

(2017) 03 MAD CK 0097

In the Madras High Court

Case No : W.A.(MD) Nos. 910 of 2012 and 355 of 2013 and M.P.(MD). Nos. 1 and 2 of 2011, 1 of 2012, 2 of 2012, 1 and 2 of 2013, 1 of 2015

Dr. R. Muthukumaran

APPELLANT

Vs

Ramesh Babu

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 173, Section 482
Penal Code, 1860 (IPC) — Section 167, Section 34, Section 464, Section 465, Section 466, Section 469

Citation : (2017) 3 CTC 603 : (2017) 3 MLJ 385

Hon'ble Judges : Mr. R. Subbiah and Mrs. J. Nisha Banu, JJ.

Bench : Division Bench

Advocate : Mr. Ajmal khan Senior Counsel for Mr. A. Haja Mohideen, Advocate, for the Appellants in W.A. (MD). No. 355/2013, W.P(MD).No.8395/2013 and Crl.O.P. (MD). No. 4676/2012; M/s. Ajmal Associates, for the Appellant in W.A. (MD). No. 910 of 2012 and Crl. O.P. (MD). No. 16517 of 2011; Mr. M. Karunanidhi, Advocate, for the Respondent No. 1 in W.A. (MD). No. 355 of 2013 and 910 of 2012; Mr. M. Karunanidhi, Advocate, for the Respondent No. 2 in Crl.O.P. (MD). No. 16517 of 2011 and 4676 of 2012; Mr. C. Karthik, Advocate, for the Respondent No. 2 in W.A.(MD). No. 910/2012; Mr. S. Chandrasekar, Govt. Advocate, for the Respondent No. 3 in W.A.(MD). No. 355 of 2013 and 910 of 2012; Mr. S. Chandrasekar, Govt. Advocate, for the Respondent No. 1 to 3 in W.P(MD). No. 8395 of 2013; Mr. S. Chandrasekar, Govt. Advocate, for the Respondent No. 1 in Crl.O.P. (MD). No. 16517 of 2011 and 4676 of 2012

Final Decision : Disposed Off

Judgement

R. Subbiah, J.—Since the issue involved in all these matters are inter-related to each other, all the matters, by consent, were taken up together and disposed of, by the following common judgment.

2. For the sake of disposal of all these matters, the parties are referred to as per the rank given to them in the respective matters. At the outset, the circumstances and events that led to filing of W.P. (MD). No. 8395 of 2013, W.A.

(MD) Nos. 910 of 2012 and 355 of 2013, CrI.O.P. (MD). Nos. 16517 of 2011 and 4676 of 2012 are narrated below.

3. Originally, one Ramesh Babu, filed W.P(MD).No.1919 of 2009 seeking for a Writ of Mandamus directing the respondents to allow him to complete the Course of P.G. in D.A (Diploma in Anesthesia) within the Academic year (2007-2009). The said Writ Petition came to be allowed by a learned Single Judge on 30.08.2012. Since the Writ Appeals arises out of the directions issued by the learned Judge, the penultimate operative portion of the said order is usefully extracted below:-

"16. Considering the prima facie case and the records produced before this Court, it is manifestly clear that from the statements recorded by the Police, that, in order to prevent the petitioner from appearing in the final year Post graduate diploma (Anesthesia) examinations, the attendance registers have been tampered with. The attendance details given earlier, by the Dean, Thanjavur Medical College to the University did not reflect the correct particulars. The petitioner had written the examinations in the year 2009 and waiting for the results for three years and five months. Even assuming that the petitioner had failed in any one of the three subjects, by this time, he would have chances, to clear the same. Considering the prima facie materials produced before this Court, in the typed-set of papers and the hardship undergone by the petitioner, a direction is issued to the Controller of Examinations, Tamil Nadu Dr. MGR Medical University to publish the results of the examination, written by the petitioner from 16.03.2009 and on subsequent dates, within a period of ten days from the date of receipt of a copy of this order. Registry is directed to send a copy of this order to the Secretary, Health and Family Welfare Department, Chennai for taking appropriate action against Dr.Muthukumaran, the then Head of the Department (Anesthesia)Department, and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur and also against those who are responsible for tampering with the petitioner's attendance particulars. Mrs. J. Padmavathi Devi, learned counsel for the University shall communicate the result of this case to the Controller of Examinations, Tamil Nadu Dr. MGR Medical University, Chennai, so as to facilitate publication of results within ten days from the date of receipt of a copy of this order."

4. Aggrieved over the afore-said order, after obtaining leave from this Court, as a third party, Dr. Muthukumaran, the then Head of the (Anesthesia) Department filed W.A.(MD). No. 910 of 2012 and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur filed W.A.(MD).No.355 of 2013 whereby and where under, they prayed to set aside the order made in W.P. (MD). No. 1919 of 2009, insofar as the order of the learned Single Judge goes against them.

5. When the matter stood thus, at the instance of the said Ramesh Babu, who filed W.P.(MD). No. 1919 of 2009, a criminal complaint came to be lodged against Dr. Muthukumaran, the then Head of (Anesthesia) Department and Dr. R.

Thenmozhi, Chief Doctor, Anesthesia Department, Thanjavur Medical College, Thanjavur, and after investigation, a charge sheet came to be filed in C.C. No. 583 of 2011 on the file of the learned Judicial Magistrate No. II, Thanjavur.

6. Aggrieved over the filing of the charge sheet Mr. Muthukumaran, the then Head of (Anesthesia) Department, filed CrI.O.P.(MD). No. 16517 of 2011 and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur filed CrI.O.P.(MD). No. 4676 of 2012, for quashing of the charge sheet pending against them.

7. As a result of the order passed in W.P(MD).No. 1919 of 2009 filed by the said Ramesh Babu, an impugned order of suspension came to be issued by the first respondent against Dr. R. Thenmozhi, the Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur vide G.O.(D).No.402, Health and Family Welfare(I-2) Department dated 30/04/2013 and consequentially, order was passed not permitting the said Dr. R. Thenmozhi to retire from service vide G.O. (D).No.403, Health and Family Welfare (I-2) Department, dated 30/04/2013 which resulted in the filing of W.P(MD).No.8395 of 2013.

8. Facts narrated in W.P(MD). No. 1919 of 2019 :-

Since the Writ Appeals, Criminal Original Petitions and Writ Petition are the output of W.P(MD).No.1919 of 2009, initially, the facts projected by the said Ramesh Babu, in the said Writ Petition, are culled out for deciding the issue on hand:-

8.1. Originally, the said Ramesh Babu filed W.P.(MD). No. 1919 of 2009 for a simple direction, directing the respondents therein to allow him to complete the Course of P.G. in D.A. (Diploma in Anesthesia) within the Academic year(2007-2009). At the time of filing the Writ Petition, he was an in-service M.B.B.S. Doctor and applied for admission to Post Graduate Diploma in Anesthesia(DA) for the academic year 2007-2008. He was admitted to Thanjavur Medical College, Thanjavur. According to him, he had been regular in attending the classes. However, due to illness, for some period, he did not attend the classes, for which he produced Medical Certificate to the Head of the Department. The petitioner further submitted that due to some internal departmental problems between the Heads of Departments, the Medical Certificate produced by him was wantonly not produced by the Head of the Department (Anesthesia) Mr. Dr. Muthukumaran to the college office. The practical examinations were due to commence on 16.03.2009. On 13.03.2009, hall tickets were issued to the candidates. To his shock, he was not issued with hall ticket. Therefore, he was constrained to approach this Court for a Mandamus, directing the respondents to allow him to complete the Post graduate Diploma (Anesthesia). On 14.03.2009, when the matter came up for hearing, this Court directed the respondents, namely, the Controller of Examinations, Tamil Nadu Dr. MGR Medical University, 9 Chennai, the Dean, Thanjavur Medical College, Thanjavur, to permit him to take up the examination, commencing from

16.03.2009 and further directed that the results alone need not be published. Thereafter, the Writ Petition was listed after a period of three years and five months for final disposal, though, the interim direction was given on 14.3.2009.

8.2. In the afore-said Writ Petition, a counter affidavit was filed by the Dean, Thanjavur Medical College, Thanjavur to the effect that the petitioner did not possess sufficient attendance as prescribed by the Tamil Nadu Dr. MGR Medical University, Chennai and therefore, he was not issued with hall ticket to write the exam scheduled in March 2009. According to the Dean, as per the rules of the University, a student should possess a minimum of 80% of attendance, whereas, the petitioner had only 60% of attendance. He also submitted that the petitioner did not produce any medical certificate for the period of absence. The Dean, Thanjavur Medical College, Thanjavur further submitted that merely because, salary/stipend for the entire course had been paid to the petitioner, who is a post-graduate student it does not mean that he had attended all the classes. According to the Dean, the petitioner was not entitled to the relief sought for in the Writ Petition.

8.3. The University submitted that the second respondent/college had sent the attendance particulars of the petitioner to the University. As per the schedule, the petitioner was eligible to appear for the final examination to be held in March 2009 in three papers. On verification of the attendance particulars, it was found that the petitioner had obtained only 60% of the attendance as against 80%, as prescribed by the University. Since the petitioner was lacking attendance, the University did not issue hall ticket. It is the further case of Tamil Nadu Dr. M.G.R. Medical University, Chennai that the reason, for non-issuing the Hall Ticket was also communicated to the second respondent/Medical College. It is also stated that as per the directions of this Court, the petitioner was permitted to take up the examinations. On the aspect of condonation of attendance, the Registrar, Tamil Nadu Dr. MGR Medical University, Chennai stated that there was no provision in the regulations to condone the attendance for Post graduate diploma course in Anesthesia. Therefore, the first respondent prayed to cancel the examination in respect of the petitioner.

