

(2015) 08 RAJ CK 0109

In the Rajasthan High Court

Case No : Criminal Misc. Petition Nos. 1360, 2922/2014, 86 and 87 of 2015

M.K. Vyas and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 120, 120-B, 34, 407, 409

Prevention of Corruption Act, 1988 — Section 13, 13(1), 13(1)(c), 13(1)(c)(d), 13(1)(d)

Citation : (2015) 08 RAJ CK 0109

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : M.R. Singhvi, Senior Advocate assisted by Saurabh Maheshwari, N.K. Bohra, Mahesh Bora, Senior Advocate assisted by Nishant Bora, J.S. Choudhary, Senior Advocate assisted by Pradeep Choudhary and U.S. Gehlot, for the Appellant; S.K. Vyas, Government Advoca

Final Decision : Allowed

Judgement

Vijay Bishnoi, J—These criminal misc. petitions under section 482 CrPC have been preferred by the petitioners while questioning the investigation carried out by the Anti Corruption Bureau against them in connection with the FIR No. 56/2010 dated 19.03.2010 lodged at Police Station CPS, Jaipur. It is also prayed that the FIR No. 56/2010 be quashed qua the petitioners.

2. Brief facts, necessary for disposal of these criminal misc. petitions, are that during the course of hearing of D.B. Civil Special Appeal No. 188/2002 - State of Rajasthan & Anr. v. Sarita Choudhary, Division Bench of this Court directed the Principal Secretary (Finance), Government of Rajasthan, Jaipur to depute a team of officers to enquire into the record of Jai Narain Vyas University, Jodhpur (for short "JNVU" hereinafter) for detecting any misuse of Students' Union Fund. Pursuant to the said directions given by this Court, a committee headed by the Director, Treasury and Accounts, Jaipur had inspected the record of JNVU and

submitted a report to the effect that there is clear cut evidence that there has been forgery and misappropriation of huge amount by the office bearers of the Students Union, JNVU and prima facie, there is a case against known or unknown persons for the offences punishable under sections 409, 407, 458, 471, 420, 418, 477A IPC read with section 34/120 and section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (for short "the P.C. Act" hereinafter).

3. The Division Bench of this Court while disposing of the D.B. Civil Special Appeal No. 188/2002 vide judgment dated 03.02.2006 has directed the State Government to initiate police action against the officers, teachers and the students, known and unknown, against whom there is a prima facie case of forgery, conspiracy, abetment and misappropriation of huge Students' Union fund.

4. Pursuant to the said directions, the Registrar, JNVU has filed a complaint to the SHO, Police Station, Shashtri Nagar, Jodhpur on 28.07.2006. Later on, it was reported that there is a complaint regarding the commission of offences under the P.C. Act, therefore, the police station, Shashtri Nagar has no jurisdiction to conduct investigation into the offences pertaining to P.C. Act, the complaint was reported to Anti Corruption Bureau. On receiving the same, the Anti Corruption Bureau, Jodhpur has registered the FIR No. 56/2010, which is reproduced hereinunder:

5. The Anti Corruption Bureau started investigation and after thorough investigation, has found the petitioners prima facie guilty for the offences punishable under sections 13(1)(c)(d) and 13(2) of the P.C. Act. The petitioners have received notices from the Anti Corruption Bureau informing that charge-sheet is to be filed against them for the aforesaid offences therefore, the petitioners have approached this Court by way of these criminal misc. petitions.

6. Learned counsels for the petitioners have argued that the investigating agency has wrongly framed the petitioners for commission of offences punishable under sections 13(1)(c)(d) and 13(2) of the P.C. Act. It is contended that in the complaint filed by the Registrar, JNVU, there is no allegation that the petitioners while discharging their duties as public servant in the university were entrusted any property or have control over said property and they have converted it for their own use or allowed any person so to do or the petitioners have dishonestly or fraudulently misappropriated the said property. It is further contended that the sum and substances of the allegations contained in the complaint are that the then President of Students' Union has misappropriated the funds of Union by submitting forged bills. It is argued that fund for organizing Youth Festival was given in advance to the President of Union and after the end of festival he had submitted forged bills for adjusting the amount advanced to him. It is not the case of the University that the petitioners were party in preparation of forged bills.

