

(2014) 08 MAD CK 0145

In the Madras High Court

Case No : Crl. R.C. Nos. 982, 983, 986 and 942/2013

The Additional Superintendent of Police CBI

APPELLANT

Vs

G.B. Anbalagan

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 170, 173, 173(2), 190(1), 190(1)(b)
Penal Code, 1860 (IPC) — Section 120B, 417, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19, 3, 30

Citation : (2014) 2 LW(Cri) 345 : (2014) 4 MLJ(Cri) 279

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Judgement

Aruna Jagadeesan, J.—All the above criminal revisions are filed by the CBI to set aside the common order dated 17.4.2013 in Crl. M.P. Nos. 1042, 848, 1135 and 1136/2012 in C.C. No. 1028/2012 respectively, passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai whereby the Respondents/A 1 to A10 were discharged from the charges laid against them. In Crl. R.C. No. 942/2013, the Respondents are A1, A4, A6, A7 and A8. In Crl. R.C. No. 982/2013, the Respondents are A2 and A3. In Crl. R.C. No. 983/2013, the Respondent is A5 and in Crl. RC. No. 986/ 2013, the Respondents are A9 and A10.

2. A1, M/s. Melmaruvathur Adhi Parashakthi Institute of Medical Science and Research (herein after referred to as MAPIMS) is an entity under the Adhiparashakthi Charitable Medical Educational and Cultural Trust (herein after referred to as ACMEC Trust) established in the year 2007 represented by the Managing Director Dr. T. Ramesh (A6). The Trustees in March 2010, included G.B. Anbalagan (A2), G.B. Sethil Kumar (A3), Dr. T. Ramesh (A6), R. Karunanithi (A4), who is also the Secretary of the College, V. Lakshmi (A5) who was also working as the Vice President of the Trust which runs MAPIMS. Dr. Sashikant C. Patel (A7) was the Dean of MAPIMS and K. Ramabadran (A8) was working as the Administrative Officer, Melmaruvathur Adhi Parasakthi Dental College. Dr. Sridhar

(A9) and Subramanyam (A10) were working as agents.

3. The brief facts, which are essential to dispose of these revisions, are given below:-

?Adiparasakthi Charitable Medical Educational and Cultural trust (ACMEC Trust) was established by Sri Bangaru Adigalar in the year 1978. The establishment of the Medical College Regulations, 1999 was published in the Official Gazette. In April 2006, Melmaruvathur Adiparasakthi Institute of Medical Science made their application to the Government of India for establishment of a Medical College. In 2007, Melmaruvathur Adiparasakthi Institute of Medical Science was constituted under the ACMEC Trust. On 27.9.2007, the file pertaining to MAPIMS was forwarded to the Medical Council of India and on 11.4.2008 and 12.4.2008, Inspection was carried out by the Medical Council of India for the grant of Letter of Intent and Letter of Permission for establishment of the proposed MAPIMS. Certain deficiencies were pointed out and Compliance Verification Inspection was carried out by the Medical Council of India. At the Executive Committee meeting held on 12.5.2008, it was resolved to recommend to the Central Government to issue Letter of Intent and Letter of Permission. Accordingly, Letter of Intent was issued by the Ministry of Health and Family Welfare, Government of India, for the Medical College. Letter of Permission for establishment of a new College was issued by the Ministry of Health and Family Welfare, Government of India, for the Medical College on 4.7.2008.?

4. During the first renewal Inspection, again certain deficiencies were identified during the Inspection by Medical Council of India on 30.3.2009 and 1.4.2009 and after compliance, the Compliance Verification Inspection was conducted by Medical Council of India on 30.4.2009. The Executive Committee considered the first renewal, Inspection report and recommended to the Central Government by its letter dated 9.5.2009 to renew the permission. Accordingly, on 19.6.2009, first renewal permission was accorded to the Medical College for admission to 2nd batch medical students for the academic year 2009-2010.

5. On 16.2.2010 and 17.2.2010, a team of Inspectors from Medical Council of India conducted second renewal Inspection at MAPIMS and the team noted certain deficiencies numbering seven. The Executive Committee of the Medical Council of India under the Chairmanship of Dr. Ketan Desai decided not to renew the permission accorded to MAPIMS and accordingly, intimated the same to the Government of India. The said communication was also forwarded to the Medical College requesting the College to rectify the defects. Thereafter, it appears that MAPIMS had submitted a detailed reply to the Medical Council of India with documentary evidence.

6. Again on 29.3.2010, Medical Council of India had conducted Compliance Verification Inspection at MAPIMS, however, found that some of the deficiencies pointed out were not rectified. On 5.4.2010 Inspection report was accepted by the Medical Council of India and the members of the Executive Committee, in

which Dr. Ketan Desai, who was the President, decided to recommend to the Central Government to renew the permission of the 3rd batch for the academic year 2010-2011. The said decision was communicated to the Central Government vide communication letter No. MCI-34(41)/2009-Med/1165. Based on the recommendation of the Medical Council of India, the Central Government approved the renewal permission and the Ministry of Health and Family Welfare intimated the same to the Medical College.

