

R.C.C. No. 129/2010
State Vs. Dr.Dinesh and others
CNR NO. MHWS09-000211-2010

ORDER BELOW EXH. No.55

(Passed on 15-10-2018)

1. This is an application filed by accused No.2/applicant under Section 239 of the Criminal Procedure Code (for short 'the Cr.P.C.') for discharge.
2. It is contended by accused No.2 that he is Pujari of Poharadevi goddess Poharadevi, Tq. Manora District-Washim since birth. He is not much related with the society and has engaged himself in the work of worship in the premises of temple. Assistant Director, Ayurved namely Vaidya Lieus John has lodged report at Police Station Manora dated 14.03.2008 which is registered on 15.03.2008 as crime No.16/2008 under section 420 read with Section 34 of the Indian Penal Code (for short 'the I.P.C.'). In the said crime, the applicant is shown as accused No.2 and in the report and he is designated as President.
3. On reading F.I.R. it appears that the allegations in the complaint and F.I.R are that “ Sant Sevadas Maharaj Ayurved Mahavidhalaya and Hospital Poharadevi is run by one trust namely Sevadas Bahuuddeshiya Shikshan Sanstha Pusad registered No.135/64/89. Accused No.1 Dinesh Kaluram Jadhao resident of Green Park Pusad is Secretary of the said society. This accused is President of the said college. The further allegations are that the said college is authorized by Mooreland University, U.S.A. and UNISCO as shown in the advertise. The further allegations is that for the course of B.A.M.S. 17 students had taken admission and fees are recovered from them. The further allegation is that there is no sanction or permission from State of Maharashtra, Health Science University Nashik, Health Ministry of Central Govt., Indian Medical Council etc. He also found

that there is no any certificate or document showing any link authority as regarding approval by Mooreland University and UNESCO or government of U.S.A. The allegations that while making inspection accused No.1 Dinesh Kaluram Jadhoo disclosed as regarding online study center and no computer, educational articles, equipments were found. It is alleged that fees of Rs.85,000/- is recovered from the students. On the basis of that it was claimed to register the crime against the applicant and crime was registered.

4. Along with the said report enquiry report is also attached. In the enquiry report it is mentioned that the registration certificate of the trust and memorandum of the trust is not produced in the enquiry. Furthermore, no resolution was produced for the opening of the college of the society. The building and the hospital are owned by Akhil Bharatiya Banjara Labhani Shaktipith Poharadevi which is used as sarai. No documents of sanction found of Central Government. There is no mentioned about the name of this applicant anywhere in the said report as he is President of the college as mentioned in the report anywhere. Furthermore, in the said report the allegations are made only against accused Dinesh.

5. Statement of complainant Vaidya Luis Chaco John is recorded on 02/04/2008 and the statement of other members of the enquiry committee i.e. Subhash Yashwant Raut and Shankar Thavraji are also on record. Spot panchnama, seizure of the articles of the college are on record. The statements of all the witnesses are also on record.

6. Overall the document, report filed under section 173 of the Cr. P.C. filed on record it appears that under some wrong assumption the complainant has claimed the applicant as President of the college. In fact the statements of the students in the said college the lecturers those who were doing teaching job in the college are not stating anything against this applicant that he is the President of the college. The investigating officer did

not collect the copy of P.T.R register of the society/trust of Sevadas Bahuuddeshiya Shikshan Sanstha Pusad which is registered trust. The applicant is nowhere related as a trustee or president of the said trust. He was never President of the said college. In fact there is no post of the President in the said college. Therefore, only on wrong information the applicant is named as president.

7. On reading the whole charge-sheet, documents and the statements it is clear that there is no role of the applicant either in the society or in the college. He has not made any publicity of the said college and has not invited any student for the admission. He has not obtained any fees from the said college. There is no any bank account which is under signature of this applicant. The applicant/accused has not deceived any student for taking admission and for paying the fees. No amount from the said college is received to the applicant. Hence, the basic ingredients of the cheating are absent in the charge-sheet and documents filed under section 173 of the Cr.P.C.