8.4. When the matter stood thus, an additional typed-set of papers was filed on behalf of the petitioner and relying on it, it was submitted that being aggrieved by the irregularities committed by the then Head of the Department (Anesthesia), Mr. Dr. Muthukumaran, in the attendance registers, done with a mala fide intention, to prevent the petitioner from taking up the final examination, a complaint was lodged with the Inspector of Police, Thanjavur Medical College Police Station, Thanjavur and it was taken up on record in Crime No.311/09, under Sections 465, 466, 469 and 167 r/w 34 of IPC. He further submitted that later on, the crime registered was transferred to the District Crime Branch, Thanjavur. The learned Counsel brought to the knowledge of the learned Judge with regard to the investigation conducted by the District Crime Branch, Thanjavur, by producing the statements recorded from various persons,

including the Dean of Thanjavur Medical College, Thanjavur, under Section 161(3) of Cr.P.C. and submitted that though Dr. R. Thenmozhi, Chief Doctor, Anesthesia Department, Thanjavur Medical College, Thanjavur was examined as one of the witnesses under Section 161(3) Cr.P.C, having regard to the irregularities committed by the Chief Doctor, in the records, the said Doctor has also been implicated, as an accused and that a final report had been submitted by the Inspector of Police, District Crime Branch, Thanjavur to the learned Judicial Magistrate No. II, Thanjavur.

8.5. The learned Counsel for the petitioner contended that as per the procedure an in-service candidate would be paid monthly stipend and if for any reason, he had not attended classes, monthly attendance would be sent by the Dean to the employer and that, the stipend would be proportionately reduced. In this regard, learned counsel for the petitioner has also referred to the statement of one Mr. S. Sivakumar, Assistant, Office of the Thanjavur Medical College, Thanjavur recorded under section 161(3) Cr.P.C. before the learned Judge to show that there was absolutely nothing on record to indicate that any letter had been sent by the Medical College, to the employer, to substantiate that the petitioner had absented himself from attending the classes. In the light of the facts, deduced during investigation by the Police, he contended that the Head of the Department had abused his official position and victimised the petitioner by preventing him from taking part in the final examination.

8.6. Before the learned single Judge, learned counsel for the University contended that the University did not issue hall ticket, on the basis of attendance particulars furnished by the Dean and that therefore they were not to be blamed for any irregularities committed in the college.

8.7. At the time of hearing of the Writ Petition, it was contended by the learned Additional Government Pleader that subsequent to the filing of the charge sheet, the said criminal case was taken on file by the learned Judicial Magistrate No.I, Thanjavur and the same was challenged before this Court in CrI.O.P. Nos. 16517 of 2011 and 4676 of 2012 and the further proceedings were stayed.

8.8. Eventually, after hearing all the parties, the prayer of the said Ramesh Babu in W.P.(MD).No.1919 of 2009 for a Writ of Mandamus directing the respondents herein to allow the petitioner to complete the course in P.G. in D.A.(Diploma in Anesthesia) with the academic year (2007-2009) came to be allowed by the learned Judge. While allowing the prayer, the learned Single Judge directed the respondents therein for taking appropriate action against Dr.Muthukumaran, the then Head of the Department (Anesthesia), and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur and also against those who were all responsible for tampering with the petitioner's attendance particulars, which resulted in the filing of W.A. (MD). Nos. 910 of 2012 and 355 of 2013, by the said Dr. Muthukumaran and Dr. R. Thenmozhi after obtaining leave of this Court for filing an appeal as against the order passed in W.P.(MD). No. 1919 of 2009.

9. Submissions made on behalf of the appellants in respect of W.A. (MD). Nos. 910 of 2012 and 355 of 2013 :-

9.1. The first limb of argument of Mr.Ajmal Khan, learned Senior Counsel appearing for the appellants herein is that the appellants, namely, Dr.Muthukumaran, the then Head of the Department (Anesthesia) and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur, were not made as parties and there was no allegation levelled against them in the affidavit filed in support of the writ petition in W.P(MD)No. 1919 of 2009. Moreover, the Writ Petition was filed only for a simple direction directing the respondents herein to allow the petitioner to complete the course in P.G. in D.A.(Diploma in Anesthesia) with the academic year (2007-2009). It is pertinent to point out that when the said writ petition came up for hearing before the Writ Court for final disposal, after a period of 3 years and 5 months, the counsel for the petitioner had submitted an additional typed set of papers containing statements under Section 161(3) of the Criminal Procedure Code recorded by the Police in furtherance of the compliant preferred by the 1st respondent/writ petitioner in Crime No.311 of 2009, Tanjore Medical College Police Station, Tanjore. The learned Judge, relying on the statements made under Section 161(3) Cr.PC, by his order, dated 30.08.2012, in W.P(MD)No. 1919 of 2009, had allowed the said writ petition and also, rendered a finding that the writ appellants had altered the attendance particulars of the said Ramesh Babu, namely, the petitioner in (W.P(MD).No.1919 of 2009) with an intention of preventing him from attending the final year examination. In this regard, it is relevant to refer to the findings rendered by the learned Judge in Paragraph Nos.12, 14 and 16 of the impugned order made by the Writ Court, wherein, the Writ Court rendered a categorical finding that the appellants had indulged in tampering with the attendance register and thereby attempted to prevent the said Ramesh Babu (W.P. (MD). No. 1919 of 2009) from undertaking his final year examination and had also directed disciplinary action to be initiated against the appellants by the State. However, it is relevant to note that before rendering such a finding or issuing such a direction for initiation of disciplinary action, the appellants were not made parties to the writ petition and the said observation has been made without impleading the appellants as parties and affording them an opportunity of hearing. Hence, without any prayer from the petitioner a direction was issued to initiate action against the Writ Appellants.

9.2. The second limb of the argument of the appellants is that the Writ Court has travelled beyond the relief sought for in the writ petition and the pleadings made therein and directed initiation of disciplinary action against the appellants, without impleading them, as one of the respondents.

9.3. The third limb of the argument is that though the Writ Petition came up for hearing after a period of three years from the date of filing of the Writ Petition, the petitioner in W.P. (MD) No. 1919 of 2009 did not choose to implead the appellants as one of the respondents for the reasons best known to him.

9.4. The fourth limb of the argument is that the writ court has failed to consider the aspect that it cannot make any observation or direction against persons who were not made as parties to the lis.

9.5. The fifth limb of the argument is that the Writ Court had, relying on the statements made under Section 161(3) of the Criminal Procedure Code, recorded a finding that the appellants were guilty of tampering the attendance register with an intention of preventing the 1st respondent/petitioner from appearing in the final year examination and also directed the State to initiate disciplinary action against the appellants under the service rules applicable. However, it is to be noted that the appellants were not made parties to the writ petition and there was no pleading by the writ petitioner to the effect that the appellants had tampered with the attendance register.

9.6. The sixth limb of the argument is that when a person is not a party to the proceedings, no adverse remarks can be passed. In support of his contention, the learned Senior Counsel placed reliance upon the judgment made in *Testa Setalvad v. State of Gujarat*, 2004 (10) SCC 88. He further relied upon a judgment in the case of *State of West Bengal v. Babu Chakraborty*, AIR 2004 SC 4324.

9.7. The learned Senior Counsel further advanced his arguments that placing reliance on the statements under Section 161 Criminal Procedure Code is impermissible. It is relevant to note that, the learned Judge has passed the impugned order on the basis of the statements recorded by the Police under Section 161 Cr.PC, furnished to the Court as an additional typed set of papers by the 1st respondent/writ petitioner on the date of final hearing. By treating such statements, the learned Judge has rendered a finding that the appellants have manipulated the records detriment to the interest of Ramesh Babu/the Writ Petition in W.P. (MD). No. 1919 of 2009 and directed that disciplinary action be taken against the appellants. However, it is to be noted that, the said documents were relied before the Writ Court without there being any pleading to that effect. In this regard, he relied upon a Division Bench Judgment of this Hon'ble Court in *Govt. of Tamilnadu v. Noorudeen and Ramswaroop v. State of Rajasthan*, AIR 2004 SC 2943, to contend that the statements recorded by the Police under Section 161 Criminal Procedure Code is not admissible. He also relied upon the Writ Rules of Practise. That apart, this Court in *P.K. Shriram v. Sourashtra Higher Secondary School*, 2002 (4) CTC 489, had deprecated the practise of filing documents, without being supported by pleadings and held that such documents cannot be admitted by the Court. Therefore, the order made by the learned single Judge, by relying on the statements made under Section 161 Cr.PC, without any affidavit, is unsustainable and warrants the interference of this Court.

9.8. Learned Senior Counsel for the appellants would submit that it is relevant to note that this Hon'ble Court in exercise of powers under Article 225 of the Constitution of India had framed rules to regulate the proceedings under Article 226 of the Constitution of India, which is known as Writ Rules of Practise, which

has been absolutely not followed by the learned Single Judge at the time passing order in W.P. (MD). No. 1919 of 2009.

9.9. For all the foregoing reasons, he prayed for allowing of the Writ Appeals.

10. Counter submissions made by the learned counsel on behalf of the first respondent in W.A. (MD). Nos. 910 of 2012 and 355 of 2013/writ petitioner in W.P.(MD). No. 1919 of 2009, which are as follows:-

10.1. Mr. M. Karunanidhi, learned Counsel appearing for the first respondent/Writ Petitioner in W.P.(MD)No.1919 of 2009 would submit that the petitioner was selected and he got admission for Diploma in Anesthesia (D.A.) at 2nd Respondent Medical College. The said Course commenced in May, 2007 and the course was completed in March 2009. On 13.3.2009, hall tickets in respect of the above said examinations were issued by the Dean, TMCH., Thanjavur, except the Writ Petitioner and hence the petitioner approached him for issuance of Hall-ticket, but, to his surprise, the Dean, Thanjavur Medical College informed him that due to lack of attendance, hall-ticket was not issued by the Controller of Examinations, Tamil Nadu M.G.R. Medical University, Chennai. It is further submitted by him that since the Writ Petitioner was selected for the afore-said course from the service quota, the persons selected from service quota will be paid full salary and if the Writ Petitioner was irregular in attending the College, the Department will never credit the salary on his account but he was given regular pay for his entire course period. Moreover, some of the students, who were having less attendance than the Writ Petitioner, were permitted by the respondents thereon to write the examinations.