7. In the above said background of the facts, based on the source information, the CBI launched Prosecution and the First Information Report was registered on 29.6.2010 in Cr. No. RCMA 1-2010-A0025 against Dr. Ketan Desai arraying him as A1 and against the management of the MAPIMS and unknown officials of the Medical Council of India and private persons under Section 120B read with 420 of IPC and Section 13(2) read 13(1)(d) of the Prevention of Corruption Act. The First Information Report was sent to the Special Court for CBI cases, Chennai. Strangely, without an order from the higher Court, the First Information Report was transferred to the Court of Additional Chief Metropolitan Magistrate, Egmore on 12.3.2012 and charge sheet was filed by the CBI against MAPIMS represented by Dr. T. Ramesh, G.B. Anbalagan, G.B. Senthilkumar, R. Karunanidhi, V. Lakshmi, Dr. T. Ramesh, Shashikant C. Patel, K. Ramabadran, Dr. Sridhar and Subramanyam for the offences under Section 120B read with 420 of IPC.

8. The allegations as found in the charge sheet, based on which the CBI seeks to prosecute the Respondents/A1 to A10 under Section 420 read with 120B of IPC are as follows:--

"(I) Shortage of Faculty:--

"(a) According to the Indian Medical Council Act, as per the minimum requirements for 150 MBBS Admissions, there had to be 262 faculty members at the time of 2nd renewal. The Revision Petitioner/CBI had identified that even though the College had shown 274 faculties, only 158 were paid through Bank and that the remaining 116 faculties were paid through cash.

(b) These 116 faculties were appointed during the period 2009-2010 and out of 116 faculties, 32 had worked only for a few days in the College. Thereby, the College had violated the minimum standard required for the 2nd renewal. Thus, the College and its authorities had cheated the Medical Council of India as regards the faculty members."

(II) False Declaration Forms:--

"(a) The declaration forms (116 Nos.) submitted by the faculties contained false and misleading information as to the undertaking that they were full time faculties, even when they were not the permanent staff."

(III) Payment in cash:--

"The 116 faculty members were not required to sign in any attendance register.

The payments to these faculties were through cash, which did not reflect in IT calculation or in the payment of professional tax to the Panchayat or in the Bank Statement.

Thus, the entire gamut of the Prosecution case rests on the fact that there was a shortage in the Faculties/Residents in the College and that it amounted to cheating, as the renewal permission had been obtained in pursuance of projecting ad hoc faculties as regular faculties."

9. Mr. N. Chandrasekaran, the learned Special Public Prosecutor for CBI strenuously contended that the order of discharge passed by the Trial Court is erroneous, inasmuch as the Trial Court ought not to have threadbare examined as to whether the acts of the accused only amounted to violation of regulations of the Medical Council of India and there was no act amounting to cheating and conspiracy. The learned Special Public Prosecutor contended that the existence of specific rules and regulations will not oust launching prosecution for commission of offences attracting provisions of IPC. The learned Special Public Prosecutor contended that the case of the Prosecution rests on the fact that a fraud was played on the Medical Council of India by placing false declaration during the Inspection conducted by the Medical Council of India and the evidence collected, which were placed along with the final report clearly established, *prima facie*, the offences against the accused. The learned Special Public Prosecutor pointed out that the Medical Council of India rules and regulations do not contain any preventive clause for launching prosecution for misdeclaration and therefore, the reasoning of the Trial Court that the CBI has no power to investigate and file a final report is totally a misconception.

10. The learned Special Public Prosecutor referred to a catena of decisions of the Honourable Supreme Court and emphasised the legal position laid down by the Honourable Supreme Court that at the time of framing charges all that is required is to see whether a *prima facie* case is made out or not and the question whether the charge framed will eventually stand proved or not can be determined only after evidence is recorded. The learned Special Public Prosecutor contended *inter alia* that the Trial Court grossly erred in not following the law laid down by the Honourable Supreme Court in

- "i. State of M.P. Vs. S.B. Johari and Others,
- ii. State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others,
- iii. The State of Orissa v. Debendranath Padhi (2004 Cri.LJ 465)
- iv. Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another,
- v. State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.,

11. In response, Mr. A. Ramesh and Mr. N.R. Elango, the learned senior counsel for the Respondents argued on the authority of decisions of the Honourable Supreme Court in:--

- "i. Preeti Gupta and Another Vs. State of Jharkhand and Another,
- ii. Union of India (UOI) Vs. Prafulla Kumar Samal and Another,
- iii. Sajjan Kumar Vs. Central Bureau of Investigation,
- iv. Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another,

that while considering an application for discharge, the court can examine the evidence on record and discharge the accused persons, if there is no possibility of the accused being found guilty on the basis of such evidence."

12. Mr. N.R. Elango, the learned senior counsel pointing out to the clean chit given to Dr. Ketan Desai who was arrayed as A1 in the First Information Report registered by CBI, submitted that the Investigating Officer while submitting a report under Section 173 of Cr.P.C. should not record a finding nor can he give a clean chit which is a function and power of the Magistrate who shall exercise the said power as provided in Cr.P.C.. The learned senior counsel placed reliance on the decision of the Honourable Supreme Court reported in Hardeep Singh Vs. State of Punjab and Others, in support of his aforesaid submission. The learned senior counsel for the Respondents, thus, supported the impugned order of discharge passed by the Trial Court and contended that the learned Magistrate had applied his judicial mind to the facts of the case keeping throughout in view the essential ingredients of the offence for which the accused persons is sought to be charged and on consideration of materials and the provisions of the relevant law, he was justified in discharging the accused persons.

