

(2017) 03 MP CK 0066
In the Madhya Pradesh High Court
Case No : 21718 of 2015

Surendra Prasad Chauhan

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 161, Section 227, Section 228 - Saving of inherent powers of High Court - Examination of witnesses

Citation : (2017) 03 MP CK 0066

Hon'ble Judges : J.P.Gupta

Bench : Single Bench

Advocate : Siddharth Gupta, Amit Pandey

Judgement

1. This petition under section 482 of the Cr.P.C. has been preferred for quashment of the impugned order dated 4.12.2015 passed by 8th Additional District Judge, Bhopal, in Sessions Trial No.304/2015, whereby charges for the offence punishable under sections 420 and 120-B of the I.P.C. have been framed against the applicant.

2. As per the prosecution story, co-accused persons B.Kartik and Nagarjun Reddy, who were residents of Andhra Pradesh, gave assurance to complainant/informant Dr.Sarvapalli Jaichand and three of his friends, who were also residents of Andhra Pradesh, that they would get the admissions of their children done against the management quota in L.N.Medical College, Bhopal. Accordingly, they all came to Bhopal on 26.6.2013 and met co-accused Ranvir Anand, who came to L.N.Medical College and introduced them to accused Surendra Singh @ Ajay Singh as a P.A. of the applicant. On 29.6.2013 co-accused Nagarjun, Kartik, Ranvir Anand and Surendra @ Ajay Singh got the forms purchased for two students, viz. Manoj and Chelapalli from L.N.Medical College and deposited the same at the office of DMAT/APDMC on the same day and the students were issued hall tickets on the same day and they appeared in the Dental Medical

Entrance Text (hereinafter referred to as "the DMAT examination") on 30.6.2013 at the examination center NRI Institute, Raisen Road, Bhopal. On 1.7.2013 accused Ranvir Anand called the parents of the four students to the L.N. Medical College and took Rs.17 lacs from each of the student, totaling to Rs.68 Lacs. On the same day, accsued Ranvir Anand also issued receipts of tuition fees to all the four students on the letter head of L.N.Medical College and also issued a letter mentioning reservation of one seat each in favour of the students. Thereafter, on 2.7.2013 the parents and students returned to their native place. Thereafter, when they did not get any information from the accused persons, they came back to Bhopal on 3.9.2013 and met B.N.Singh, an Administrative Officer of L.N.Medical College, Bhopal. B.N.Singh informed them that the receipts of tuition fees and the letters with regard to reservation of seats are forged documents. Thereafter, they tried to contact with the aforesaid accused persons, but remained unsuccessful. Thereafter, on the advice of B.N.Singh, they informed the matter to the Police Station Kolar, Bhopal, where Crime No.385/2013 was registered against the accused persons for the offences under sections 420, 467, 468, 471 and 34 of the I.P.C.

3. During investigation Rs.19 Lacs were seized from the possession of the aforesaid accused persons Ranvir Anand and Surendra @ Ajay Singh. It was also revealed that the applicant was the Secretary of the Association of Private Dental and Medical Colleges conducting DMAT examination as well as a Director of the L.N.Medical College, Bhopal, and on the direction of the applicant forms for entrance examination conducted on 30.6.2013 were received by the Administrative Officer of the DMAT examination Vedraj Pehlajani on 29.6.2013, i.e. after the expiry of the last date for receiving the forms, i.e. 26.6.2013. The co-accused Surendra @ Ajay Singh and Ranvir Anand have also disclosed that they have shared Rs.20 Lacs with the applicant and the applicant is also involved in the aforesaid criminal conspiracy. Thereafter, after completion of investigation, charge-sheet was filed before the court of Judicial Magistrate. The eand thereafter the case was committed to the Court of Sessions, who thereafter passed the aforesaid order of framing of charges against the applicant.

4. The impugned order has been challenged on the ground that the documents accompanying the charge-sheet filed by the prosecution failed to show even the iota of commission of offence by the present applicant on whose names other accused persons acting as a borrower took the entire amount of money from the parents and guardian of some students for getting them admission and defrauded them. No offence on the face of it against the present applicant is made out; hence the impugned order is liable to be set aside. It is further submitted that at the relevant point of time, the applicant was working as the Secretary of the Association of Private Dental and Medical Colleges of M.P. This Association consists of private unaided six Medical Colleges, imparting M.B.B.S. and other P.G. and Super Specialty courses and that of 14 dental colleges imparting education in B.D.S. and allied courses. The said Association is a registered society. A copy of the registration certificate along with byelaws is filed