10.2. It is further submitted that the writ petitioner has paid his examination fees on 31.1.2009. Further, if he had no sufficient attendance, the Dean, TMCH., Thanjavur ought not to have allowed him to pay the examination fees. Further, the Dean, TMCH., Thanjavur, has filed attendance calculation memo, in which, it had been mentioned that out of total 634 days, the writ petitioner worked only 381 days, which comes around 60%, but the calculation memo furnished by the Dean, TMCH., Thanjavur is totally erroneous and without any basis.

10.3. It is further submitted that even in the calculation memo of the Dean, TMCH., Thanjavur, it had been specifically mentioned that the writ petitioner did not attend classes for 167 days, out of 634 days and this gives a percentage of 71%. However, the Dean, TMCH., Thanjavur had mentioned that even though, the writ petitioner has signed in the Department Attendance Register, he was not found in the Operation Theatre on many days.

10.4. It is submitted that in the above writ appeals, three main points have been placed on the side of the appellants. They are :-

(i) There was no pleadings regarding forgery/manipulation of attendance register ;

(ii) the learned Single Judge relied on statements of witnesses recorded under

Section 161(3) Cr.P.C., and since there is a bar under Section 162 Cr.P.C, the statements of the witnesses and the final report ought not to have been relied upon by this Court and

(iii) both the appellants have not been impleaded as parties.

On the above points, the appellants have prayed this Court to set aside the order passed by the learned Single Judge in W.P. (MD) No. 1919 of 2009 by order dated 30.8.2012.

10.5. With regard to the first point, it is submitted by the learned Counsel for the petitioner that there was no wilful suppression of material facts. The dates and events are very much essential to decide this issue, which are as follows:-

Date of denial of Hall ticket :13.03.2009 - Friday

Date of filing the Writ Petition :14.03.2009- Saturday

W.P.(MD)No. 1919/2009

Date of interim order :14.03.2009- Saturday

Date of Examination :16.03.2009 - Monday

10.6. He further contended that since, all of a sudden, the writ petitioner was denied hall-ticket on the ground of lack of attendance and the writ petition was filed urgently and hence no averments of tampering of attendance was raised in the writ petition. Further, the writ petitioner was permitted to pay the examination fees also. Hence, he had not pleaded in the writ petition regarding the forgery/manipulation in the attendance register. There was no breathing time given to the writ petitioner. The hall ticket was denied on Friday, fortunately, this Court was working on Saturday. Hence, the writ petitioner hurriedly moved this Court and prayed for Mandamus and therefore, there was no wilful omission in the pleading in the writ petition nor wilful suppression of facts on the side of the writ petitioner. The Writ Petitioner, after completing the examination, submitted an application under the Right to Information Act before the Dean, TMCH, Thanjarur, praying to furnish attendance register. Only after going through the attendance register, he came to know that forgery has been committed. Hence, he preferred a report before the Inspector of Police, Thanjavur Medical College Hospital Police Station on 19.6.2009 and the same was registered in Crime No.311 of 2009 for the offences under Sections 465, 466 and 469 IPC as against Dr. R. Muthukumaran (Head of the Department). Hence, it is crystal clear that the fact of forgery of attendance register was not known to the writ petitioner on the date of filing of writ petition. Hence, non-pleading of forgery of attendance register is not fatal to the case.

10.7. With regard to submission of non-impleading of the appellants as parties to the Writ Petition is concerned, learned Counsel for the petitioner submits that this Court in Para No. 16 of the order made in W.P. (MD)No. 1919 of 2009 culled out that there was a prima facie case made out and directed to take appropriate

action. When a glaring irregularity or illegality has been noticed by the High Court, under Article 226 of Constitution of India or under Section 482 of the Criminal Procedure Code, 1973, this Court can pass orders to undo a wrong. The inherent power of the High Court under Article 226 of Constitution of India or under Section 482 of the Criminal Procedure Code, 1973 is always available to prevent abuse of powers and to secure the ends of Justice. Hence, the learned Single Judge by exercising the inherent power has directed the authorities to hold enquiry. In this regard, he placed reliance reported in (2006) 3 SCC (CRL) 245, Popular Muthiah v. State.

10.8. In certain situations, the Court exercises a wider jurisdiction and it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before the Court. It is further submitted that the writ petitioner has filed additional affidavit before this Court stating that the attendance register was tampered and prayed this Court to send for the attendance register.

To sum up, since the Writ Petitioner in W.P. (MD). No. 1919 of 2009, namely, Ramesh Babu, came to know about the forgery after filing of the Writ Petition, the contention of non-impleading of the Writ Appellants cannot be accepted. When there is glaring irregularity committed by the Writ Appellants, there is nothing wrong on the part of the Writ Court in giving adverse direction against them and eventually, prayed for the dismissal of the above Writ Appeals.

11. The case of the petitioner and the submissions with respect to W.P.(MD) No. 8395 of 2013:-

11.1. As already stated earlier, in view of the directions issued in W.P. (MD) No. 1919 of 2009 dated 30.08.2012, an action came to be initiated against Dr. Thenmozhi, Professor of Anesthesia, Thanjavur Medical College, Thanjavur, which necessitated to file W.P. (MD). No. 8395 of 2013, in which, she prayed for the quashing of the charge memo issued by the respondents therein.

11.2. The short facts in the said Writ Petition are that in furtherance of the direction issued by the learned Judge in W.P. (MD)No. 1919 of 2009 dated 30.08.2012 to the Government to initiate disciplinary action against the appellants, a charge memo came to be issued against the appellant, namely, Dr. Thenmozhi, on 30.04.2013 and she was also placed under suspension. The charge memo also refers to the judgement of the learned Single Judge in W.P. (MD)No. 1919 of 2009 dated 30.08.2012 as well as the charge sheet filed by the learned Judicial Magistrate concerned in Crime No.311 of 2009 under Sections 465, 466, 469 and 167 r/w.34 IPC.

11.3. In the said writ petition No.8395 of 2013, she had also challenged the order made by the 2nd respondent therein placing her under suspension and not allowing her to retire from service, as well as charge memo issued against her both dated 30.04.2013. It is submitted that this Court by its order dated 15.05.2013, stayed the initiation of disciplinary proceeding by its interim order in

M.P.(MD) No. 1 of 2013 in W.P. (MD) No. 8395 of 2013. In support of the said writ petition, it is pleaded that Dr. Thenmozhi, the writ petitioner had challenged the order made by this Court in W.P. (MD)No. 1919 of 2009 dated 30.08.2012, by preferring an appeal to the Division Bench of this Court and this Court had by its order in MP(MD)No.2 of 2013 in W.A. (MD)No. 355 of 2013 dated 10.04.2013 granted an order of interim stay, which has been extended from time to time and is in force as of today.

11.4. When this Court had stayed the operation of the order made by the Writ Court in W.P. (MD)No. 1919 of 2009 by which the learned Single Judge had directed initiation of disciplinary proceedings against the appellant, the impugned charge memo having been issued after the passing of interim order in the writ appeal and the knowledge thereof renders the charge memo and the consequential order retaining her in service by not allowing her to superannuate, is a nullity.

11.5. It is a trite principle of law that any administrative order or action taken/made in violation of an interim order made by a competent court would be illegal and nullity. In this regard, reliance is placed on the Judgment of the Hon"ble Supreme Court in Manohar Lal v. Ugrasen, (2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524, wherein the Hon"ble Supreme Court has held as follows :

"24. In *Mulraj v. Murti Raghunathji Maharaj* this Court considered the effect of action taken subsequent to passing of an interim order in its disobedience and held that any action taken in disobedience of the order passed by the Court would be illegal. Subsequent action would be a nullity.

25. In *Surjit Singh v. Harbans Singh*, while dealing with the similar issue held as under:

"4. ... In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes."

26. In *All Bengal Excise Licensees" Assn. v. Raghavendra Singh*, it has been held as follows:-

"28. ... a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. ... the wrong perpetrated by the respondent contemnors in utter disregard of the order of the High Court should not be permitted to hold good."

27. In *DDA v. Skipper Construction Co. (P) Ltd.*, this Court after making reference to many of the earlier judgments held: (SCC p. 636, para 18)

"18. ..." on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

28. In *Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund* this Court while dealing with the similar issues held that even a court in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure, 1908, in the event of coming to the conclusion that a breach of an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated.

29. In view of the above, it is evident that any order passed by any authority in spite of the knowledge of the interim order of the court is of no consequence as it remains a nullity."

12. Counter affidavit filed in W.P(MD).No . 8395 of 201 3 on behalf of all the respondents-

12.1. The Writ Petition is not at all maintainable either in law or on facts. It is submitted that Dr. Rameshbabu joined in Diploma in Anesthesiology course in Thanjavur Medical College, Thanjavur on 31.05.2007. On completion of the course, he approached the Dean for hall ticket and the same was not issued due to lack of attendance. However, he got a direction from this Court in W.P.(MD). No. 1919 of 2009 and appeared in the examinations and thereafter, filed a compliant in Crime No.311 of 2009 and the investigation was transferred to the District Crime Branch, Thanjavur.

12.2. Pursuant to the direction in W.P. (MD). No. 1919 of 2009, action was taken against the above said Medical Officers, including the petitioner in W.P. (MD). No. 8395 of 2013 through letter No. 35455/A1/2012-1, dated 22.11.2012. Accordingly, disciplinary action has been initiated against the petitioner and another under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and Charge Memo against Dr. Muthukumaran, Head of the Department (anaesthesia) and Dr. R. Thenmozhi (petitioner), Thanjavur Medical College, Thanjavur, vide Director of Medical No. 14352/SCI(2)/2013, dated 30.04.2013. Since the criminal case No. 583/2011 is pending before the Judicial Magistrate No.II, Thanjavur in respect of the petitioner and another, Dr. R. Thenmozhi who was to attain the age of superannuation on 30.04.2013, was placed under suspension and not allowed to retire from service on 30.04.2013, but retained in service beyond the date of superannuation on 30.04.2013 under rule 56(1)(c) of the Fundamental Rules vide G.O(D) No.402 Health and Family Welfare Department, dated 30.04.2013 and G.O(D) NO.403 Health and Family Welfare Department, dated 30.04.2013, respectively.