7. Learned counsels for the petitioners have argued that the petitioners were

Convener and members of the Organizing Committee and Budget Scrutiny Committee constituted by the then Vice Chancellor of the University for the purpose of organizing Youth Festival and their role was limited to the extent of determining modalities and number of events in the festival with consultation with the President of the Union. The petitioners were not responsible for verifying the bills submitted by the President, Students' Union or anybody for adjusting the money paid to them in advance. It is argued that even if it is admitted that the petitioners being members of functional committees had recommended to reimburse some expenditure, then also it cannot be presumed that they had misappropriated any property because the recommendations of functional committees were not binding on disbursing authority. Therefore, it is argued that when the amount for conducting Youth Festival was given in advance to the President Students' Union, there is no question of entrustment of any property to the petitioners and they cannot be framed for commission of offence punishable under section 13(1)(c) of P.C. Act.

8. Learned counsels for the petitioners have further argued that it is not the case of the University or investigating agency that petitioners while discharging their duties as public servants have obtained any valuable things or pecuniary advantage by corrupt or illegal means or by abusing their position as public servants for themselves or for any other person. There is no evidence to the effect that the petitioners had received any amount from the funds of university meant for organizing Youth Festival or they had obtained any pecuniary advantage or valuable thing from anybody in connection with organizing the Youth Festival. It is reiterated that when the whole amount for organizing the Youth Festival was paid in advance to the then President of Students' Union, it cannot be said that the petitioners had obtained anything for themselves or for anybody else by corrupt or illegal means or by misusing their official position, therefore, no offence is made out against the petitioners under section 13(1)(d) of P.C. Act.

9. Lastly, it is submitted that the University has refused to grant prosecution sanction for two members of Budget Scrutiny Committee namely Professor Kalpana Mathur and Dr D.S. Kheechee, while observing that recommendations of functional committees are not binding on disbursing authority. It is argued that the case of the petitioners is not different from those two members viz. Professor Kalpana Mathur and Dr D.S. Kheechee but the investigating agency is filing charge-sheet against the petitioners only for the reason that they have retired and no prosecution sanction is necessary to prosecute them. The learned counsels for the petitioners have argued that the petitioners were the Professors and Registrar of the JNVU and retired after serving the university for long duration and their service record was unblemished but now they have been framed guilty for no fault of them. It is contended that continuation of criminal proceedings against the petitioners is nothing but abuse of process and harassment of the petitioners, therefore, these criminal petitions may be allowed and the impugned FIR and the investigation carried out by the investigating

agency qua the petitioners may kindly be quashed.

10. Per contra, Mr. S.K. Vyas -Government Counsel, assisted by Investigating Officer, has argued that evidence regarding commission of offences punishable under sections 13(1)(c)(d) and 13(2) of P.C. Act is available on record and, therefore, the relief prayed for by the petitioners cannot be granted and these criminal misc. petitions are liable to be dismissed.