8. Thus, the applicant is innocent person. There is no material on record to frame the charge under section 420 read with section 34 of the I.P.C. against the applicant. The applicant is not at all concerned with accused No.1 and 3 in any manner. The articles and documents which are seized from the college are also from accused No.1. All the servants of the said college are also not pointing any involvement of the applicant.

9. Hence, overall the accused deserves to be discharged from the said trial. There is no requirement to frame the charge in absence of any document under section 173 of the Cr.P.C. and continue the trial against the applicant. He is bonafide person and doing only job of priest in the temple. Therefore, he prayed for his discharge from this case.

10. The learned A.P.P. filed his common say (Exh.83) to applications Exh.53 and 55 and strongly opposed the application of the accused. It is contended by the learned APP that on perusal of final report and documents sent with it under section 173 of the Cr.P.C. by Investigating Officer and on perusal of enquiry report and say filed by informant-Assistant Director Ayurved, Nagpur below Exh. 69, it is clearly appears that accused No.1 to 3 are criminally conspired together to commit this serious offence punishable under Section 420, 120-B read with section 34 of the I.P.C.

11. It is admitted by accused No.3 Dr.Devashish that, he is a Director General of Mooreland University (U.S.A.). It is pertinent to note that accused No.1 Dr.Dinesh Jadhav (Secretary) admitted in his statement recorded by Investigating Officer, that he published in newspaper that he started Ayurvedic College B.A.M.S. (Bachelor in Ayurvedic Medicine and Surgery) at Poharadevi which is recognised from Mooreland University and the student in practice as a Doctor anywhere. As well as, the statements of witnesses namely Dr.Sharadchandra Upadhe, Dr.Hitendra Rathi, who have stated that accused No.1 Dr.Dinesh Jadhav had approached to them to come to their college and hospital for giving lecture in their B.A.M.S. college at Poharadevi, which is having recognition from Mooreland University.

12. It is further submitted by the learned APP that the statements of the students also clearly shows that accused persons had published in the advertisement for imparting the courses which will lead to grant qualification of Doctor and such fact also clearly mentioned in that advertisement. That mobile number mentioned in the advertisement is also mentioned in the letter pad of Sevadas Maharaj Multipurpose Education Society, Pusad below the name of secretary accused No.1 Dr.Dinesh. That such letter pad also having the name of accused No.2 Babusing Rathod being a sub-president of said society along with his mobile number.

13. It is further submitted that the advertisement along with the photographs of all accused namely Dr.Devashish Kundu, Dr. D.K. Jadhav and Babusing Maharaj Rathod together are seized by the Investigation Officer. That said advertisement clearly shows that admissions open for Advanced Diploma Course in Ayurveda six semester and course in Ayurveda three semester in B.A.M.S. (Bachelor in Ayurvedic Medicine and Surgery). All above chain of facts and circumstances and documentary evidences clearly indicates that accused No.1 along with accused No.2 and 3 opened fake B.A.M.S. college and course under the head that, such college and course had recognised from Mooreland University (U.S.A.) and deceived those students and grabs Rs.85,000/- from each students as tuition fees and thereby clearly cheated to those students and thereby clearly committed an offence punishable under section 420 of the I.P.C. and such facts is also mentioned in the statements of students.

14. It is further submitted by the learned APP that in respect of discharge application of accused No.2 Babusing Rathod, the Investigating Officer has seized letter pad of Sevadas Multipurpose Education Society having registration number MH 135/F-6489 which shows the name of accused Babusing as sub-president of the said society along with his mobile number 9421865522 and the name of accused No.1 Dr.Dinesh as a secretary which is as page No.114 of charge-sheet. Such fact is also mentioned in the letter address to Mrs. Anita Das, Secretary Ayush Ministry of Health, New Delhi.