12.3. By its order, dated 30.08.2012 in W.P.(MD).No.1919 of 2009, this Court directed the respondents to initiate appropriate action against Dr.R.Muthukumaran, Head of the Department and Dr. R. Thenmozhi, Professor of Anesthesia, Thanjavur Medical College, Thanjavur. Dr. R. Ramesh Babu also filed

a complaint with Thanjavur Medical College Police Station in Crime No. 311/2009 and later on, investigation was transferred to the District Crime Branch, Thanjavur. After full investigation, charge sheet was filed before the learned Judicial Magistrate No.II, Thanjavur and cognizance was taken C.C.No.583/2011 for the offences under Sections 465,466,469,167 and 34 IPC. As such, charge sheet was filed against Dr. Muthukumaran, Head of the Department and the petitioner, Thanjavur Medical College, Thanjavur and the same is pending. The learned single Judge vide his order dated 20.12.2011 in MP.(MD) Nos. 1 and 2 of 2011 in CrI.OP (MD) No. 16517 of 2011 had granted interim stay of further proceedings in CC. No. 583/2011 and dispensation of the personal appearance of the petitioner.

12.4. It is further submitted that the Government have instructed the Director of Medical Education to take necessary action on the above said Medical Officers vide Government letter No.35455/A1/2012-1, dated 22.11.2012. Accordingly, disciplinary action has been initiated against the aforesaid Medical Officers under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and charge memo has been issued to Dr. Muthukumaran and Dr. R. Thenmozhi, Thanjavur Medical College, Thanjavur vide Ref.No. 14352/SCI(2)/2013, dated 30.04.2013. Further, it is submitted that this Court by order dated 15.05.2013 in M.P. (MD).No.1 of 2013 in W.P.(MD). No. 8395 of 2013 has ordered interim stay of the charge memo dated 30.04.2013. However, this does not mean that the charges have been washed off or obliterated. The Hon"ble Apex Court has given direction in many cases that departmental proceedings can also be initiated against a government servant in connection with the same charges, since it is well settled that even if an employee is acquitted in a criminal case, he can be punished in the departmental proceedings on the same charges. As such, there is no violation of the interim order, dated 15.05.2013 in M.P.(MD).No.1 of 2013 in W.P. (MD).No.8395 of 2013. This Court has ordered interim stay of the charge memo dated 30.04.2013.

12.5. It is further submitted that the charge memo has been issued as per Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Further, charges are relevant and are based on plausible evidence as observed by this Court order dated 30.08.2012 in W.P. (MD). No. 1919 of 2009. Hence, there is no procedural irregularity in conducting departmental proceedings. Hence, it is maintainable in law and on facts.

12.6. With regard to the averments made in grounds (i) to (vi) of the affidavit, it is submitted that the petitioner/Dr. Thenmozhi, was given reasonable opportunity and the principles of natural justice was also followed in this case. The petitioner herein is involved in grave misconduct for which regular charges have been framed as per the provision of the Tamil Nadu Civil services (Discipline and Appeal) Rules. It is submitted that proceedings by disciplinary authority have been stayed by this Court vide interim order dated 15.05.2013 in M.P. (MD).No.1 of 2013 in W.P.(MD).No.8395 of 2013.

13. The facts of the criminal case filed against the appellants:-

It is the case of the prosecution that the 1st petitioner, who was the Head of the Department of Anaesthesia, Thanjavur Medical College, along with the second petitioner, namely, Dr. Thenmozhi, with an intention of preventing the defacto complainant/Dr. Ramesh Babu from taking his examination conducted by the University, had made a star mark below the signature of the defacto complainant in some place and in some other place had written "A" above the signature of the de facto complainant in the attendance register and had thereby committed forgery and had manipulated the attendance of the defacto complainant. On the basis of the complaint preferred by the defacto-complainant, dated 23.06.2009, a case in Crime No.311 of 2009 has been registered and on completion of the investigation, the impugned charge sheet in C.C. No. 583 of 2011 came to be laid on the file of the learned Judicial Magistrate No.II, Thanjavur charging the petitioners/accused under Sections 465, 466, 469, 167 r/w. 34 IPC.

14. The submissions made on behalf of the petitioners in CrI.O.P.(MD). Nos. 4676 of 2012 and 16517 of 2011:-

14.1 As we have already stated, the petitioners in the above criminal original applications, seek to quash the charge sheet in CC No. 583 of 2011 on the file of the learned Judicial Magistrate Court No.2, Tanjore, wherein, the petitioner in CrI.O.P. (MD) No. 16517 of 2011 (Dr. Muthukumar) has been arrayed as accused No.1 and the petitioner in CrI.O.P. (MD)No. 4676 of 2012 (Dr. Thenmozhi) has been arrayed as accused No.2.

14.2. Mr.Ajmal Khan, learned Senior Counsel appearing on behalf of the petitioners/accused, who have been charged with Sections 465, 466, 469, 167 r/w.34 IPC., has submitted that in the case of State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335, the Hon"ble Supreme Court has set out the parameters under which the Courts criminal proceedings can be quashed either under Article 226 of the Constitution of India or under Section 482 of the Criminal Procedure Code. According to the learned Senior Counsel, applying the ratio laid down in the said judgment, the Criminal case against the appellants are liable to be quashed. He further submitted that the impugned charge sheet in CC No.583 of 2011 warrants to be quashed in view of the fact that even if the entire allegations contained in the charge sheet are taken to be true at its face value, no offence much less the offences under Sections 465, 466, 469, 167 r/w.34 IPC are made out.

14.3. In this regard, the learned Senior Counsel would contend that Section 465 IPC provides for punishment for the commission of an offence of forgery. While Section 466 deals with forgery of a public register kept by a public servant and Section 469 deals with commission of forgery for the purpose of harming the reputation of any person. Therefore, in order to invoke Sections 465, 466 and 469, an offence of forgery as defined under Section 463, must have been committed by the accused. Further, there is no making of a false document under

Section 464 IPC which is sine qua non for the offence of forgery.

14.4. As the charge of forgery cannot be sustained against the petitioners/accused, consequently, the charge under Sections 465, 466 and 469 IPC, do not stand the scrutiny of law and should equally fail. In this regard, learned Senior Counsel for the petitioners relied on a judgment reported in *Parmainder Kaur v. State of U.P.*, AIR 2010 SC 840. Similarly the Hon"ble Bombay High Court while considering the term "dishonestly and "wrongful gain & wrongful loss" has interpreted Sections 23 & 24 of the Code in the case of *Ramakrishna Babu Rao Maske v. Kisan Shivraj Salke*, 1975 Cri.LJ. 173.

14.5. With regard to Section 167, it is to be noted that the accused are the Head of the Department and the Chief Anaesthetic of the Medical College, respectively and they are academic professors not charged with the duty to prepare or maintain an attendance register. No statutory provision specifically obligates a head of the department or a Chief Anaesthetic to prepare or maintain an attendance register and in the absence of any such specific statutory mandate, the petitioners cannot be charged with the manipulation/forgery of the document and therefore, the offence under Section 167 cannot be attracted as against the petitioners. In support of the same, the petitioners seek to rely on the Division Judgment of the Hon"ble Bombay High Court in *Kalusing Dalesing Rajput v. State of Maharashtra*, 1969 (71) BOM. LR 669.

14.6. That apart, learned Senior Counsel for the petitioners/appellants submitted that even according to the report filed by the Inspector of Police, the defacto complainant/petitioner in W.P(MD). No. 1919 of 2009 was having only 71% of attendance, which is less than the required attendance as prescribed by the University. Even if the prosecution case is accepted to be true, the petitioner in W.P(MD). No. 1919 of 2009 could not be permitted to write the examination. When that is the factual position, the appellants cannot be blamed that they did manipulation in the attendance register of the petitioner in W.P(MD). No. 1919 of 2009 and in other words, they prevented him from attending the examination. Therefore, on this factual position also, no ground is made out to punish the petitioners/appellants under Section 167 I.P.C. and prayed for quashing the charges pending against the appellants.

15. Submissions made by the learned Counsel for the second respondent/defacto complainant in respect of Crl.O.P.(MD). Nos. 4676 of 2012 and 15617 of 2011:

15.1. The learned Counsel appearing for the second respondent/defacto complainant, viz., Ramesh Babu, who is the Writ Petitioner in W.P(MD). No. 1919 of 2009 would submit that based on the complaint given by the second respondent, the Inspector of Police, Thanjavur Medical College Hospital Police Station, registered a case in Crime No.311 of 2009 for the offences under Sections 465, 466 and 469 IPC as against the Head of the Department, namely, Dr. Muthukumaran. After registration of FIR, the investigation was taken up and statements from witnesses were recorded by the Investigating Officer. The Chief

Anesthetist, namely, Dr. Thenmozhi was examined as a witness on 23.6.2010 and on her statement; it came to the light that on the instruction of the Head of the Department, she only made star mark in the attendance register. So, she was also made as an accused. Since on the date of examination of Dr. Thenmozhi, she was not an accused, her statement is admissible under Section 21 of the Indian Evidence Act. The above statement will come under the definition "admission" as defined under Section 17 of the Indian Evidence Act. The investigation was thereafter transferred to the Inspector of Police, District Crime Branch, Thanjavur. The transferee Inspector of Police, after completing the investigation, has filed a positive final report under Section 173(2) Cr.P.C. before the learned Judicial Magistrate No.II, Thanjavur. The learned Judicial Magistrate No.II, Thanjavur had taken cognizance of the final report submitted by the 1st Respondent herein under section 190 of Cr.P.C. The 1st Respondent has filed a positive final report as against two accused for the offences under Sections 465, 466, 469 and 167 r/w. 34 IPC.