11. Heard learned counsels for the parties and perused the impugned FIR as well as the material available on record.

12. This Court is conscious of its powers under section 482 CrPC for quashing the FIRs or criminal complaints. The Hon"ble Supreme Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the High Courts under section 482 CrPC. In State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , the Hon"ble Supreme Court has listed the categories of cases when the power under section 482 CrPC can be exercised by the High Courts. The law laid down by the Hon"ble Supreme Court in State of Haryana v. Bhajan Lal (supra) on this point has later on followed in various decisions. To mention a few - Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, AIR 1988 SC 709 : (1988) CriLJ 853 : (1988) 1 Crimes 780 : (1988) 1 JT 279 : (1988) 1 SCALE 261 : (1988) 1 SCC 692 : (1988) 2 SCR 930 ; State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp ; Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, AIR 1996 SC 309 : (1996) CriLJ 381 : (1995) 4 Crimes 171 : (1995) 7 JT 299 : (1995) 5 SCALE 670 : (1995) 6 SCC 194 : (1995) 4 SCR 237 Supp ; Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 AD 341 : AIR 1996 SC 2452 : (1996) 87 CompCas 849 : (1996) CriLJ 3501 : (1996) 3 Crimes 60 : (1996) 6 JT 227 : (1996) 5 SCALE 99 : (1996) 5 SCC 591 : (1996) 3 SCR 360 Supp ; State of Bihar Vs. Rajendra Agrawalla, (1996) CriLJ 1372 : (1996) 1 Crimes 21 : (1996) 1 JT 601 : (1996) 1 SCALE 394 : (1996) 8 SCC 164 : (1996) 1 SCR 744 , Rajesh Bajaj Vs. State NCT of Delhi and Others, AIR 1999 SC 1216 : (1999) CriLJ 1833 : (1999) 1 Crimes 136 : (1999) 2 CTC 243 : (1999) 2 JT 112 : (1999) 1 SCALE 697 : (1999) 3 SCC 259 : (1999) 1 SCR 1012 : (1999) 1 UJ 685 : (1999) AIRSCW 881 : (1999) 2 Supreme 442 ; M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others, (2000) CriLJ 1487 : (2000) 2 JT 426 : (2000) 2 SCALE 88 : (2000) 3 SCC 269 : (2000) 1 SCR 1169 : (2000) AIRSCW 682 : (2000) 2 Supreme 261 Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, AIR 2000 SC 2341 : (2000) CriLJ 2983 : (2000) 3 JT 604 : (2000) 2 SCALE 694 : (2000) 4 SCC 168 : (2000) 2 SCR 859 : (2000) AIRSCW 2077 : (2000) 3 Supreme 13 , M. Krishnan Vs. Vijay Singh and Another, (2001) 8 AD 494 : AIR 2001 SC 3014 : (2001) CriLJ 4705 : (2001) 8 JT 540 : (2001) 7

SCALE 126 : (2001) 8 SCC 645 : (2001) AIRSCW 4142 : (2001) 7 Supreme 397 and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, AIR 2005 SC 9 : (2005) CriLJ 92 : (2004) 9 SCALE 177 : (2005) 1 SCC 122 . The principles relevant are as under:

"(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

13. Recently the Hon"ble Supreme Court in Rishipal Singh Vs. State of U.P., AIR 2014 SC 2567 : (2014) AIRSCW 3810 : (2014) 8 SCALE 298 : (2014) 7 SCC 215 has held as under:

"12. This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482, Cr.P.C. In State of Haryana v. Bhajan Lal 1992 Supp(1) SCC 335, this Court has listed the

categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in Central Bureau of Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, (1996) 5 AD 341 : AIR 1996 SC 2452 : (1996) 87 CompCas 849 : (1996) CriLJ 3501 : (1996) 3 Crimes 60 : (1996) 6 JT 227 : (1996) 5 SCALE 99 : (1996) 5 SCC 591 : (1996) 3 SCR 360 Supp ; Rajesh Bajaj Vs. State NCT of Delhi and Others, AIR 1999 SC 1216 : (1999) CriLJ 1833 : (1999) 1 Crimes 136 : (1999) 2 CTC 243 : (1999) 2 JT 112 : (1999) 1 SCALE 697 : (1999) 3 SCC 259 : (1999) 1 SCR 1012 : (1999) 1 UJ 685 : (1999) AIRSCW 881 : (1999) 2 Supreme 442 and; Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, AIR 2005 SC 9 : (2005) CriLJ 92 : (2004) 9 SCALE 177 : (2005) 1 SCC 122 . This Court in Zandu Pharmaceuticals Ltd., observed that:

"The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed". Also see Om Prakash and Others Vs. State of Jharkhand and Another, (2012) 9 JT 642 : (2012) 9 SCALE 291 : (2012) 12 SCC 72 .

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482, Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact."