as Annexure A/3. This Association was conducting entrance examination for admission in private medical colleges of M.P. At that time the applicant was also a Secretary of the L.N.C.T. Group of Institution and was also a Secretary of the L.N.Medical College, which is one of the private unaided Medical College and a part of the L.N.C.T.Group of Institution, which is run by a private trust. As per the allegation of the complainant, some agents or Middlemen have taken some money in the name of the applicant. In the FIR name of the present applicant is not mentioned. Other co- accused persons have promised the complainant that they would provide admission to their sons in the L.N.Medical College on payment of Rs.17 Lacs by each of the students and on receiving of the aforesaid amount by the Middlemen, i.e. other co-accused persons, they have issued forged receipts and letters of reservation of seats in favour of the students. That the aforesaid act of allegation nowhere disclosed the role of the applicant. B.N.Singh, Administrative Officer of the L.N.Medical College himself have advised the complainant to lodge the FIR against the persons who cheated the complainant. This fact has been mentioned in the FIR by the complainant. It is further submitted that the allegation that the forms of Manoj and Chillapalli for appearance in the entrance examination were taken on the instructions of the applicant after expiry of the last date of receiving the same, is not correct as by the resolution of the APDMC, the last date for receiving the forms was extended from 26.6.2013 to 29.6.2013 and the forms were received till 29.6.2013 not only in the office of DMAT Bhopal but also across the country on different centers and more than 100 candidates were allowed to submit their forms till 29.6.2013. Therefore, on the basis of the aforesaid allegations, it cannot be inferred that the applicant has hatched conspiracy with other co-accused persons for committing the aforesaid alleged offences.

5. It is further submitted that in this regard a copy of the minutes of meeting of the resolution of APDMC dated 22.6.2013 has been filed, which is an unimpeachable document and can be considered in the proceedings of this case. It is also contended that as per the charge-sheet only admissible evidence against the applicant is the statement of witness Vedraj Pehlajani, who stated as under :- "VERNACULAR MATTER OMITTED"

6. It is submitted that the said Vedraj Pehlajani expired recently on 20.2.2017 and till his death his statements were not recorded before the trial court. Therefore, his statement under section 161 of the Cr.P.C. cannot be considered for any purpose as the said statement does not come within the purview of section 32 of the Evidence Act. In such situation, in the charge-sheet nothing remained against the applicant to prove any relevant fact to connect the applicant with the aforesaid alleged crime as the memo of co- accused persons recorded under section 27 of the Evidence Act, namely Ranvir Anand and Surendra @ Ajay Singh, are not admissible against the applicant.

7. On the other hand, learned Panel Lawyer opposed the contentions advanced by learned counsel for the applicant and stated that prima facie applicant's

involvement in the conspiracy of the offence of cheating is established from the material available in the charge-sheet and hence the instant petition under section 482 of the Cr.P.C. be dismissed.

8. Having considered the rival contentions advanced by learned counsel for the parties and on perusal of the case diary, it is found that with regard to implication of the applicant in the aforesaid alleged offence, so far as the confessional statements of co-accused Ranvir Anand and Surendra Singh are concerned, they have been recorded under section 27 of the Evidence Act, which is not admissible in evidence, even against the maker of the statements, i.e. co-accused Ranvir Anand and Surendra Singh, except the fact that they have been found in possession of the alleged money taken from the complainant party.

9. With regard to admissibility of the confessional statement or memo, Hon'ble the Apex Court in the case of *Anter Singh Vs. State of Rajasthan*, (2004)10 SCC 657, has observed in paras 13, 14 and 16 as under :- 13. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements.

The section says: "27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

14. The expression "provided that" together with the phrase "whether it amounts to a confession or not" shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly" relates "to the fact thereby discovered" and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it

affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483].

16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

10. Further, the Apex court in the case of Mustkeem Vs. State of Rajasthan, (2011) 11 SCC 724, has interpreted the provision and observed in para 25 as under :- 25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

11. Thus, only the statement with regard to having possession of the money taken from the complainant party is admissible against the makers of the statements, i.e. co-accused Ranvir and Surendra, the applicant is a third person. A statement given by co-accused at the time of recording of a memo under section 27 of the Evidence Act is not admissible against other co-accused persons even under section 10 of the Evidence Act, as has been held by the Three Judge Bench of the Apex court in the case of Sardul Singh Caveeshar Vs. State of Bombay, AIR 1957 SC 747. Further relying on the aforesaid judgment in the case of State of Gujarat Vs. Mohammed Atik, reported in (1998)4 SCC 351, it has

been laid down that "thus, the principle is no longer *res integra* that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act". Therefore, it is not admissible against other co-accused persons even in the case of charge of criminal conspiracy. Apart from it, in the case of *Kehar Singh Vs. State (Delhi Administration)* reported in (1988) 3 SCC 609, the Apex Court has held as under :- "From an analysis of the section, it will be seen that Section 10 will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such *prima facie* evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it".