15.2. The case of the prosecution is that in order to prevent the defacto-complainant from appearing in the examination, the 1st and 2nd accused in furtherance of their common intention, A-1 directed A-2 to manipulate the attendance and A-2 manipulated the same by putting star mark and "A" mark and thereby they have reduced the percentage of attendance of the defacto-complainant so as to prevent him from appearing in the examination. Thus, both the accused had forged the attendance register which is a public document and hence, the final report under Sections 465, 466, 469 and 167 r/w. 34 IPC has been filed. The Inspector of Police has also forwarded a comparative table of attendance along with the final report. In order to bring home the charges levelled against the accused, the prosecution has proposed to rely upon 45 documents. Among them, the following are the attendance registers relating to operation theatre, which are extracted below:-

(a) Urology Anesthesia Register

(b) Plastic surgery Anesthesia Register

(c) C.T. Anesthesia Register

(d) A. Operation Theatre

(e) B. Operation Theatre

(f) C. Operation Theatre

(g) Ortho Operation Theatre

(h) C.T.S. Operation Theatre Registers have been compared and the Investigation Officer came to a conclusion that there were material alteration found in the Class Room Attendance Register with ulterior motive to debar the 2nd Respondent from University Examinations. The said material alteration was done by the Petitioner herein, who is the Chief Anesthetist in TMCH., Thanjavur

at the instigation of the Head of the Department.

15.3. Learned Counsel for the second respondent/defacto complainant would further submit that on a bare perusal of statement of witnesses, namely, co-students and teaching faculty, will make it clear that [*] mark and "A" mark were put only after the course was completed and after the interim order was passed by this Court in W.P(MD). No. 1919 of 2009. The 2nd Respondent/defacto-complainant was denied the hall-ticket for the University Examinations on the ground of lack of attendance as per the letter given by the 1st accused - Head of Department.

15.4. Immediately, the 2nd Respondent filed a writ petition before this Court in W.P.(MD)No.1919 of 2009 and as per the interim direction given by this Court, the 2nd respondent appeared in the University Examinations. The 2nd respondent/defacto-complainant gave a requisition to the Dean, TMCH., Thanjavur under the Right to Information Act to furnish a copy of the Attendance Register relating to him and it was also furnished.

15.5. Learned Counsel for the 2nd respondent/defacto complainant would further submit that on a bare perusal of attendance register it would clearly reveal that just below the signature of the second respondent on certain dates, [*] mark has been put and it is noted that [*] denotes absent or not attended operation theatre and on certain other days, "A" mark was put in which denotes after signing the attendance register, the defacto/complainant left the classes without attending the classes. But, the 2nd respondent/defacto-complainant was regular in attending the classes. Hence, he was constrained to prefer a report before the Inspector of Police, TMCH Police Station on 19.6.2009. After preliminary enquiry, FIR was drawn up for the offences under Sections 465, 466, 469 IPC in Crime No.311 of 2009 on 23.6.2009 against the Head of Department/1st accused, who is the custodian of the attendance register. The above said case was transferred to the file of the first Respondent and the investigation officer collected as many as 45 documents and examined 12 witnesses in order to ascertain the truthfulness or otherwise of the compliant given by the second respondent/defacto-complaint.

15.6. On a careful scrutiny of the class room Attendance Registers maintained in (1) R.M. Hospital, (2) Thanjavur Medical College Hospital and after comparing with the following registers.

- a. Urology Anesthesia Register
- b. Plastic surgery Anesthesia Register
- c. C.T. Anesthesia Register
- d. Operation Theatre
- e. Operation Theatre
- f. Operation Theatre

g. Ortho Operation Theatre

h. C.T.S. Operation Theatre Registers have been compared and the Investigation Officer came to a conclusion that there were material alteration found in the Class Room Attendance Register with ulterior motive to debar the 2nd Respondent from University Examinations. The said material alteration was done by the Petitioner herein, who is the Chief Anesthetist in TMCH., Thanjavur at the instigation of the Head of the Department.

The Investigating Officer has come to the conclusion that 2nd Respondent/defacto-complainant had 71% of attendance, whereas, the 1st accused/Petitioner herein had put only 60% of attendance. The investigating officer has filed a separate report and calculation sheet before the Learned Judicial Magistrate concerned by a report dated 20.9.2011. On 23.6.2010, Dr. R. Thenmozhi/Petitioner in Crl.O.P. (MD No. 4676/2012, who was working as Chief Anesthetist in TMCH., Thanjavur, was examined by the Investigating Officer and a statement under Section 161(3) Cr.P.C. was also recorded. As per the said statement, the Head of the Department compelled her to alter the attendance and accordingly, she altered the attendance of the 2nd Respondent/ defacto-complainant. Hence, she was also made as an accused and a positive final report was filed by the 1st Respondent herein before the Learned Judicial Magistrate No.II, Thanjavur for the offences under Sections 465, 466, 469, 167 r/w.34 IPC. The case of the Petitioner in Crl.O.P.(MD)No.4676/2012 and Crl.O.P.(MD)No.16517 of 2011 cannot be decided without recording evidence. More so, the co-students of the 2nd Respondent/defacto-complainant and Assistant Professors" statements recorded under Section 161(3) Cr.P.C. will clearly make out a prima facie case against the Petitioners/writ appellants.

15.8. The learned Counsel for the second respondent /defacto-complainant would further submit that the Writ Petitioner was selected from service quota. As per Rule, if he had not attended the classes, the Head of the Department has to inform the office so as to deduct the amount from the student's salary. But, there was no such communication from the Head of the Department and hence, full salary was paid to the 2nd Respondent/defacto-complainant as per the statements recorded from the Dean, TMCH., Thanjavur and concerned clerk.

15.9. As regards, ante-dating, it is submitted that as per the statement of witnesses, the star mark was put after the completion of course, that too, after the interim order was passed in W.P(MD). No. 1919 of 2009 directing the respondents therein to permit the defact complainant to take up his examination. Hence, the very ante-dating itself is an offence as defined under Section 463 I.P.C. In this connection, learned Counsel for the second respondent relied on AIR 1954 SC 322, in which, it has been held as follows :-

"(21) All these circumstances go to show that far from these documents coming into existence on the respective dates which they bore they were in fact brought into existence on the afternoon of the 11th April 1949 at the Constitution House

as alleged by the prosecution and were ante-dated to the 1st April 1949 and the 2nd April 1949 respectively with a view to show that the resumption order had already been granted by the first appellant to the Syndicate at Rewa on the 2nd April 1949. The evidence of Nagindas and Pannalal thus in respect of the forgery of these documents bears the stamp of truth and deserves to be accepted."

15.10. For the purpose of the intention, to cause of injury on the mind or reputation of the defacto complainant the learned Counsel for the second respondent/defacto complaint relied on judgment reported in AIR 1968 Madras 349, Daniel hailey Walcott and another v. State and for the purpose of wrongful loss and wrongful gain, he relied on the judgment reported in 2011 (5) SCC 708, Sushil Suri v. Central Bureau of Investigation and another.

15.11. In the case reported in (2003) 3 SCC 641, Ram Narayan Popli v. Central Bureau of Investigation, it has been held in paragraph Nos. 372 to 374, which are as follows:-

"372 - The expression "intent to defraud" implies conduct coupled with an intention to deceive or thereby to cause injury. In other words, defraud involves two conceptions, namely, the deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. The term forgery as used in the statute is used in its ordinary and popular acceptance.

373. The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions are (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty.

374. He also submit that Section 374- In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however small."

15.12. He would further submit that the defacfo-complainant was not permitted to appear in the examination on the ground of lack of attendance. As per Rule, 30 days leave is eligible for P.G. students, so the defacto-complainant is eligible for 60 days leave for 2 years. It comes around 9.4%. According to the working sheet prepared by the Investigation Officer, the defacto-complainant attended 71%. Hence, the defacto-complainant has got 80.4% of attendance, so he is eligible to appear in the examinations.

15.13. Lastly, learned Counsel for the second respondent/de-facto compliant would submit that in the case on hand the accused are public servants. The attendance register was in custody of A-1, he was given power to send certificate

of attendance to the Medical University. He had manipulated the register in an incorrect manner and caused injury to the defacto-complainant. Hence, prima facie case under Section 167 IPC is also made out. Admittedly the defacto-complainant has been selected from service quota. It is also admitted that if candidate from service quota has not attended the classes, salary would not be given. Here, admittedly, the defacto-complainant has been paid full salary. The possible legal inference would be that the defacto-complainant attended the class and got full attendance. Only because of the wrong entry made by both the accused, he was not permitted to write examination. Hence, it is an injury on his mind and his reputation has been spoiled. The injury has been defined in Section 44 IPC. Section 44 IPC - the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. In the case on hand, the defacto-complainant has been injured on his mind and reputation. Hence, the injury as defined in Section 44 IPC is squarely made out. Further, elaborate or roving enquiry is not possible under Section 482 Cr.P.C. If prima facie case is made out on reading of the prosecution documents and statement of witnesses, quashing of proceedings is not possible. Even for any reason, if this Court comes to a conclusion that offences are not made out still Section 511 IPC can be added by the learned Magistrate concerned for the attempt to commit forgery. Hence, the accused have to face the trial. Eventually, he prayed that the quashing applications are liable to be dismissed.

16. We have paid our anxious consideration on the submissions made by the parties and perused the materials available on record.