13. I have carefully perused all the relevant materials and considered the rival submissions of the learned counsel on either side.

14. In order to appreciate the contentions made by the learned senior counsel Mr. N.R. Elango that the final report submitted by the Investigating Officer under Section 173 of Cr.P.C. is not in consonance with law, it is necessary to look into the provisions under Section 173 of Cr.P.C.. The said section provides for submission of final report by the Police Officer on completion of investigation. Sub-section (1) of Section 173 of the Code lays down that every investigation must be completed without unnecessary delay. Sub-section (2) enacts that as soon as investigation is completed, the Officer in charge of the Police Station shall forward a report to the Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government, stating

"(i) the names of the parties,

(ii) the nature of the information,

(iii) the names of the persons who appear to be acquainted with the circumstances of the case,

(iv) whether any offence appears to have been committed and if so by whom,

(v) whether the accused has been arrested,

(vi) whether he has been released on his bond and if so whether with or without sureties and,

(vii) whether he has been forwarded in custody under Section 170. He shall also communicate to the informant the action taken by him."

15. The Honourable Supreme Court in Hardeep Singh Vs. State of Punjab and Others, has reiterated as to what should contain in the final report filed under Section 173 of the Code and indicated that the power is not available to the Investigating Officer to record findings of fact or give a clean chit to the accused in the said report. In paragraphs 67 and 68 of the said decision, it is held as follows:--

"67. The report contemplated by Section 173 should contain the information required by the said provision. The Investigating Officer is not expected to record findings of fact nor to give clean chit by exercising power of a Court or judicial authority. In the instant case, however, the Superintendent of Police not only refers to investigation made by him and the statements recorded in the course of investigation but records a "finding" that the statements were "correct". Vijay Preet Singh was not present at the place of offence when the incident took place but reached after the occurrence was over. Thereafter police had arrested him. Likewise, Jagtar Singh was not present at the spot at the time of occurrence. The report stated;

"However, Vijay Preet Singh is totally innocent because he came there after finalizing of the occurrence. The police had already been there after reaching him and the fight stood already finished. Moreover, Balbir Singh Dhanoa and Hardeep Singh named Jagtar Singh son of Suchha Singh resident of Fatehmajri later on. This fact is also totally wrong because the son-in-law of Joginder Singh was expired a few days earlier. He was found to be at the ceremony of taking the bones with other men and women. Except this, this fact has also come in the notice that Hardeep Singh has stated in FIR that he was taken this land on lease. He went there to cultivate but prior to the occurrence Davinder Singh party had already cultivated his corn yield and jantars in this land, which was already 2 feet in height. If he wanted to cultivate then he could cultivate this land alone. What was the necessity to come with these group of men. It is evident therefrom that these all men armed with their weapons came to get possession of this land forcibly after making a plan. The statement which was given by Balbir Singh Dhanoa that he had deposited his gun at Verma Gun House, Model Town, Patiala on 2.6.04 has been deposited with connivance. Because Inspector Rajesh Chijjar snatched gun from Balbir Singh Dhanoa with the help of his employees. Later on Dhanoa party got the weapons forcibly from the police due to a big gathering of men. It is recommended to take legal action against Verma Gun House, Patiala".

68. We may only state that the Investigating Officer was required to submit report in terms of Section 173 of the Code and nothing more. He should not

record a finding nor he can give clean chit which is a function and power of the Magistrate who will exercise the said power as provided in the Code."

16. Therefore, it is explicit that upon receipt of a police report under Section 173(2) of Cr.P.C., a Magistrate is entitled to take cognizance of the offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the Police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) of Cr.P.C. does not lay down that a Magistrate can take cognizance of an offence only if the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit in exercise of his power under Section 190(1)(b) of Cr. PC and direct the issue of process to the accused.

17. The fact that in this case, the investigation had not originated from a complaint preferred to the Magistrate, but had been made pursuant to the source information to the police would not alter the situation in any manner. It has been held in *Tula Ram and Others Vs. Kishore Singh*, that if the police after making an investigation, send a report that no case was made out against the accused, the Magistrate could ignore the conclusion drawn by the police and take cognizance of a case under Section 190(1)(b) and issue process. It is the jurisdiction of a Magistrate and Magistrate alone to decide whether the material placed by the Prosecution with the report (charge sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency whose duty is only to investigate and place the facts and the evidence before the Magistrate.

