

HON'BLE SRI JUSTICE K.G.SHANKAR

CRIMINAL PETITION No. 6844 of 2008

ORDER:

A1 and A2 in CC No.1592 of 2008 on the file of the V Addl. Judicial First Class Magistrate, Kakinada, East Godavari District sought for quashing of the above case. There are as many as nine respondents herein. Notice was served upon the respondent No.1 which is the State and respondent Nos.3 to 5 and 7. The respondent No.9 refused the notice and hence, it is deemed that the notice was served upon her. Notice was not served upon the respondent Nos.2, 6 and 8. Notice indeed was sent to them. The notices have not returned so far.

2. The case arises from a joint complaint. A common complaint was lodged by the respondents 2 to 9. Service of notice upon some of them consequently is sufficient to dispose of the case. Accordingly, this petition is disposed of, although notice is not served upon respondents 2, 6 and 8.

3. The petitioners 1 and 2 were the accused in CC No.1592 of 2008. Sri K.R.Koteswara Rao, learned counsel for the petitioners reported that the 1st petitioner died on 27.10.2010 and that the case against him consequently stood abated. The record does not disclose about the death of the 1st petitioner. The case against the 1st petitioner stands on a different footing from the case of the 2nd petitioner. I propose to deal with the case of the two petitioners independently.

4. The petitioners as already pointed out are A1 and A2. A-1 is the Secretary-cum-Correspondent of Geddam Tata Rao (GTR) Educational Society, Kakinada. A-2 is the Administrative Officer of the society. The

respondents out of whom the 3rd respondent belongs to Kerala, were students of the Nursing College run by the society headed by A-1.

5. The case of the prosecution is:

i) A-1 rented a building in the year 2006 claiming that Lalitha College of Nursing was started by the society for studies in B.Sc., Nursing. He admitted eleven students for the course of B.Sc., Nursing. Three of the students discontinued the studies. The remaining eight students are R2 to R9.

ii) The respondent Nos.2 to 9 allegedly made payments ranging from Rs.15,000/- to Rs.98,000/- for the course for six months. The transactions were run by A-1 and A2. The Management of GTR Society subsequently passed a resolution to hand over the management of Lalitha College of Nursing to M/s.Gifford Memorial Hospital of Seventh Day Adventists, Nuzividu Krishna District and accordingly, handed over the same to M/s.Gifford Memorial Hospital of Seventh Day Adventists, Nuzividu Krishna District.

iii) A1 and A2 directed the students to continue their studies in M/s.Gifford Memorial Hospital of Seventh Day Adventists, Nuzividu, Krishna District. The 1st accused received Rs.1.15 crores from M/s.Gifford Memorial Hospital of Seventh Day Adventists for transferring the management of Lalitha College of Nursing to them. M/s.Gifford Memorial Hospital of Seventh Day Adventists, Nuzividu Krishna District, however, failed to obtain affiliation for Lalitha College of Nursing from NTR Health University. The college consequently, was wound up. Respondent Nos.2 to 8 had no alternative but to attend the examination in Ranga Reddy Medical College, Kakinada. The medical college informed them that the respondents 2 to 9 shall have to attend the computer examination in their parent institution only. Consequently,

the respondents 2 to 9 could not complete their course as their parent institution had already stood wound up. A1 and A2 thus cheated the respondents 2 to 9 by starting a spurious college and collected fee.

6. The learned counsel for the petitioners contended that so far as the 2nd accused is concerned, she is the Administrative Officer and that she has nothing to do with the alleged cheating indulged upon by the 1st accused. In the complaint duly signed by the Respondents 2 to 9 there was no whisper about the overtacts on the part of the 2nd accused in the alleged cheating. The offence u/Sec.420 IPC thus, is *prima-facie* not made out against the 2nd accused. The complicity of the 2nd accused in the entire incident is her standing as the Administrative Officer of the college. I am afraid that a plain reading of the complaint has not made out any case against A-2. The case against A-2 consequently, is liable to be quashed.

7. So far as A-1 is concerned, the entire allegations in the complaint as well as in the charge sheet are against him only making out a clear case against him. Sri K.R.Koteswara Rao however, contended that A-1 is no more and the case automatically stood abated against A-1. As already pointed out, the death extract of A-1 has not been filed. The death of A-1 is not proved. The case of A-1 stands on an entirely different footing from the case of A-2. While no *primafacie* case is made out against A-2 from the complaint, the entire case is a pointer against A-1 from the complaint and the charge sheet.

8. I therefore, consider that A-1 is liable to face trial in the event he is alive. If he is no more, it is for the prosecution to report to the trial court that A-1 is no more and that the case stood abated against him.

9. So far as A-2 is concerned, for the reasons as already pointed out, *primfacie* case is not made out against her. The case against A-2 is

liable to be quashed.

10. Accordingly, this petition is allowed in part. This petition is dismissed so far as A-1/1st petitioner is concerned. This petition is allowed so far as A-2/2nd petitioner is concerned. The case against A-2 in CC No.1592 of 2008 on the file of the V Addl. Judicial Magistrate of First Class, Kakinada stands quashed.

JUSTICE K.G.SHANKAR

Dt. 31-03-2011

Mjl/*3