17. Conclusion in W.A.(MD). Nos. 910 of 2012 and 355 of 2013 :-

17.1. Though very many grounds have been raised to assail the order of the learned single Judge, it would be appropriate to deal with the issue whether the appellants ought to have been made as parties before passing any order against them. The main contention of the writ appellants is that an adverse order has been passed by the learned single Judge without impleading them and without affording any opportunity of hearing to them. Once the said issue is decided, there will be quietus to the entire issue involved in the writ appeals. There is no dispute that the writ appellants were not parties before the Writ Court. The writ petitioner could have very well impleaded the appellants as one of the parties when he filed the additional typed set of papers, wherein, the writ petitioner has stated the alleged act of the writ appellants and therefore, we can safely come to the conclusion that they lost their valuable right accrued to them in defending the case in a proper manner. In this connection, we find much force in the arguments of the learned Senior Counsel for the appellants. In this connection, it is useful to refer to the judgment reported in *Testa Setalvad v. State of Gujarat*, 2004 (10) SCC 88, wherein, the Hon'ble Supreme Court held as follows:

"It is not in dispute and the records also reveal that the appellants were not parties in the case before the High Court. It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and

vitaly essential tenet of the "rule of law", that no one should be condemned unheard, and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations quoted above do not prima facie appear to have any relevance to the subject-matter of the dispute before the High Court. Time and again this Court has deprecated the practise of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. Apart from that, when there is no relevance to the subject-matter of adjudication, it is certainly not desirable for the courts to make any comments or observations reflecting on the bona fides or credibility of any person or their actions. Judicial decorum requires dispassionate approach and the importance of issues involved for consideration is no justification to throw to the winds basic judicial norms on mere personal perceptions as saviours of the situation."

17.2. Further, the said Ramesh Babu, the petitioner in W.P(MD). No. 1919 of 2009 did not choose to implead the appellants in W.A.(MD). Nos. 910 of 2012 and 355 of 2013 even after a period of three years from the date of filing of the Writ Petition for the reasons best known to him. It is true that when there is a glaring irregularity, this Court has power to sue the erring officials. But the case on hand, is somewhat different. Here, nothing prevented the Writ Petitioner to implead the appellants against whom he made allegations as one of the parties to the writ proceedings, at least after getting an interim order from this Court or at the time of filing additional typed set of papers before the Writ Court as regards the alleged statement given by the Writ Appellants under Section 161 Criminal Procedure Code. This major factor has been omitted instead of being considered by the learned Single Judge at the time of passing an adverse order against the appellants in W.A.(MD). Nos. 910 of 2012 and 355 of 2013. Right to rebut allegations made against an individual is a valuable right which cannot be taken away just like that. It is always safe and better to pass an order after impleading the affected party, who might have a say to defend the allegations levelled against them. It is settled principle of law that, no observation much less any remarks, prejudicial to the interest of any person can be made in any lis when such persons are not made party to the litigation and did not have an opportunity to rebut the same. Thus, the order made by the Writ Court rendering findings against the appellants and directing initiation of disciplinary action against the appellants, when they were not party to the writ petition and thus had no opportunity to rebut the same warrants interference at the hands of this Court.

17.3. The Hon"ble Supreme Court in the case of State of West Bengal v. Babu Chakraborty, AIR 2004 SC 4324, has held as follows : (Para 29)

"In our view, the High Court was not justified and correct in passing observations/

strictures against Appellants 2 and 3 without affording an opportunity of being heard, and it is in violation of a catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial court to lodge a complaint to the Magistrate having jurisdiction for prosecuting Appellants 2 and 3 for having committed an offence under Section 58 of the Act read with Sections 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against Appellants 2 and 3."

17.4. Similarly, the Hon"ble Supreme Court has held in the case of *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557 : (2010) 4 SCC (Civ.) 524, it is held as follows:-

"30. In *Trojan & Co. v. Nagappa Chettiar* this Court considered the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under: (AIR p. 240, para 22)

"22. ... It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

17.5. A similar view has been reiterated in *Krishna Priya Ganguly v. University of Lucknow* and *Om Prakash v. Ram Kumar* observing that a party cannot be granted a relief which is not claimed.

17.6. Dealing with the same issue, in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi*, the Hon"ble Supreme Court has held as follows:-

"30. ... Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

17.7. In the case of *Fertilizer Corpn. of India Ltd. v. Sarat Chandra Rath*, it is held that "the High Court ought not to have granted reliefs to the respondents which they had not even prayed for.

18. From the dictum laid down in the afore-said judgments, it is clear that without affording an opportunity of hearing or impleading as a party or pleading before the Writ Court or exceeding the relief sought, an observation cannot be made by the High Court and accordingly, the observations made against the writ appellants are liable to be expunged.

19. In fact, it is relevant to note that this Court has in exercise of powers under Article 225 of the Constitution of India had framed rules to regulate the proceedings under Article 226 of the Constitution of India, which is known as

Writ Rules of Practise. Rule 2(e) of the Rules, provide as hereunder:

"No documents can be admitted in any writ proceedings unless and otherwise it is referred to in an affidavit"

Similarly, Rule 20(d) provides that :

"No party can produce or rely upon a document which has not been referred to in the affidavit filed in support of the writ petition, unless the Court grants permission to file such documents on the basis of a petition duly supported by affidavit satisfying the Court explaining as to why it was not filed earlier along with the writ petition. This permission shall mutatis mutandis apply to appeals against an order in such petition".

Further Rule 39(c) also provides that :

"No new grounds shall be relied on and no relief be sought at the hearing except on grounds taken reliefs sought in the original petition and the accompanying affidavit, provided the Court may allow the petitioner and amend the pleadings and grounds upon such terms as to costs or otherwise as the Court deems fit."

20. Therefore, according to the learned Senior Counsel for the appellants that by virtue of the explicit prohibition from admitting any document in a writ proceedings, unless and otherwise, it is referred to in an affidavit as mandated under Rule 2 (e), the Writ Court was not correct in taking on record the statements made under 161 Cr.PC submitted by the writ petitioner/the 1st respondent as an additional typed set of papers and passing orders thereon in the absence of an affidavit in this regard. In fact this Court has in its Judgment in P.K. Shriram v. Sourastra Higher Secondary School, 2002 (4) CTC 489, had deprecated the practise of filing documents without being supported by pleadings and held that such documents cannot be admitted by the Court. Therefore, the Order made by the Learned Single Judge by relying on the statements made under Section 161 Cr.PC without any affidavit warrants the interference of this Court.

21. Before appreciating the submission made by the learned Senior Counsel for the appellants by relying upon the Rules, it would be appropriate to extract R.O.C. No. 2572-A/2001/F1, wherein, it is stated as follows:-

"The following set of rules were published in the Tamil Nadu Government Gazette, dated 02.01.2002, Issue No.1, Part III, Section 2, Page 2. These rules were:-

(i) Kept in abeyance

(ii) restored with effect from 3rd June 2013 (Vide High Court notification No.146/2013 dated 29.04.2013 ROC. No. 2572-A/2001/F1)

(iii) suspended for a period of four weeks with effect from 05.06.2013 (vide High Court Notification No. 152/2013 dated 05.06.2013)

(iv) suspended until further orders (vide High Court notification No.188/2013 dated 02.07.2013)"

From the reading of the afore-said R.O.C., it could be seen that the Rules relied upon by the appellants that these rules were initially kept in abeyance; restored with effect from 3rd June 2013; Again, suspended for a period of four weeks with effect from 05.06.2013. Thereafter, it was suspended until further orders. Therefore, as on date of producing 161 statement before the Writ Court, rule relied upon by the counsel for the appellant was kept in abeyance. Therefore, we are of the opinion that we cannot attach much significance to the submissions made by the learned Senior Counsel for the appellants by placing upon the afore-said rules.

22. As regards the submission of the learned Senior Counsel for the appellants that reliance on Section 161(3) Cr.P.C. statements of witnesses ought not to have been made by the Writ Court, the learned Counsel for the petitioner drew the attention of the Court to Section 162 Cr.P.C., which reads as under:-

162 Cr.P.C. - statements to police not to be signed: Use of statements in evidence. (1) No statement made by any person to a police officer in the course of an investigation....., be used for any purpose, same as hereinafter provided, at any inquiry or trial in respect of any offence was made.

23. In order to appreciate the provision of law, the learned Counsel for the petitioner submits that the heading of the provision "statements to police not to be signed: Use of statements in evidence" is relevant and the same has to be read conjointly. Section 162 Criminal Procedure Code speaks about use of statements in evidence. The bar is to the effect that the statements of witnesses cannot be used in inquiry or trial in respect of any offence. There was no inquiry or trial before this Court in the writ jurisdiction. Hence, the statement of witnesses can be relied upon by the Writ Court and Civil Court. In support of his contentions, he placed reliance on the following judgments :-

(1) 1995 CrL.LJ. - 568, Khairmohamed Reas Mohamed v. State of Maharashtra.

In this case, the Supreme Court traced the legislative history of the provisions contained in Section 162 of the Criminal Procedure Code and held that the said section was enacted to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. In this case, the Supreme Court held that Section 162 of the Code of Criminal Procedure created a general bar against use of such statements at a criminal trial subject to limited purpose of contradicting witnesses at the criminal trial in the manner provided by Section 145 of the Evidence Act. The observations made in this case cannot be applied in a civil suit IPSO FACTO while appreciating the evidence led by the parties at the trial of a civil suit. If the statement recorded by the police is to be always considered unreliable without its appreciation or scrutiny in a civil proceeding, there is no

purpose in stating that such statements are admissible as evidence in a civil suit/proceeding or a writ petition.

(2) 1981(2) SCC 493, Khatri and others (IV) v. State of Bihar and others.

Section 162 has been enacted for the benefit of the accused. The bar created by this section is a limited one and has no application if the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made. Thus the section does not apply to a civil proceeding or a proceeding under Article 32 or 226 and as such a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 or 226 provided it is relevant under the Evidence Act.

Thus, according to the learned Counsel for the petitioner, it is crystal clear from the above judgments that this Court can rely upon statements of witnesses recorded under Section 161(3) Cr.P.C. in Writ proceedings and hence, this point is to be negated.

24. On reading of the above dictum laid down by the Apex Court it is clear that there is no bar for the Civil Court or for the Writ Court to rely on 161 statement. The bar is only for the Criminal proceedings. However, in the case on hand, the vital point is that the writ appellants were not impleaded nor they were given an opportunity of hearing to defend their case in a proper manner and therefore, this Court is of the view that no significance could be given to the same.