18. In the instant case, the First Information Report was submitted before the Principal Special Judge for CBI Cases, Chennai, since the said court is the designated court for the cases triable for the offence under the Prevention of Corruption Act. The First Information Report was registered against Dr. Ketan Desai, President of Medical Council of India, the Management of MAPIMS, unknown officials of Medical Council of India and private persons for the offences under Section 120B read with 420 of IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption Act. After investigation, the CBI has laid charge sheet only against the Respondents, exonerating Dr. Ketan Desai and unknown officials of the Medical Council of India from the offences. Strangely, the First Information Report, which was pending on the file of Principal Special Judge for CBI Cases, was transferred to the Additional Chief Metropolitan Magistrate, Egmore without any order and the charge sheet has been filed before the Additional Chief Metropolitan Magistrate, Egmore against the Respondents.

19. A Magistrate, who receives the case on transfer and takes cognizance, would not become incompetent to proceed as enjoined by the Criminal Procedure Code

and he has been conferred with power to take cognizance by Section 190(1) of the Code and he would not be deprived of this power because the case has come to his file pursuant to some illegal order of the concerned court. At the time of taking cognizance, the Additional Chief Metropolitan Magistrate court has to exercise its judicial discretion and record reasons for accepting the police report as such. The opinion of the Investigating Officer as against Dr. Ketan Desai that the allegations contained in the First Information Report were not substantiated by the statements of witnesses recorded during investigation is not a proper one. The discretion of the police to prosecute is, thus "cabined and confined" and subject to appeal or revision and the Magistrate is made the final arbiter on this question. In the light of the decision of the Honourable Supreme Court stated *supra*, I am of the opinion that the submission of Mr. N.R. Elango, the learned senior counsel is well founded that it is not for the CBI to give clean chit to Dr. Ketan Desai and unknown officials of the Medical Council of India which power is provided with the Magistrate while taking cognizance.

20. The procedure adopted by the learned Special Judge is also contrary to the provisions of the Code of Criminal Procedure. In the case on hand, the First Information Report was registered on the source information against Dr. Ketan Desai for the offences under the Prevention of Corruption Act, which offence can only be tried by a Special court. A Special Judge is entitled to exercise all the powers of a Sessions Judge as provided under Cr.P.C. in relation to the proceedings under the Prevention of Corruption Act, 1988, so far they are not inconsistent with the provisions of the Prevention of Corruption Act. As per Section 4 of the Prevention of Corruption Act, 1988, notwithstanding anything contained in Cr.P.C. or in any other law for the time being in force, the offences specified in sub section (1) of Section 3 shall be tried by the Special Judge only. Section 5 of the Prevention of Corruption Act, 1988 empowers the Special Judge to take cognizance of the offences without the accused being committed to him for trial and while holding trial, he has to follow the procedure prescribed by Cr.P.C. for trial of warrant cases by Magistrate. So, the expressions, "the Magistrate empowered to take cognizance of the offence" and the "Magistrate having power to try such cases" appearing in various sections of Chapter XII of Cr.P.C. would only mean the special judge appointed under the Prevention of Corruption Act, 1988. From the provisions of the Prevention of Corruption Act, 1988 and Cr.P.C., it is not possible to hold that the Special Judge does not come in picture during the course of police investigation and prior to taking cognizance of the offences under the said Act. The Special Judge is entitled to exercise all the powers conferred on a Magistrate under Chapter XII of the Cr.P.C. as he has got exclusive jurisdiction to take cognizance and try the offences under the Prevention of Corruption Act, 1988.

21. In this case, it appears that the Investigating Officer had filed a petition before the learned Special Judge for CBI cases to transfer the First Information Report of this case along with the connected papers to the Additional Chief Metropolitan Magistrate Court without mentioning any of the provisions of Cr.P.C.

as seen from the order of the Special Court. In the charge sheet, it is merely stated that Dr. Ketan Desai had no knowledge about the irregular faculty members/junior residents in the strength of the Medical College admitted when he accepted the report of its Inspection team and granted the renewal of permission to admit the 3rd batch of MBBS students in the Medical College. Admittedly, no closure report is filed as against Dr. Ketan Desai who was arrayed as the main accused in the First Information Report. In such circumstances, it was for the Special Judge to have gone through the materials and satisfy himself about the correctness of the report filed by the CBI in so far as Dr. Ketan Desai is concerned before transferring the file to the Court of Additional Chief Metropolitan Magistrate.

22. Now, after interpreting Section 193 together with Section 319 of Cr.P.C., the Honourable Supreme Court has enlarged the scope of Section 193 of Cr.P.C. to include the power of Sessions Court to summon a person left over to face the trial even before framing of charge. Although calling upon a person to face the trial before framing of charge envisages an enquiry in the matter and the enquiry under the Code by the Court of Sessions is barred, yet the power of the Court, cannot be limited, after the words used in the new Code under Section 193 that the cognizance is taken after committal of the case and not after committal of the accused as was originally provided in Section 193 of the Code.

23. The law on this point was laid down by the Honourable Supreme Court in two cases, wherein the Honourable Supreme Court has considered the scope of Sections 193 and 319 of Cr.P.C. in the case of *Kisun Singh v. State of Bihar* (1993-1-L.W. (Crl.) 56 : 1993-SCC-Crl- 470) and held that scope of Section 193 includes the power of the Court of Sessions to summon an accused, who is left over by the investigating agency and by the Magistrate in the committal order before commencement of the trial. The same view has been reiterated by the Honourable Supreme Court in the case of *Nisar and Another Vs. State of U.P.*, wherein the Honourable Supreme Court held that the scope of Section 193 was wide enough to include inherently the power of the Court of Sessions to summon a person to face the trial even before the commencement of the trial when the court is satisfied that he is left over by the investigating agency.

