

ORDER BELOW EXH. No.53

(Passed on 15-10-2018)
(CNR No. MHWS09-000211-2010)

1. This is an application filed by accused No.3/applicant under Section 239 of the Criminal Procedure Code (for short 'the Cr.P.C.') for discharge. My learned predecessor has called say of the informant. Accordingly, he has filed his say vide Exh.69.

2. It is contended by accused No.3 Dr. Devashish Ranjit Kundu that, he is well qualified person. He is medical practitioner in Homeopathy faculty of medical science and awarded Ph.D in the said field. The applicant at present doing private practice at Hawra, West Bengal.

3. It is further contended by accused No.3 that, Assistant Director, Ayurved namely Vaidya Lieus John has lodged report at Police Station, Manora on 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.3 and in the report it is alleged that in advertise of the college it was shown that the said college was affiliated with the Mooreland University. However, it is again mentioned that accused No.1 did not produce any document to show that the said college was affiliated with Mooreland University. In the report, the name of the applicant is mentioned. However, it is nowhere mentioned that how the present applicant is connected with the said college. Moreover, admission of the students for obtaining any fees from them. Further, on the said report the above crime is registered and charge-sheet is filed.

4. It is specifically mentioned in the report that, enquiry report is attached with the said report. In the enquiry report in para No.13, it is specifically mentioned that the prospectus produced by the college of

Mooreland University does not mention any courses of B.A.M.S. The reference is only the name of the applicant as co-ordinator and Director of Moorland University and nothing more. Along with the charge-sheet there are statements of enquiry committee and complainant and the said statements also could not show any role of the applicant for running the course of B.A.M.S. in the said college by the trust Sevadas Maharaj Ayurvedic Mahavidyalaya and Hospital, Poharadevi and trust Sevadas Bahuddeyshiya Sanstha, Pusad which is duly registered trust.

5. On the contrary, the documents produced by the Investigating Officer in the charge-sheet clearly shows that no account of the college or the trust is in the name or under signature of the applicant and no amount from the college or trust is received to the applicant.

6. Further, the documents produced by prosecution clearly shows that the applicant is completely innocent person. The letter which is at page No.115, shows that applicant had given information to P.S.O. Manora and brought to notice that the course of B.A.M.S. is without any permission of Mooreland University and there is no any as such course of Mooreland University. The courses of Mooreland University are well mentioned in the prospectus and on website. The prospectus was also produced to Police Station for due verification. It was also brought to notice that in the courses of Mooreland University, the student's registration as well as admission fees are to be remitted to the designated bank account of Mooreland University viz. LLOYDS TSB (LOYDS TSB BANK PLC) Church St Stoke-on-Trent Branch, 68 Church Street Stoke-on-Trent Staffs ST 41 BW Great Britian (UK), Account No.0762078, Branch Sort Code 30-93-83. There is no any amount received in the said account from the college or trust in respect of admission of students. The permission was granted to only harbour courses online and not to any B.A.M.S. course. Thus, the

involvement of the accused is not at all there.

7. The prospectus of Mooreland University is also on record. The letter which is on record at page No.117 clearly shows that the Mooreland University has given approval to advance diploma in Herbology and Ayurvedic Herbs and it is online course. Then the other documents the letter of the accused dated 03.10.2007, 17.04.2008, affidavit of Prof. Dr.Sir Malik Abdul Kayyum Awam clearly shows that Mooreland University is not at all concerned with the course of B.A.M.S. run by the college, admission of the student and fees collected from the student.

8. The over all documents, statements, seizure panchanama which is filed under section 173 of the Cr.P.C. clearly shows that there is wrong assumption of the complainant and Investigating Officer that there is any common intention of this accused with accused No.1 Dinesh Jadhav. There is nothing on record to conclude that the applicant had invited the admission of the students for B.A.M.S. course, which is approved by Mooreland University. On the contrary, accused No.1 who was appearing before enquiry committee before lodging the report also did not produce anything to show that the course of B.A.M.S. was approved by Mooreland University. On the contrary, it is well mentioned that he has not produced as such document. That before registration of the crime no enquiry was made with the applicant for giving any proper explanation. Throughout the investigation, nothing has brought on record that the applicant has deceived any student and given admission to them and obtained fees.

9. There is no any role of the applicant for the opening of the college nor he worked there nor he sponsored and made publicity of the said college for the admission of any student. He has not obtained any fees from the said college and trust.