25. For all the foregoing reasons, we are inclined to allow the writ appeals.

26. Conclusion in Crl.O.P.(MD).Nos.4676 of 2012 & 16517 of 2011:-

Before traversing into the discussion made in respect of Criminal Original Petitions, it would be appropriate to extract the charge sheet filed by the respondent police:-

"Fw;w mwpf;if"

"jQ;rht{h; khtl;l fy;Yhhp fhty; epiya Fw;w vz; 311/2009 gphpt[465, 466, 469 kw;Wk; 167 IPC r/w 34 IPC"

vjphpfs; lhf;lh; Kj;Jf;Fkud; vd;w Kj;Jf;Fkhh; j/bg. ,uhkhkph;jk;> Anesthesia) (HOD of Anesthesia) jQ;rht{h; kUj;Jt fy;Yhhp. jQ;rht{h;. 2. lhf;lh; Mh;. njd;bkhHp. M.D., Chief Doctor Anesthesia Department jQ;rht{h; kUj;Jt fy;Yhhp jQ;rht{h;

thjp lhf;lh; uBnk];ghg[vd;gth; jq;rht{h; kUj;Jt fy;Yhhpapy; KJepiy og;skh (Diploma in Anesthesia) kaf;ftpay; Jiwap; 2007 Kjy; 2009Mk; fy;tp Mz;oy; goj;Js;shh;. ,th; muR kUj;Jtuhf gzpg[hpe;J gzpg[hpa[k; kUj;JtUf; fhd xJf;fPl;od; fPH; goj;Js;shh;. thjpf;Fk; kaf;ftpay; Ji w jiyth; vjphp lhf;lh; Kj;Jf; FkuDf;Fk;

jdpg;gl;l tpnuhjk; neh;e;jjhy; thjp njh;t[vGjf;TlhJ vd;w bfl;l vz;zj;jpy; thjpf;F
jPq;F cz;lhf;f ntz;Lk; vd;w fUj;J ld; Kjyhk; vjphpa[k; kaf;ftpay; Jiwapd; kUj;Jt
fy;Yhhp Kj;ik kUj;Jtuhd

"vjphpfs;

"(Chief Doctor) ,uz;lhk; vjphp lhf;lh; njd;bkhHpa[k; Tl;lhf nrh;e;J bghJ cl;fUj;Jld;
xd;W To jq;rht{h; kUj;Jt fy;Yhhpapy; kaf;ftpay; Jiwapy; cs;s tUif gjpntl;oy"
Kjyhk;vjphp Jhz;ojpd; nghpy; ,uz;lhk; vjphp neh;ikaw;w Kiwapy; tUif gjpntl;oy;
thjp ifbaGj;Jf;F nky; cs;s gFjpapy; "A"vd;W nghl;L xU bgha;ahd Mtzj;ij jahh;
bra;Js;shh;fs;. ,t;thW tUif gjpntl;il jpUj;jpajhy; thjp gy;fiyf;fHf njh;t[vGj Koahj
epiyf;F tUif gjnBtl;od; rjtPjj;ij Fiwj;J fhl;o thjpf;F nfL cz;lhf;f gad;gLk; vd;w
bjspt[l; xUbgha; Mtzj;ij jahh;bra;Js;shh;fs;.

"vdnt Kjyhk; vjphp kw;Wk; ,uz;lhk; vjphpapd; bra;ifahdJ ,e;jpa jz;lid rl;lk;
gphpt[fs; 465, ,466, 469, kw;Wk; 167 r/w34d; fPH; fz;of;fj;jf;f Fw;wj;ij
g[hpe;Js;shh;fs;.

",Jnt Fw;wk;

27. Now, Coming to the criminal original petitions pending against the petitioners/accused, as already stated, they have been charged for offences under Sections 465, 466, 469, 167 r/w. 34 IPC. In this regard, it is apt to mention the case of State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335, wherein, the parameters under which this High Court can quash a criminal proceedings either under Article 226 of the Constitution of India or under Section 482 Criminal Procedure Code have been enumerated. The judgment reads as under:-

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)..

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6)..

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

28. Keeping the submissions in mind and the principles laid down by the Hon"ble Supreme Court, let us proceed to consider the case before us. The prayer of the petitioners in this Criminal Original Petitions is to quash the charge sheet filed against them under Sections 167, 465, 466, 469 r/w. 34 IPC.

29. It is also useful to refer to Sections 465, 466 & 469 IPC for the purpose of considering the prayer of the petitioner:-

Section 465 IPC provides for punishment for the commission of an offence of forgery. While Section 466 deals with forgery of a public register kept by a public servant, Section 469 deals with commission of forgery for the purpose of harming the reputation of any person. Therefore, in order to invoke Sections 465, 466 & 469, an offence of forgery, as defined under Section 463 must have been committed, by the accused. Hence, in order to appreciate as to whether the petitioners can be said to have committed an offence of forgery, it is relevant to extract Sections 463, 465, 466, 469 and 167 IPC hereunder:

"463. Forgery.-

Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

465. Punishment for forgery-

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

466. Forgery of record of court or of public register, etc:-

Whoever forges a document, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

469. Forgery for purpose of harming reputation:-

Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may

extend to three years, and shall also be liable to fine.

167. Public servant framing an incorrect document with intent to cause injury-

Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

30. From a plain reading of the provision of Section 463, it could be seen that the following ingredients are required to be satisfied for the purpose of bringing home the charge of forgery.

(i) The accused should have created a false document.

(ii) It should be made with an intention to cause damage or injury to the public or to any person.

31. Unless a false document is said to have been created as defined under Section 464 of IPC, no offences of forgery as defined under Section 463 is said to have been committed and consequently, no offence under Sections 465, 466 & 469 IPC would be attracted. Section 464 provides that "a person is said to make a false document who dishonestly or fraudulently makes, signs, seals or executes a document or a part of a document". Thus, making of a false document requires the following:-

(i) Making, signing, sealing or executing a document or a part of a document.

(ii) Such act of making or signing or sealing or executing should be done dishonestly or fraudulently.

32. In the present case, it is not the case of the defacto complainant that the petitioners have either made or signed or sealed or executed any document or part thereof. The only allegation against the petitioners is that with an ulterior motive to prevent the defacto-complainant from writing the examination, they put "A" and star mark (" * ") above and below the signature of the de facto complainant in the attendance register, thereby to appear that he did not attend the classes on those days and thereby he lacks attendance to sit for the examinations. Thus, in the absence of any allegation of making or signing the document in the impugned charge sheet, the petitioners cannot be said to have made a false document nor have they been said to have committed forgery. Secondly, such making of document should have been done "dishonestly" or "fraudulently". The term "dishonestly" has been defined under Section 24 IPC as hereunder:

"24. "Dishonestly".- Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"."

33. While the term "wrongful loss" and "wrongful gain" has been defined under Section 23 code as:-

"23. "Wrongful gain".- "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss".- "Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

Gaining wrongfully, losing wrongfully.- A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property."

34. Therefore, the entire concept of wrongful gain or wrongful loss and consequently the terms "dishonesty" or "fraudulently" relate only to property and in fine, in the absence of any unlawful gain or loss of property, the actus rea of the accused cannot be labelled to be dishonest and in consequence, if no property is involved, there is no question of making of a false document under Section 464 IPC and the quick consequence of the same is that no forgery is said to have been committed unless the end result of the alleged offensive act results in either "unlawful gain" or "loss of property". In the present case, it is the admitted case of the prosecution that the charge does not relate to any unlawful gain or loss of property and therefore, there is no making of a false document as defined under Section 464 IPC which is sine qua non to bring an act under the case of forgery.

35. When the act of the petitioners do not fall within the charge of "forgery", the charges under Sections 465, 466 and 469 IPC do not stand. In this regard, it is relevant to refer to the following decisions which establish the above stated position of law:-

In *Parmainder Kaur v. State of U.P.*, AIR 2010 SC 840, the Hon'ble Supreme Court while considering a case where, like in the case in hand, the figure "1" was added in the date of the document, held that there is no making of false document under Section 464 IPC and quashed the criminal prosecution against the accused therein. Para 14 & 17 of the said Judgement are extracted hereunder:

"The only allegation which appears from the first information report is that the appellant altered the date from "6-5-2002" to "16-5-2002" and "7-5-2002" to "17-5-2002" and "27-5-2002". It seems from the certified copy that though she had applied for the certified copies of the revenue records on 6-5-2002 and the same were made available to her on 7-5-2002, she altered those dates in the copies filed by her in the court to "16-5-2002" and "17-5-2002" as also "27-5-2002". This is all the forgery which has been complained of by Respondent 2 in the aforementioned FIR. It is only on this basis that it is suggested that the said civil suits were filed on 27-5-2002 and a false affidavit was sworn by the

appellant. It is pointed out that in that affidavit also she had given the wrong dates.

To attract the second clause of Section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract clause "Secondly" if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document. Therefore, presuming that the figure "1" was added as was done in this case, it cannot be said that the document became false for the simple reason that the appellant had nothing to gain from the same. She was not going to save the bar of limitation.

The last offence which is alleged against the appellant is Section 471 IPC. This section is not applicable in the case of the appellant for the simple reason that we have already found that there was no dishonest intention on the part of the appellant nor had she acted fraudulently. This section applies only in case of the use of a forged document as a genuine document. Since we have found that there is no element of forgery at all, there would be no question of there being any valid allegation against the appellant."

36. Similarly, the Hon"ble Bombay High Court while considering the term "dishonestly and "wrongful gain & wrongful loss" while interpreting Sections 23 and 24 IPC, held in the case of Ramakrishna Babu Rao Maske v. Kisan Shivraj Salke, 1975 Cri.LJ 173, that the same cannot exist if the same does not relate to a property. Justice Bhole speaking for the Court observed as follows:

"The learned Magistrate after considering Section 415, Indian Penal Code found that "dishonesty" is one of the ingredients of that section and that it is connected with property. He was therefore, satisfied that the case of the complainant did not fit within the purview of Section 415, Indian Penal Code. He, therefore, acquitted all the accused. The point, therefore, that arises here for consideration is whether the order of acquittal passed by the learned Magistrate is legal and proper....."