24. In this case, the learned Special Judge should have considered that the similarly placed accused has been left out and the CBI has acted in a pick and choose manner. In the final report, except stating that the investigation had not revealed that Dr. Ketan Desai had any knowledge of the irregular faculty members in the strength of the College when the Medical Council of India accepted the report of the investigation team, it has not been pointed out that in what respect the said conclusion is arrived at. The statement is very vague in nature and it only shows the partisan attitude of the CBI. As the investigation has not been conducted fairly, such vitiated investigation would only lead to miscarriage of criminal justice.

25. There is no indication that the final report was submitted before the learned

Special Judge and he has accepted the same. There is no specific order to that effect and there is no indication that the learned Special Judge after considering all the relevant materials and applying his mind, transferred the First Information Report to the file of the Additional Chief Metropolitan Magistrate. Therefore, the learned Special Judge has committed gross illegality in sending the First Information Report to the file of Additional Chief Metropolitan Magistrate on CBI just asking for transferring the file to the other court.

26. It need hardly be emphasised that in the conduct of the warrant cases by the Magistrates, the stage, at which the Magistrate is required to consider whether to discharge or to frame a charge against an accused, is of vital importance both from the point of view of the Prosecution as also the accused. The provisions under Sections 239 and 240 of the Code demand that the Magistrate must consider the police report and all the documents furnished by the police along with such report if need be, to examine the accused and hear the arguments of both the Prosecution and the accused and then, arrive at his conclusion, independent of and uninfluenced by the police opinion; if accepted at its face value, would furnish a reasonable basis or foundation for the accusation.

27. There cannot be any doubt whatsoever that the Trial Court under Section 239 is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the Prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped.

28. In Smt. Rumi Dhar Vs. State of West Bengal and Another, , it has been held that complicity of accused person is required to be taken into consideration for purpose of determining application for discharge upon taking a realistic view of the matter. While considering application, it is for the judge to go into the details of allegations made against accused persons so as to form an opinion as to whether any case at all is made out, as a strong suspicion regard thereto shall subserve the requirements of law.

29. It is now necessary to refer to the specific allegations in the charge sheet against the Respondents. The allegations, inter alia, are as under:--

"(a) Investigation revealed that in normal course, a shortage of eligible faculty members/residents would prompt action by the Medical Council of India against the College which would not even recommend renewal of permission for admission of 3rd batch of students for MBBS Degree Course at MAPIMS. The declaration forms of all the faculty members/residents who were not regularly employed in the College contained false and misleading information in the form of an undertaking to the effect that these 116 faculty members/residents were full time teachers/residents of MAPIMS and that they were not working at any other Medical College/Institution during any Inspection of the Medical Council of India from 1st August 2009 onwards till date and that they were not practising

anywhere or carrying out any of the activity etc.

(b) By doing so, MAPIMS made the Medical Council of India to believe that the strength of Faculty Members/Residents of the College was sufficient as per the Medical Council of India and on the basis of the Inspection report made by them to the Medical Council of India, the College was granted permission for admission of 3rd batch of students for MBBS Course for the academic year 2010-2011 thereby cheating the Medical Council of India.

(c) It came to light during the investigation that these 116 Faculty Members/Residents were working either part time or have appeared for the limited purpose of Medical Council of India Inspection. Some of the faculties were paid heavy amounts under the garb of salary only for such appearances.

(d) Investigation revealed that the Heads of Departments were not included in the " Selection process" of the faculty members which was done mostly by Dr. T. Ramesh (A6), Managing Director of the College and Sri Ramabadran, A8, Administrative Officer.

(e) The 116 faculty members, who had attended Medical Council of India Inspection, were paid salary in cash either lump sum or on case to case basis and not as per the UGC Rules, for which their acknowledgement of payment of salary by cash was taken in vouchers even after the date of compliance Inspection on 29.10.2010.

(f) Investigation further revealed that two persons viz. Dr. Sridhar (A9) and Dr. Subramanyam (A10) had acted as agents who had helped the College to recruit some of these 116 Doctors as faculty members. When the requirement of Faculty Members/Residents for the College came up for the impending compliance Inspection by the Medical Council of India for the renewal of permission for admission of 3rd batch of students of MBBS, the above persons were contacted and they had coordinated with Sri Ramabadran (A8) of MAPIMS for making available some Doctors at short notice for presenting them before the Medical Council of India Inspection team on 29.3.2010.

(g) The Dean of the College Dr. Sashikanth (A7), who was responsible for the day-to-day management of the College, had certified most of the declaration forms of the 116 faculty members projecting them as permanent, even though their photographs were not attested and not countersigned the said declaration forms to the effect that the Doctors were full time faculty members of MAPIMS. With the object of securing permission by illegal means, the blank declaration forms were got filled and signed by the said Doctors with incorrect, misleading and false particulars at the instance of the College authorities. Dr. T. Ramesh (A6) and Dr. Sashikanth Patel (A7) the Dean were thus aware of the status of some of these Faculty Members/Residents with respect to their employment in the College.