[Emphasis supplied]

14. In view of the law laid down by the Hon^{ble} Supreme Court, if we examine the facts of the present case, it is clear that from bare reading of the allegations levelled in the impugned FIR no case for commission of offences punishable under sections 13(1)(c)(d) and 13(2) of P.C. Act is made out against the petitioners. Petitioners M.K. Vyas, G.R. Jakhar and L.N. Gehlot have not been named as accused in the impugned FIR. Petitioner P.K. Banerjee though named as accused in the impugned FIR but no specific allegation has been levelled against him. In the FIR, it is stated that Rs. 15.90 lacs have been paid in advance to the President of the Students' Union through Advisor for conducting Youth Festival and a committee constituted under the directions of the Hon^{ble}

High Court has found that five bills pertaining to the tent house, hotel, transportation and decoration submitted by the then President Ishwar Singh Balawat and other are found to be forged. However, there is no allegation to the effect that those bills were prepared and submitted by either of the petitioners.

15. Since there are no specific allegations against the petitioners regarding commission of offence under section 13(1)(c) or (d) of P.C. Act in the impugned FIR, I have decided to examine the evidence and material collected by the investigating agency during the course of investigation.

16. The undisputed facts emerging from the material collected by the Investigating Officer are that the then Vice Chancellor on 03.02.2003 had sanctioned amount of Rs. 9 lacs for organizing International Youth Festival "Sanskar 2003". She also constituted an Organizing Committee on 03.02.2003. Petitioner M.K. Vyas was Convener of that committee and petitioner P.K. Banerjee was Member Secretary along with six other persons.

17. On 04.02.2003, amount of Rs. 2 lacs was advanced to the then President Students' Union and amount of Rs. 8 lacs and 1.05 lacs was again advanced to him on 14.02.2003 and 22.02.2003 respectively. There is no evidence to suggest before giving any amount in advance to the then President of Students' Union and the Organizing Committee has recommended for the same. On 21.02.2003, spot purchase committee was constituted as per the directions of the then Vice Chancellor consisting of petitioner M.K. Vyas as Convener and L.N. Gahlot as Member along with four other persons. There is no evidence available on record that spot purchase committee has made purchases of any goods. The Youth Festival was over on 25.02.2003 and the President of then Students' Union submitted bill dated 23.02.2003, 26.02.2003 and 08.03.2003 for adjusting the amount paid to him in advance and for making payment of more money which has been spent in excess to the amount already sanctioned for organizing Youth Festival. In between the University has further sanctioned additional amount of Rs. 2 lacs on 22.02.2003 as per the recommendation of Organizing Committee. Thereafter, another committee was constituted for ascertaining to make payment of amount as demanded by the President Students' Union, said to have been spent in excess than the amount sanctioned. The said committee was consisting of petitioner, G.R. Jakhar as Convener and petitioners, P.K. Banerjee and L.N. Gahlot as Members along with Professor Kalpana Mathur and Dr D.S. Kheechee. The above mentioned committee on 07.10.2003 had recommended for reimbursement of Rs. 3,81,423/- beyond the limit of the original sanction of Rs. 11 lacs. Thereafter an amount of Rs. 4,35,000/- was paid to the President Students' Union on 16.10.2003. Later on it was found that the bills submitted by the then President of Students' Union were forged and fabricated.

18. In the case diary, no evidence of this effect exists that the amount sanctioned by the then Vice Chancellor for organizing youth festival was entrusted to the Organizing Committee or the Budget Scrutiny Committee at any point of time. In fact, as per the material collected by the investigating agency,

the amount sanctioned for the said event was directly paid to the then President of Students" Union on different dates running from 04.02.2003 to 16.10.2003.