15. It is further contended that if the court perused Para No.6 of judgment of the Hon'ble High Court Bench Nagpur, in criminal application No.1831/2008 and 1840/2008, attached with final report, stated that “ the statement of Jitendra Rathod also shows that accused No.2 Babusing Rathod was the person who inaugurated the said Ayurvedic College and it is he who is the president of the society. The college was being run in the land owned

by Subhash Maharaj Rathod, nephew of accused Babusing. As well as statements of witnesses thus clearly defined the role of accused Babusing also.” However, it is very surprising that investigation officer has not filed the statement of Jitendra Rathod and other witnesses which shows the role of Babusing in this offence and the reason for the same is best known to him. Hence, while deciding discharge application of accused No.2 Babusing, it is very essential to call case diary and say of investigating officer for the perusal and for just and proper decision of the case.

16. Hence, considering all above facts and circumstances, it clearly indicates that there are grounds for presuming that, accused No.1 to 3 criminally conspired together to commit this serious offence punishable under section 420, 120 (B), 34 of the Indian Penal Code against the interest of the students who are the future of the country. Hence, he prayed for rejection of the application (Exh. 55).

17. Heard the learned advocate for the applicant/ accused Shri. R.D. Thakre and learned APP Shri. R.V. Rekhe at sufficient length.

18. At this stage, it is necessary to be seen that whether accepting the allegations of complainant as it is or after giving face value to the allegations any of the ingredients of above stated offences are made out or not. We should firstly deal with the offence punishable under section 420 of I.P.C. It provides as under.

Section 420 : - Cheating and dishonestly inducing delivery of property. -

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

19. Perused the record. Perusal of the record shows that the accused No.1 to 3 are charge-sheeted for the offence punishable under section 420 read with section 34 of the I.P.C. In short, it is contended by the applicant that in the enquiry report there is no mention about the name of the applicant as he is President of the college. Further, in the said report the allegations are made only against accused Dinesh Jadhav. However, it is important to note here that the said report is of dated 13.03.2008 thereafter Police has investigated the matter and finally filed charge-sheet in which name and role of the applicant is clearly shown. Moreover, the said enquiry was primary in nature.

20. It is further submitted by the applicant that perusal of report and documents filed along with charge-sheet under section 173 of the Cr.P.C. shows that under some wrong assumption the complainant has claimed that the applicant is President of the college. In fact, the statements of the students and lecturers in the said college are not showing anything against this applicant that he is President of the college. Though there is no document showing that the applicant was President of the said college. But perusal of charge-sheet at Page No.114 shows that the applicant Babusing Rathod is sub-president of Sewadas Multipurpose Education Society, Pusad along with his mobile number.

21. It is important to note here that perusal of Para No.6 of the judgment of the Hon'ble Bombay High Court Bench at Nagpur in Criminal Application No.1831/2008 and 1840/2008 show that " statement of Jitendra Rathod also shows that applicant Babusing Rathod was the person who is the President of the Society. The college was being run in the land owned by Subhash Maharaj Rathod nephew of the applicant Babusing. Whether or not the applicant Babusing has any concern with the society or the college is again matter of further investigation. It is not necessary that one must be office bearer of the institution. Statements of witnesses thus clearly define

the role of applicant Babusing also.” Hence, considering the material on record and discussion as above I am of the view that there is sufficient material to frame charge against the applicant.

22. It is important to note here that the accused can be discharged if charges against him appear to be groundless. 'Groundless' means that the materials placed before the Court do not make out or are not sufficient to make out a *prima facie* case against the accused i.e absence of any ground for presuming that the accused has committed an offence. At this stage, it is required to consider the materials put forward by the Investigating Officer on their face value. Taking into account the above settled features and statements of witnesses; it appears that there are *prima facie* material on record to proceed against the accused in respect of offences punishable under section 420 read with section 34 of the I.P.C. Therefore, I pass the following order.

ORDER

The application (Exh.55) is hereby rejected.

Sd/-

(R.M. Shaikh)

Judicial Magistrate First Class,
(Court No.3) Manora.

Date :- 15.10.2018.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word as per the original order.

Name of Stenographer :- S. P. Kale, Stenographer (L.G.)

Court Name :- 2nd Civil Judge (Jr.Dn.) and J.M.F.C.,
Manora. Dist. Washim.

Date :- 15/10/2018

Order signed by the :- 15/10/2018
presiding officer on

Order uploaded on :- 16/10/2018