(h) G.B. Anbalagan (A3) Managing Trustee and G.B. Senthil Kumar (A4) Trustee

had signed the IT returns of the College filed by the Trust and hence, they knew the actual strength of the faculty members and falsehood contained in their declaration forms. Lakshmi (A5) had approved for release of funds and no reason was attributed for non approval of the funds for other faculty members who were paid through cash."

30. The point, which falls for examination and determination, is as to whether there is any material collected during investigation justify putting the Respondents on trial or whether those materials, taking on their face value make out any prima facie case against the Respondents.

31. Even accepting the Prosecution case on its face value, it only reveals violation of regulation framed by the Medical Council of India and they cannot ex facie give rise to a criminal liability, as such misconduct may give rise to refusal of permission/recognition for two consecutive academic years.

32. The Indian Medical Council Act 1956 and the Regulations framed thereunder provides for periodical Inspection of Medical Institutions for noticing the irregularities in the running of the Medical Institution without conforming to the standards of medical education prescribed by the Medical Council of India and its regulations. The provisions of the Act also provide for rectifying the irregularities and complying with the requirements needed for running the medical Institution to maintain the standard of education prescribed by the Medical Council of India.

33. A perusal of the various provisions of the Indian Medical Council Act 1956 therefore would make it clear that the Act and the regulations framed thereunder form a complete Code by themselves providing for every contingency regarding the running of medical Institution, the periodical Inspection to be carried out and also the action to be taken in the event of the council not doing its work properly. Under Section 10A of the Act, it is the Central Government which is the authority empowered either to grant or refuse to grant approval for starting any Medical College or for any increase in the intake. The Medical Council of India is the recommendatory body recommending to the Central Government for the approval or disapproval of the permission required for starting and running the Medical Institution. Section 19 of the Act provides for withdrawal of recommendation, when the staff, equipments, accommodation, training and other facilities for instructions and training provided in any University or Medical Institution appears to the Central Government that they do not satisfy the standards prescribed by the Council.

34. Section 30 of the Act provides for enquiry being conducted by a Commission of enquiry consisting of three persons, two of whom shall be appointed by the Central Government, one being a Judge of a High Court and one by the Council in the event of the Council not complying with any of the provisions of the Act.

35. More importantly, Clause 8(3) of the Establishment of Medical College Regulations, 1999 contemplates penal action in case any Institute is found to have employed a teacher and submits a declaration form of such a teacher with

fake/forged document. Sub clause (d) of clause 8(3) reads as under:--

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

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

36. Therefore, on this ground, the criminal Prosecution of the Respondents with the allegations that the declaration forms submitted by the faculties contained false and misleading information as to the undertaking that they were full time faculties when they were not permanent staff is of no criminal consequence nor does it make out any prima facie criminal case against the Respondents/accused. The shortfall in faculties and the submission of fake/forged declaration forms is not considered to be "cheating" according to the legislators in so far as the Medical Council of India and its procedures are concerned. If the Medical Council of India had to treat fall outs in faculties as an offence, then the same would have been provided so in the regulations. But, rather the statutory body seeks to take only corrective action and affords time to the College to rectify its defect, in order to prevent scores of medical students being affected. Also, the errant Medical Doctors would be dealt with accordingly by the Indian Medical Council Act whereby the names of defaulters are liable to be removed from the State Medical Register, thus debarring them from engaging themselves in this profession.

37. When a statute or the statutory body is not inclined to treat violation or lapses as an offence, no penal law can be invoked for the shortfalls in the faculty and the submission of false declaration forms.

38. In this context, it is relevant to refer to the law laid down by the Constitutional Bench of the Honourable Supreme Court in Dr. Preeti Srivastava and another v. State of MP and others (1997 7 SCC 120) wherein the Honourable Supreme Court at paragraph 57 has concluded as follows:--

"In the case of Medical Council of India Vs. State of Karnataka and Others, a bench of three judges of this Court has distinguished the observations made in Kumari Nivedita Jain (supra). It has also disagreed with Ajay Kumar Singh & Ors. v. State of Bihar & Ors (supra) and has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with admissions to the M.B.B.S. Course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The Court took note of the observations in State of Kerala Vs. Kumari T.P. Roshana and Another, to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has

implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to post-graduate medical courses. We are in respectful agreement with this reasoning."

39. In view of the statutory provisions of the Medical Council Act which is a self contained Act and when there are specific provisions in the Act to deal with the misconduct committed by the Institution and if it submits fake/forged declaration forms, it would be improper to resort to Section 420 of IPC altogether ignoring those provisions.

40. Apart from that, there is no material, inasmuch the learned Special Public Prosecutor for CBI could not point out, from the materials placed along with the charge sheet or from anywhere on the record from which it can be gathered, that prima facie offences are made out against the accused persons. The Trial Court examined the materials placed on record on threadbare after referring to the statements recorded from various witnesses and decided to discharge the accused persons which in my view is justified. Instead of extracting each and every statement, it is suffice if the statements relevant to the allegations are extracted.