19. Investigating Agency has concluded that the then President of Students" Union has submitted the forged bills and petitioners being the members of Budget Scrutiny Committee have failed to detect the forgery in the bills. The Investigating Officer, present in person, has frankly admitted before the Court that none of the petitioners has been found guilty of preparation, submission of any forged bill or misappropriation of public money. He also frankly admits that the investigating agency has also not found any evidence against the petitioners of this effect that they have conspired with other accused persons for commission of offences punishable under sections 467, 468, 471, 409, 420 read with section 120-B IPC. He has submitted that the Anti Corruption Bureau is not going to file charge-sheet against the petitioners for the offences punishable under sections 467, 468, 471, 409, 420 and 120-B IPC and has proposed to file charge-sheet against the petitioners only for the offences punishable under sections 13(1)(c), (d) and 13(2) of the P.C. Act.

20. Now the question comes whether the petitioners can be charge-sheeted for the offences punishable under section 13(1)(c) and section 13(1)(d) of the P.C. Act on the basis of complaint as well as the investigation conducted by the investigating agency till date.

21. For the purpose of proper appreciation, section 13(1)(c) and 13(1)(d) of the P.C. Act is reproduced hereunder:

"13. Criminal misconduct by a public servant.--

(1).....

(a).....

(b).....

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

22. As per the provisions of section 13(1)(c), a public servant can be held guilty for commission of the offence, if he dishonestly or fraudulently misappropriates

or otherwise converts for his own use any property entrusted to him or under his control or allowed any other person so to do. Entrustment of the property or control over the said property of the public servant is necessary element to bring home the guilty for commission of offence under section 13(1)(c) of the P.C. Act.

23. In the present case, it is clear that the amount sanctioned by the then Vice Chancellor for organizing Youth Festival was never entrusted to the Organizing Committee or the Budget Scrutiny Committee and the said amount was also not under the control of the said committee. Therefore, it cannot be presumed that the members of the above mentioned committees have dishonestly or fraudulently misappropriated the said amount or converted the said property for their own use which was neither entrusted to them nor was in their control. For the purpose of charging a person for the offence punishable under section 13(1)(c) of the P.C. Act, it must be established that a property is entrusted to a public servant or the said property was under his control. In the absence of any evidence regarding entrustment of any property or control over such property, no public servant can be charged for the said offence. In such circumstances, I have no hesitation in holding that there is no material available on record to charge-sheet the petitioners for the offence punishable under section 13(1)(c) of the P.C. Act.

24. From the material available on record, it is also clear that there is no evidence on record to suggest that the petitioners have obtained anything from anybody by corrupt or illegal means or by misusing their official position. The simple meaning of the word "obtain" is to get hold or to acquire. However, in the present case, there is no allegation against the petitioners that they have obtained any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing their position as public servant without any public interest. The amount was sanctioned by the then Vice Chancellor and paid directly to the President of the Students' Union by the University and there is no evidence to suggest that the petitioners have obtained anything out of the said amount by corrupt or illegal means or by misusing their position as a public servant. At the most, it can be assumed that the petitioners being the members of the Organizing Committee or Budget Scrutiny Committee had recommended for reimbursement of expenditure incurred in organizing the Youth Festival but that itself is not sufficient to hold the petitioners guilty for commission of offence under section 13(1)(d) of the P.C. Act when there is no evidence available on record to suggest that the petitioners have obtained anything from anybody for recommending reimbursement of certain expenditures.

25. It is also noted that the investigating agency has not specified that which of the criminal misconduct on the part of the petitioners attracts which of the three clauses of section 13(1)(d). It is clear from clause (d) of section 13 that all the three wings of that provision are independent and alternative and disjunctive for constituting the ingredients for the offence under section 13(1)(d), as is clear from the use of the word "or" at the end of each clause. A charge under section

13(1)(d) of the P.C. Act has to be fairly specific in respect of the offence. It would not be enough to say that the accused committed criminal misconduct punishable under section 13(1)(d) of the P.C. Act. The offence of misconduct is one contemplated in all or any of the four clauses (a) to (d) of section 13(1) of the P.C. Act and where the accused is sought to be made guilty under clause (d), it must be specified.

26. In view of the above discussions, I am of the firm opinion that there is no material available on record to hold the petitioner guilty for commission of offence under section 13(1)(d) of the P.C. Act.