10. Thus, the applicant is innocent person. There is no material on record to frame charge under section 420 read with section 34 of the I.P.C. against him. He is not concerned with accused No.1 and 2. The articles and documents which are seized from accused No.1. The enquiry committee, college staff, servants and students are also not pointing out any involvement of the applicant for framing charge under section 420 of the I.P.C.

11. Thus, over all the applicant 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 residing at Hawra, West Bengal. He is interested in development of medical science for health in the world and therefore was connected with Mooreland University without any personal profit. He was only honorary designated and not employee. Thus, it is necessary to hear the accused and the prosecution before framing the charge and on hearing both side the applicant may kindly be discharged. Hence, he prayed for allowing this application.

12. The learned APP filed his common say (Exh.83) for application 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.

13. 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 recognized 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.

14. 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 i.e. 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.

15. 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 recognized 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.

16. It is also submitted by the learned APP that in respect of discharge application of accused No.3, it is pertinent to note that accused No.3 Dr.Devashish Kundu was also present at the time of inauguration function of B.A.M.S. college at Poharadevi along with accused No.1 and 2 and even though said college not recognized by Mooreland University. It means that, he having knowledge about the inauguration of unauthorized B.A.M.S. college at Poharadevi even though he keep mum.

17. It is further submitted by the learned APP that it is also surprising from the statement of the students that accused No.3 visited to unauthorized B.A.M.S. college in February 2008 and halt for seven days. At that time, also students asked him about the authenticity of the said B.A.M.S. college, but he deliberately avoid to give answers to them. So considering all the above facts and circumstances it is clear that accused No.3 along with accused No.1 and 2 criminally conspired together to cheat those students and grab huge amount from them by showing that B.A.M.S. is recognized by Mooreland University.

18. Hence, considering all the above facts and circumstances, it clearly shows 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 student who are the future of the country. Hence, he prayed for rejection of the application (Exh.53).

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

20. 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 offence is made out or not. However, before going to discuss merits of the application. We should first deal with the offence punishable under section 420 of the Indian Penal Code. It runs 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.

21. 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 submitted by the applicant that in enquiry report at Para No.13 it is specifically mentioned that the prospectus produced by the college of Mooreland University does not mention any courses of B.A.M.S. The reference is only the name of the applicant as Co-ordinator and Director for Mooreland University and nothing more. However, it is important to note here that in the said report it is concluded that the accused Dr. Dinesh Jadhav and accused Devashish Kundu are directly responsible for the alleged offence. Hence, the applicant will not get any benefit from his said contention.

22. Further, statement of student Balaji Madhvrao Ingole at Page No.65 shows that the applicant Devashish Kundu visited the said college in the month of February for 8 days. Further, perusal of the statement of student Mahesh Jagdish Kolambe at Page No.67 also shows the same thing.

It means that, he was having knowledge about the unauthorized B.A.M.S. college at Poharadevi but he does not disclose this thing to Police. Even the statement of the students shows that they have asked about the authenticity of the said B.A.M.S. college to him but he avoided to give answers.

23. It is further submitted by the applicant that the documents produced by the investigating officer in the charge-sheet clearly shows that no account of the college or the trust is in the name or under signature of the applicant and no amount from the college or trust is received to the applicant. Nevertheless, it is important to note here that all these things are not material for framing charge against the applicant under section 420 read with section 34 of the I.P.C.

24. Further, the applicant submitted that he is an innocent person. The letter at Page No.115 shows that he had given information to P.S.O Manora and brought to notice that the course of B.A.M.S. is without any permission of Mooreland University and there is no any such course of Mooreland University. Moreover, there no amount received in the account of said University from the college or trust in respect of admission of student.

25. However, it is important to note here that these things can be best ascertained after trial. Moreover, merely giving copy of letter at page No.115 does not mean that the applicant has not involved in the alleged offence. At this stage, this court has to decide whether there is prima facie involvement of the applicant in the alleged offence. The learned advocate for the applicant vehemently argued that there is no material to frame charge against the accused under section 420 read with section 34 of the I.P.C. However, considering the material on record and discussion as above I am of the view that there is sufficient material on record to frame the charge against the applicant. Hence, the argument of the advocate for the applicant is not acceptable.

26. 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 offence punishable under section 420 read with section 34 of the I.P.C. Therefore, I pass the following order.

ORDER

The application (Exh.53) is hereby rejected.

Date :- 15.10.2018.

Sd/-
(R.M. Shaikh)
Judicial Magistrate First Class,
(Court No.3) Manora.

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 :- A. S. Bhojapure, Jr. Clerk

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