Dr. Singh had any legitimacy in his statement he would have stated the same before the Assistant Commissioner of Police who investigated the complaint pursuant to the directions issued by the Trial Court. He categorically denied that the words "NOT RECOMMENDED" were discussed before the members and they signed the said report only after the words "NOT RECOMMENDED" were there. If something was written or added later on, in that case, Dr. Surender Singh and Professor P.K. Sahu would have been the most offended persons. But this never happened.

73. I am conscious the law is settled in the case of Amit Kapoor (supra) which has been relied upon by the respondent/complainant that if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has been committed. The power cannot be invoked u/s 482 Cr.P.C. to stifle or scuttle a legitimate prosecution. However, in the above cited case, it is also observed that though there are no limits of power of the Court u/s 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Where the factual foundation of an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

74. Undisputedly, tape-recorded conversation is admissible provided, firstly, the conversation is relevant to the matters in issue, secondly, there is identification of the voice and, thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape-record. The tape-recorded conversation is, therefore, a relevant fact and is admissible u/s 7 of the Evidence Act.

75. Power u/s 482 has to be exercised sparingly and in the interest of justice but allowing the criminal proceedings to continue even where the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power u/s 482 of the Code can be exercised.

76. Undisputedly, the words "final recommendation" and "NOT RECOMMENDED"

were not part of the format of the inspection report. The inspecting team adopted the format of the University. Since the joint inspection was conducted on the directions of this Court, therefore, it was necessary to give a final conclusion for the consideration of this Court.

77. It is pertinent to mention here that this was not so required in the first inspection report since the same was to be placed before a body of experts (the Board of Affiliation of the University) which takes the final decisions whether to affiliate or not to affiliate the concerned Institute. Thus, merely because the first inspection report does not contain any remarks against the heading "Final Recommendation", it does not show that the said remarks in the second inspection report were inserted later on.

78. It is also pertinent to mention here that the first inspection report was conducted by a team constituted by the University, whereas the second inspection team was a joint team comprising of nominees of the GGSIP University as well as the AICTE, as directed by this Court vide its order dated 18.08.2009. Thus, joint team deviated from the earlier pattern of not having any remarks under the heading of "Final Recommendation".

79. In the present case, the tape recorded conversation being sought to be led in evidence by the complainant is between the complainant and some third party. Interestingly, subsequently during investigation, the said third party has clarified that there was no forgery and the words "NOT RECOMMENDED" were written in his presence. In the given situation, if this Court allows continuing the proceedings before the Trial Court; firstly, the conversation would not be proved and; secondly, there will be harassment to the petitioners. Moreover, precious public time would be wasted without any fruitful result.

80. Initially, the Trial Court had found that there was no sufficient evidence led by the complainant, therefore, directed the local police to enquire into the matter. Admittedly, the police filed the report wherein specifically stated that no case is made out. In that eventuality, neither the sufficient evidence led by the complaint is on record nor any fresh evidence relied by the police to incriminate the petitioners is on record. In such eventuality, the learned Trial Court should not have issued the summons against the petitioners until and unless some substantial evidence has come on record.

81. It is also pertinent to note that had the complainant brought each and every proceeding and orders passed by this Court before the learned Trial Court, the said court would not have passed the impugned order. If for a moment it is assumed that the joint inspection report submitted by the Committee was in favour of the Complainant College and thereafter, deliberately, the words "NOT RECOMMENDED" were added, the position would have been different. In both the inspection reports, there were lapses found by both the Committees as discussed in para 28 above. Having lot of lapses with the Institute, there was no question to grant recommendation.

82. In view of the above discussion, the present petitions are allowed. Consequently, the Criminal Complaint No. 21/1/11 titled as "Aditya College of Pharmacy & Science Vs. S.S. Mantha & Ors." and the consequent proceedings emanating therefrom, if any, are quashed qua the petitioners and the order dated 15.01.2011 passed by the learned Metropolitan Magistrate is set aside qua the petitioners. No order as to costs.