12. In the present case, there is also no material to get satisfaction that there is a reasonable ground to believe that the applicant and other co-accused persons have conspired together to commit the offence of cheating. In other words, there is no *prima facie* evidence that the applicant was a party to the conspiracy before the acts of other co-accused can be used against the applicant as a co-conspirator. Therefore, the aforesaid confessional statements of the co-accused persons cannot be read against the applicant.

13. So far as the allegation that the forms were accepted by the Administrative Officer of the Admission and Fee Regulatory Committee of DMAT, Vedraj Pehlajani, after the deadline of receiving of the forms, i.e. 26.6.2013 on the instruction or direction of the applicant is concerned, in this regard at present the prosecution has no evidence as the only sole witness Vedraj Pehlajani died on 20.2.2017 without giving statement before the trial court and his statement under section 161 of the Cr.P.C. is not a piece of evidence. So far as the statement of other witness Ashish Shukla is concerned, he has stated that the aforesaid witness Vedraj Pehlajani, who has expired, told him that the applicant found him to deposit the aforesaid forms, therefore, he received the form after the deadline of receiving of the form. This statement also cannot be admitted in absence of the statement of Vedraj Pehlajani. In such circumstances, in the charge-sheet there is no other material to prove the aforesaid allegation against the applicant. Further, it also appeared from the record that not only the forms of complainants' sons Manoj and Chillapalli were received at the DMAT Center of Bhopal, but also at various other centers more than 100 forms were received after the deadline of receiving of the forms. In such circumstances, the copy of minutes of meeting of the APDMC held on 22.6.2013 appears to be genuine as on record there is no contrary material to disprove the fact that the date was not extended till 29.6.2013. In such circumstances, deeming the aforesaid allegation correct, it cannot be inferred that the applicant by allowing or directing Vedraj

Pehlajani to receive the forms of Manoj and Chillapalli on 29.6.2013 was a part of dealing with the act of cheating by other co-accused persons or the applicant have a connivance with other co-accused persons or hatches conspiracy with the other co-accused persons to commit the aforesaid offence of cheating.

14. Against the applicant, there is no direct allegation. Only on the basis of aforesaid circumstances, the prosecution has arrayed him as an accused in the offence. The prosecution has no material in the charge-sheet to prove the aforesaid allegations against the applicant and only on the aforesaid allegation prima facie no inference can be drawn that the applicant was involved in the alleged crime with other co-accused persons. The prosecution has filed the charge-sheet only on the basis of suspicion; but, for the prosecution and for framing of charge mere suspicion is not sufficient. It requires grave suspicion to prosecute or put on trial a person in a criminal case.

15. Apex court in the case of Ramnarayan Popli Vs. CBI and others, (2003) 3 SCC 641 has held as under :- 342.The elements of a criminal conspiracy have been stated to be:

(a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act.

343. No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

346..... This Court in V.C. Shukla v. State (Delhi Admn.) [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy, there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable

doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

354. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence, whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the I.P.C.

16. In the case of K.R.Purshottam Vs. State of Kerela, reported in (2005) 12 SCC 631, the Hon"ble Apex Court has held in paras 13 and 14 as under :- "13.....Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy.

14. Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

17. Further, the Apex Court in the case of Suryalaxmi Cotton Mills Ltd. Vs. Rajveer Industries Ltd. and others, (2008) 13 SCC 678, has held as under :- 25. Ingredients of cheating are:

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to

intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

26. A bare perusal of Section 415 read with Section 420 of the Penal Code would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage.

18. Further, Hon'ble the Apex Court in the case of Iridium India Telecom Limited Vs. Motorola Incorporated and others, reported in (2011) 1 SCC 74, has held as under :- 67. The next important question which needs to be examined is as to whether the averments made in the complaint if taken on their face value would not prima facie disclose the ingredients for the offence of cheating as defined under Section 415 IPC. The aforesaid section is as under:

"415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.--A dishonest concealment of facts is a deception within the meaning of the section."

68. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

19. Hon'ble the Apex Court in the case of Sajjan Kumar Vs. CBI and others, reported in (2010) 9 SCC 368, has explained the scope of sections 227 and 228

of the Code with regard to framing of charges and observed in para 21 thus :-
21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

20. In view of the aforesaid discussion and considering the exposition of law stated aforesaid, in view of this Court, prima facie there is no material against the applicant to prosecute him for the alleged offences punishable under sections 420 and 120-B of the I.P.C. No fruitful purpose will be served to try the applicant as the chance of his conviction is very bleak. In such circumstances, continuation

of proceedings against the applicant cannot be said to be justifiable and it would amount to misuse of the process of law. In view of the aforesaid discussion, this petition is allowed and the impugned order dated 4.12.2015 is quashed. As the result, the applicant stands exonerated from the criminal proceedings pending against him in S.T.No.304/2015 in the court of 8th Additional Sessions Judge, Bhopal.