41. There are, on record, the statements of L.W. 4 Dr. Agarwal who had conducted the Medical Council of India Inspection for the academic year 2010-2011 along with L.W. 6 Dr. M.A. Kunjamma and Dr. S.S. Minhas on 16/17.2002/2010 and found 42.17% deficiencies in the teaching faculty. After the College filed the compliance report, Inspection was conducted by L.W. 4 along with two other Inspectors, namely, Dr. S.P. Sharma and Dr. K.V. Malini. Dr. Agarwal and Dr. K.V. Malini were examined as L.W. 4 and L.W. 5 and they have clearly stated that when they carried out physical appearance of the persons against the photograph certified by the Dean, it was found that the deficiencies pointed out in the first Inspection were mostly complied with except for the common examination hall cum auditorium and auditorium. L.W. 4 has stated as follows:--

"Once the council certifies in the first Inspection, in the compliance Inspection, the faculty who were present in the first Inspection is certified to be there. Only the persons who appears for the first time were checked physically. On being asked, I stated that it is not the Council's duty to check the availability of details of salary details in the declaration form. There is no way to cross check, whether a person has come only for Inspection purpose as it is difficult to do it. The report was prepared by the Committee members in consultation with each other and was sent to the Medical Council of India by me. The report was completed in a single day by the committee. We had carried out verification mainly in respect of the compliance of points which were shown as deficient by the first team which inspected Melmaruvathur Adhi Parasakthi Institute of Medical Sciences and Research, on 16/17th of March 2010 and also additional points as required by

the Medical Council of India vide its letter dated No. MCI/TN/2010/Med/415-418."

42. From the above statement, it is clear that the Medical Council of India Inspectors have physically verified the staff members with the aid of photo identities and the photographs certified by the Dean/Principal. The statement recorded by the Investigating Officer from L.W. 4 revealed that on the date of Inspection on 29.3.2010, the deficiencies have been complied with except one item and that the faculties were verified physically.

43. In fact, the statement of L.W. 5 Dr. K.V. Malini would indicate that they have verified the strength of the faculty members by calling them one by one, Department wise and noting their presence/absence against the list given by the College. They have also cross checked the declaration forms with each individual altogether. Therefore, it is evidently clear that on the date of Inspection, the faculty was sufficient and has been produced before the Medical Council of India Inspectors with all relevant records along with the declarations. Neither L.W. 4 nor L.W. 5 has stated anything incriminatory against these accused persons.

44. There are nevertheless statement of L.W. 7 A. Srinivasan who was working as Administrative Assistant in the Hospital of A1 Medical College to the effect that there are vouchers in respect of payments which were made through cash and of this 84 faculty members were from hospital and 33 were from Medical College. Some of the vouchers were not signed by the respective faculty members for which he has given explanation that though they received the payments of salary, but they had not signed the vouchers. L.W. 7 has explained the procedure for payment of salary and his statement would reveal that the management of the Medical College has maintained salary particulars and the same were submitted to the Chartered Accountant and further the payment of salary particulars either through Banks or by vouchers were not suppressed.

45. In this case, it has to be pointed out that the Medical Council of India had not preferred any complaint either against the Respondents or against the Institution. There is also no averment in the final report that the Respondents herein made any representation much less a deceptive one to anyone of the Medical Council Inspectors to deceive them and part with the "nil deficiency report". More significantly, none of the Doctors who alleged to have filed declaration forms before the Medical Council of India, had been arrayed as accused. On a perusal of the declaration forms, it is evident that the particulars had been filled up by the individual Doctors and they affirm the correctness of the information so provided. It is only countersigned by the Dean. The charge sheet states that 116 declaration forms submitted by the College are false declarations and on that premise, the Dean and the College authorities are sought to be prosecuted. Those 116 Doctors have been left from the array of the accused, but the Dean has been prosecuted for countersigning such declarations.

46. In the absence of the prime/principal offenders of an offence being prosecuted, seeking to fasten liability on the conspirators is opposed to rule of

law. The learned senior counsel for the Respondents placed reliance on the dictum laid down by the Honourable Supreme Court in *Ex-Sepoy Hardhan Chakrabarty Vs. Union of India (UOI) and Another*, that when the principal offender is acquitted of the offence being not established, then the person charged with offence of abetment of conspiracy of commission of offence also has to be acquitted.

47. The Revision Petitioner/CBI seeks to saddle the liability on the College authorities on further allegation that faculties have been paid in cash and not through bank accounts suggesting that the faculties must be only ad hoc faculties and not permanent faculty. During the Inspection in February 2010, the Medical Council of India had pointed out deficiency in staff and thus refused to recommend for the renewal permission. Thereafter, the College had made appointments for the required member of faculties in order to meet with the standards prescribed by the Medical Council of India. The statements of L.W. 4 and L.W. 5 namely Dr. Agarwal and Dr. K.V. Malini would reveal that they have physically verified the staff members by calling them one by one and they have also cross checked the declaration forms with each individual altogether.