37. Therefore, to attract the offence under Sections 465, 466 and 469, there should be dishonest concealment of facts. "What is dishonesty" is also defined in Section 24 of Indian Penal Code, whoever does any thing with intent of causing wrongful gain to one person or wrongful loss to another person is said to have done that thing dishonestly. Wrongful gain and wrongful loss are also defined in Section 23, Indian Penal Code. Wrongful gain is a gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss is a loss by unlawful means of property to which the person losing is legally entitled. Therefore, in the matter of deception there should be intention of wrongful gain to one person or wrongful loss to another person. This means that, there should be a gain by wrongful means of property. Insofar as the facts and circumstances of our case are concerned, the question of property does not arise at all.

38. It is also relevant to refer to the Judgement of the Hon"ble Calcutta High

Court in *Queen Empress v. Haradhan*, ILR 1892 Cal (29) 380, wherein a case similar to the case on hand was considered, where the accused a student created a certificate as though it was signed by a headmaster of a Government School so as to enable him to undertake the entrance exam. In furtherance of such certificate, he was permitted to take entrance exam, which he cleared successfully. Thereafter, he was charged for having used a forged document and to have committed forgery. In the case in hand, the reverse is the charge sheet against the petitioners that the accused manipulated the attendance register so as to prevent the de facto complainant from taking his examination. The Calcutta High Court after considering the provisions of the Code, held that no offence of forgery can be laid against the accused therein as the Court found that the facts do not satisfy the requirement of being dishonest or fraudulent within the meaning of Sections 24 & 25 of the Penal Code, it is held as follows:-

* As regards forgery the intention to commit fraud must be the mere intention, not possible and remote one, here the primary intention was to induce the registrar to believe that the certificate was signed by the Headmaster of the Government School, it was no doubt a wrong thing to do, but that does not make it an offence under the Penal Code by consent, this Writ Appeal is taken up for final disposal. The appellants herein are the respondents in W.P. (MD). No. 12595 of 2011 and the respondent herein is the Writ petitioner in the said Writ Petition. However, for the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition.

To support a charge under Section 471 IPC the prosecution must prove

- (i) that the document in respect of which the charge is made is forged. ;
- (ii) that the accused used
- (iii) that at the time he used it he knew or had reason to believe that it was forged
- (iv) that at the time he used it with such knowledge or belief he did so fraudulently or dishonestly.

"Fraudulently" is defined by Section 25 IPC to be "doing of things with an intent to defraud, but not otherwise"

"Dishonestly" is defined by Section 24 IPC to be "the doing of any thing with an intention of causing wrongful gain to one person or wrongful loss to another."

"Wrongful gain" is defined by Section 23 IPC to be " the gain by unlawful means of a property to which the person gaining is not legally entitled and "Wrongful loss" has been defined as the same section to be "the loss by unlawful means of property to which the person losing it is legally entitled." In construing Sections 24 and 25 IPC we are of the opinion that the primary and not the remote intention of the accused must be looked at.

Now what was the primary intention of the accused? Clearly this. By falsely

inducing the registrar to believe that the certificate was signed by the headmaster of the Government School under Public management to be permitted to sit for the entrance examination. Now this primary intention of the accused was not, we think, fraudulent or dishonest within the meaning of Sections 25 and 24, Indian Penal Code

We held that the accused could not be convicted under Sections 471 IPC as there was no dishonest or fraudulent intent.

We are therefore of the opinion that upon the facts stated, the accused was not guilty under Section 471, Indian Penal Code in as much as his use of the forged document with the knowledge or belief that it was forged, was not fraudulent or dishonest."

39. It is not the case of the prosecution that the signature made by Ramesh Babu/petitioner in W.P.(MD). No. 1919 of 2009 was manipulated by the petitioners herein and on the other hand, it is case of the said Ramesh Babu that in order to prevent him from writing the examination the accused put "X" or "A" mark below and above the signature of the defacto-complainant in the attendance register.

40. Therefore, from the above it is clear that the act of the petitioners do not attract the offence much less the offences punishable under Sections 465, 466, and 469.

41. However, we find much force in the contentions of Mr. Karunanidhi, learned Counsel for the second respondent/defacto-complainant that the act of the petitioners attract offence under Section 167 IPC, which states that whoever being a public servant and being as such public servant charged with preparation or translation of any document or electronic record frames, prepares etc., in a manner which he knows or believes to be incorrect, intending thereby to cause injury to any person. In the case on hand, the accused are public servants. According to the defacto complainant that the attendance register was in the custody of A-1 and he was given power to send certificate of attendance to the Medical University and the allegation against him is that he had put "A" mark in the attendance register in an incorrect manner and caused injury to the defacto-complainant with an intention to prevent him from writing the examination and caused injury on the defacto-complainant and hence, the allegation in the charge sheet prima facie makes out a case under Section 167 IPC.

42. Admittedly, the defacto-complainant has been selected from service quota. It is the case of the defacto-complainant that if a candidate from service quota has not attended the classes, salary would not be given. In the case on hand, the defacto-complainant has been paid full salary. Hence, according to the defacto-complainant, the possible legal inference would be that the defacto-complainant attended the classes and got full attendance. Only because of the wrong entry said to have been made by both the accused, the defacto-complainant was not permitted to write examination. Hence, it is an injury on his mind and his

reputation has been spoiled. Injury has been defined in Section 44 IPC. Section 44 IPC - the word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. But according to the petitioners/accused the attendance register was not in their custody nor are they the custodians of the documents and therefore, the charge of the preparation of the said documents will not arise. Consequently, causing injury in the mind of the defacto-complainant by making any wrong entry does not arise in this case.

43. Irrespective of the submissions made on either side, we are of the firm view that this Court cannot conduct elaborate or roving enquiry under Section 482 Cr.P.C. Further, if prima facie case is made out on reading of the prosecution documents and statement of witnesses, quashing of proceedings is not possible. Whether the petitioners/accused had put [*] and "A" mark in the attendance register or whether the attendance register was entrusted with the custody of the accused or not, is a complicated question of fact and it requires evidence both oral and documentary. The question of fact cannot be gone into by this Court under Section 482 Cr.P.C.

44. On a perusal of the statements made under Section 161 of the Criminal Procedure Code, from the witnesses, Dr. Thenmozhi, had deposed that only on the instruction of A.1, she put the [*] mark and those factual aspects cannot be gone into at this stage, but has to be gone into during the course of trial.

45. Yet another submission of the learned Counsel for the writ appellants/petitioners is that even assuming that the prosecution case is true, that, the petitioner, namely, Ramesh Babu in W.P. (MD). No. 1919 of 2009, would not have attended the examination also cannot be appreciated, which, in our opinion, has to be gone into during the course of the trial. Though the allegation in respect of Section 167 makes out a prima facie case even the genuinity of the statements can be decided only during the course of the trial. Further, whether Mr. Ramesh Babu really attended or evaded the classes of the marking of the attendance, is also a matter to be decided during the course of trial.

46. From the above, it could be seen that prima facie case is made out for an offence under Section 167 IPC. Question of fact cannot be decided by this Court under Section 482 Cr.P.C. as it requires evidence both oral and documentary. The intention is nothing but a mental process of an individual. It varies from person to person. Hence, the intention of an accused cannot be decided by this Court under Section 482 Cr.P.C. The intention of an accused can be inferred only on appreciation of evidence. On going through the statements recorded under Section 161(3) Cr.P.C, from the witnesses and the documents collected during investigation, which form part and parcel report under Section 173 (2) Cr.P.C, make out prima facie case under Section 167 I.P.C.

47. In the light of the above factual position, we are of the firm view that even if there is slightest doubt, it has to be gone into by the trial Court and the question of fact cannot be gone into by this Court under Section 482 Cr.P.C. Therefore, it

is for the judicial Magistrate concerned to expedite the trial pending against the writ appellants insofar as the offence under Section 167 IPC is concerned on the file of the learned Judicial Magistrate No.II, Thanjavur, within a period of three months from the date of receipt of a copy of this order. While doing so, the presence of the petitioners/accused may be dispensed with, except for the hearings during which their presence are absolutely necessary.

48. In fine, we are of the view that the charges against the Writ Appellants under Sections 465, 466 and 469 IPC are liable to be quashed. However, the charge under Section 167 r/w.34 IPC is not liable to be quashed and it is for the trial Court to decide the same on merits and in accordance with law.

49. In the result, we summarise our conclusions in the following manner:-

W.A.(MD) Nos. 910 of 2012 and 355 of 2013:-

The Writ Appeals are allowed and the directions issued by the learned Single Judge directing the official respondents to initiate departmental action against the writ appellants stand set aside subject to the direction issued in W.P. (MD).No.8395 of 2013.

CrI.O.P.(MD).Nos.16517 of 2011 and 4676 of 2012 :-

50. As indicated above, the criminal original petitions are partly allowed by quashing the charges framed under Sections against the petitioners/accused 465, 466 and 469 IPC. The Court below shall dispose of the C.C. No.583 of 2011 pending, in respect of charge under Section 167 read with 34 IPC alone, within a period of three months from the date of receipt of a copy of this order without being influenced by any of the observations made herein above. The Criminal Court is directed to dispense with the appearance of the petitioners/accused except for the hearings where their presence is necessary.

W.P. (MD). No. 8395 of 2013: -

Though it is stated that the impugned charge memo has been issued only based on the direction issued by the learned Single Judge, it is seen from the record that the same has been issued not only on the basis of the direction issued by the learned Single Judge but also on the basis of the criminal charges pending against the petitioner/writ appellant, namely, Dr. Thenmozhi.

51. In view of the direction issued in the criminal original petitions in CrI.O.P. (MD). Nos. 4676 of 2012 and 16517 of 2011, we are of the view that W.P. (MD). No. 8395 of 2013 cannot be decided at this stage and thus based on the outcome of the criminal case, the respondents are directed to pass appropriate orders, within a period of four weeks from the date of judgment in the criminal case.

52. Consequently, we close all the miscellaneous petitions. However, in the peculiar facts and circumstance of the case, there shall be no order as to costs.