27. Another circumstance in favour of the petitioners is that the Vice Chancellor, JNVU has refused to grant sanction against two Members of Budget Scrutiny Committee viz. Professor Kalpana Mathur and Dr. D.S. Kheechee while observing as under:

"Observations

I have considered the letter of ACB along with the factual position of the case as apprised by the office. I have thoroughly gone through all the relevant documents available in the file including the investigation report, statement of the concerned teachers and the observations and recommendations made by different committee.

Both the Professor Kalpana Mathur and Dr. D.S. Kheechee were the members of a committee that was constituted to scrutinize the budget and to make recommendations, if necessary. All the functional committees including budget scrutiny committee, which were constituted for smooth organization and coordinating the activities of the students in Youth Festival were of only recommendatory in nature and were not final authority to release the fund or to pass the bills. Moreover, the recommendations of such functional committees were not binding upon the competent authority/disbursing authority. Not only this, the budget scrutiny committee recommended that the amount may be paid by the Students' Union Adviser as per terms and conditions of earlier sanction letter. Therefore, the members of the budget scrutiny committee pertaining to the International Youth Festival "Sanskar 2003" could not be held liable for any wrong decision, if taken by the final and competent authority.

Apparently, there is no evidence on record, which shows that there was any common intention or common object. The joint liability of alleged both the teachers could not arise for want of pre-meeting of minds with Mr. Balawat."

28. The case of the petitioners is not distinguishable from that of two other members of the budget scrutiny committee namely Professor Kalpana Mathur and Dr. D.S. Kheechee. When the complainant i.e. JNVU itself is of the view that the recommendations of the functional committee were not binding upon the competent authority/disbursing authority, it cannot be held that the petitioners being the members of the Organizing Committee has committed any offence

under section 13(1)(c)(d) of P.C. Act by recommending reimbursement of certain expenditures. There is also no evidence available on record to suggest that any of the petitioners has conspired with other co-accused persons for commission of any offence or there was any pre-meeting of minds with other co-accused persons.

29. The case diary lacks evidence to the effect that the petitioners knew that the bills submitted by the President of the Students' Union are forged and despite that they have recommended for reimbursement of the same. In fact, there is no question of reimbursement of any claim of any bill when most of the amount was paid in advance to the President of the Students' Union. A sum of around Rs. 4 lac was later on reimbursed as per the recommendations of the budget scrutiny committee but there is no evidence to suggest that the budget scrutiny committee was required to verify the genuineness of the bills submitted by the Students' Union. The budget scrutiny committee was analyzing the actual expenditure in organizing the International Youth Festival and it was not supposed to verify the genuineness of the bills.

30. Even if it is assumed that the petitioners being the members of the Organizing Committee or Budget Scrutiny Committee have failed to detect forgery in the bills submitted by the Students' Union, then it is possible that the petitioners were not careful and were negligent but their action could not be said to have been actuated with criminal intent. Further even if it is assumed that certain irregularities have been committed by the petitioners in approving the expenditures incurred in the International Youth Festival or they have failed to follow the procedure, then also such a commission of irregularities or breach of procedure did not surely mean fraud or any other criminality in the absence of any evidence of criminal intent.

31. In view of the above discussions, I am of the opinion that in the absence of any evidence available on record against the petitioners, the continuation of impugned FIR and investigation against them will result in abuse of process and harassment of the petitioners. In the absence of cogent evidence of commission of offence, no useful purpose will be served in continuing the criminal proceedings against the petitioners, who have retired way back from the service of the University.

32. Consequently, these criminal misc. petitions are allowed. The impugned FIR No. 56/2010 lodged at Police Station CPS, Jaipur and the investigation conducted by the Investigating Officer against the petitioners are hereby quashed and set aside.

33. The Investigating Officer has informed that the investigation into the allegations levelled in the FIR is concluded and the competent authority has already granted sanction to file charge-sheet against the accused-persons. In such circumstances, it is directed that the investigating agency shall submit charge-sheet against remaining accused persons before the concerned court

without any delay.