48. The Prosecution has relied upon the statements of the Provident Funds Enforcement Officer and the Chartered Accountant to state that the payment in cash to faculties led to the inference that the faculties were ad hoc in nature. A perusal of the declaration forms would show that the faculties were appointed in February 2010 and the declaration is also to that effect. Unless and until the faculties so appointed were made permanent employees payments could not be made to such faculties through bank accounts.

49. Also, the CBI had not conducted any surprise verification pursuant to the receipt of source information, to physically verify whether indeed the College had appointed faculties only for the purpose of compliance Inspection. A proper investigation in that regard would have revealed whether the faculties were regular appointees or not. Further, the statement of the Village Panchayat cannot be ignored who has stated that there was an increase in the payment of the professional tax for the said College to the Panchayat.

50. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied.

"i. deception of a person either by making a false or misleading representation or by other action or omission.

ii. fraudulently or dishonestly inducing any person to deliver any property or

iii. To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

51. For the purpose of constituting an offence of cheating, the Prosecution is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In *Vir Prakash Sharma v. Anil Kumar*

Agarwal (2007 7 SCC 373) the Honourable Supreme Court held at paragraphs 13 to 15:--

""13. The ingredients of Section 420 of the Penal Code are as follows:

- (i) Deception of any persons;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

13. What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by the witnesses of the complainant. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

14. In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Penal Code."

52. The allegation against A6 and A8 is that the selection process of the faculties was done by these two persons without consulting the respective Head of Departments. As regards A9 and A10, they said to have acted as agents and helped in procuring Doctors for compliance Inspections. They coordinated with A8 for making Doctors available on 29.3.2010. The allegation against A7 is that he was responsible for the day-to-day affairs and had signed in most of the declaration forms. Further, A6 and A7 were aware of the shortage in faculty. As far as A5 is concerned, she being the Vice President of the Trust, she had approved the release of funds from the Trust for payment of salary. A8 is said to have made payments to Doctors vide cash. A4 looks after the day-to-day affairs and had corresponded with the Medical Council of India.

53. A perusal of the allegations would show that the basic ingredients required for falling within the four corners of cheating have not been made as against the accused. The lacunae in the allegations are as follows:--

"i. what was the representation made to the Medical Council of India Inspectors.

ii. who made the representation.

iii. Whether the representation was believed and acted upon by the Medical

Council of India."

54. At this juncture, it is relevant to refer to the observations made by the High Court of Andhra Pradesh in the case of TGL Groundnut Corporation and others v. The Agricultural Market Committee (1985-XXIV-MLJ-608). The relevant paragraph is extracted below:--

"On a reading of the aforesaid section, it is clear from the words "whoever commits" that a person is made personally liable for an offence committed under the act and the liability cannot be extended to any other person merely by virtue of any office or position he holds in a Company of firm. In order to extend the liability for an offence committed under the Act to any individual, it has to be specifically averred in the petition of complaint that particular person is personally guilty of any act of commission or omission which tantamount to an offence punishable under the Act."

55. Further, a perusal of the statements of witnesses do not show that any of the Respondents had dishonest intention to cheat the Medical Council of India. The allegations as against the accused do not satisfy the essential critical of "whoever" the basic requirement of cheating. For the offence of cheating, the stress is on the syllable "whoever". The definition of "whoever" is "the person or people who; any person who". Thus, it is imperative that the person who makes the representation, which he knows to be false can only be saddled with cheating.

56. On reading the charge sheet, it is seen that there is no averment in the charge sheet and its accompaniments even to suggest that the Respondents herein had made any representation much less a deceptive one to the Medical Council of India Inspectors. There is no sufficient material on the basis of which any charge could be framed against the Respondents.

57. The Respondents have been charge sheeted for the alleged offence of conspiracy under Section 120B of IPC. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means, act which by itself may not be illegal. In other words, 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 in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inferences which are not

supported by cogent and acceptable evidence.

58. Merely levelling a charge of conspiracy without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability on the Respondents. The purpose or circumstances warranting an inference of existence of a conspiracy should be stated so as to bring the Respondents to face the trial in criminal court. A complaint should make out a prima facie case against the accused persons and one cannot have the construction of a fine superstructure without a foundation as observed in K.S. Narayanan and Others Vs. S. Gopinathan, There must be prima facie evidence that a person was a party to the conspiracy and that there was an agreement for that purpose. Anything said or done or written by the conspirators after the formation of the conspiracy will be very material. Thus, to make out an offence of criminal conspiracy, it is not sufficient to establish that a number of persons had a common intention to commit an act opposed to or forbidden by the law and it has further to be proved that they agreed to commit the relevant act. Similarly, the law requires specific proof against each of the conspirators participating in doing a particular criminal offence.

59. There is nothing in the allegations or in the statements of witnesses which can be construed to show that there was a meeting of minds amongst the authorities of the College to commit an offence. Therefore, I am of the considered view that the conclusion arrived at by the learned Additional Chief Metropolitan Magistrate that there was no prima facie evidence to frame charges under Section 420 read with 120B of IPC is fully justified in taking the view and there is no perversity or illegality in the order of discharge passed by the said Court warranting interference by this Court. In the result, these Criminal Revision Cases are dismissed.