



IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Criminal Jurisdiction)

DATED : 04.06.2013

CORAM
THE HON'BLE MR. JUSTICE S. P. WANGDI , JUDGE

Criminal Misc. Case No. 12/2013

1. Eastern Institute for Integrated Learning
In Management (EIILM) University,
Budang, Mallabassey,
Dist. Soreng,
Sikkim through its Registrar
Col. (Retd.) Alok Bhandari.
2. Col. (Retd.) Alok Bhandari,
Registrar, EIILM University
R/o 1302, Sector-II, Science City,
Bhopal, Ahmedabad.
Presently residing at Majhigaon,
Jorethang, South Sikkim.
3. Mr. O. B. Vijayan,
Vice Chancellor, EIILM Univesity,
S/o Late O.N.Bhaskaran Moosathu,
C/o B – II/100, MCIE,
Mathura Road, New Delhi – 44.
4. Vinod Dahiya,
Controller of Examinations,
EIILM Univesity,
S/o Shri Narain Singh,
C/o B – II/100, MCIE,
Mathura Road, New Delhi – 44.

... **Petitioners**

Versus



1. State of Sikkim
Through Secretary (Home)
2. S.H.O. PS Sadar, Gangtok.
3. Additional District Collector,
Gangtok (East Sikkim).

... **Respondents**

For the Petitioners : Mr. K. T. Bhutia, Senior Advocate
with Mr. Vinod K. Shukla, Mr.
Shakeel Ahmed and Ms. Bandana
Pradhan, Advocates

For the Respondents : Mr. J. B. Pradhan, Public Prosecutor
with Mr. S. K. Chettri, Assistant
Public Prosecutor.
Ms. Linda Palmo Bhutia,
Investigating Officer/SDPO,
Rangpo, East.

O R D E R (O R A L)

Wangdi,J

By filing the present Criminal Misc. Case, the
Petitioners seek to quash FIR No.92/2013 dated 06.05.2013
under Sections 467/468/471/181/120(B) of the Indian Penal
Code (for short "IPC") registered against them by the Sadar
Police Station, Gangtok.

2. It is the case of the Petitioners that the Jorethang
Police Station, South Sikkim, had registered a case against
them under those very provisions under FIR No.51/2012 dated
01.09.2012 with regard to the very same offence as in FIR



No.92/2013 dated 06.05.2013 registered by the Sadar Police Station, Gangtok.

3. Mr. K. T. Bhutia, learned Senior Advocate appearing on behalf of the Petitioners, submits that grave injustice has been caused to the Petitioners to have the second FIR lodged against them for the same offence and to face the ordeals of investigation once again. This is all the more so when charge sheet in respect of the first FIR has already been filed in a competent Court. It is submitted that the subject matter of the second FIR can at best be an evidence against the Petitioners for the offences laid in the first FIR. Reference was made by him to **Amitbhai Anilchandra Shah vs. The Central Bureau of Investigation & Anr. : 2013 (5) SCALE 407**, more particularly paragraph 52 thereof, in support of his contention.

4. Mr. J. B. Pradhan, learned Additional Advocate General and Public Prosecutor appearing for the State, submits that position of law placed on behalf of the Petitioners is well settled and that in **Shivshankar Singh vs. State of Bihar : (2012) 1 SCC 130** and **Babubhai vs. State of Gujarat & Ors. : (2010) 12 SCC 254** the ratio has been reemphasised. We may reproduce the following portions stressed upon by Mr. Pradhan : -

"13. In Ram Lal Narang v. State (Delhi Admn.) this Court considered a case wherein two FIRs had been lodged. The first one formed part of a subsequent larger conspiracy which came to light on receipt of fresh information. Some of the



conspirators were common in both the FIRs and the object of conspiracy in both the cases was not the same. This Court while considering the question as to whether investigation and further proceedings on the basis of both the FIRs was permissible held that no straitjacket formula can be laid down in this regard. The only test whether two FIRs can be permitted to exist was whether the two conspiracies were identical or not. After considering the facts of the said case, the Court can to the conclusion that both conspiracies were not identical. Therefore, lodging of two FIRs was held to be permissible.

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20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 Cr.PC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC.

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(emphasis supplied)

5. Mr. Pradhan submits that if the case falls within the purview of the ratio set out above, the Petitioners shall be



entitled to the reliefs sought for in the present case. It is, however, submitted that the second FIR is in respect of a distinct offence and not at all identical to the first one and, therefore, valid for investigation. He fairly submits that should the petition be allowed, it should not cause any impediment to the State in pursuing with the investigation of offences under the second FIR No.92/2013 dated 06.05.2013, in accordance with law in the light of the provisions of sub-section (8) of Section 173 of the Code, by which it is permissible for the I.O. to seek permission of the Court to take up further investigation.

6. Heard the learned Counsels for the parties.

7. In order to arrive at a finding as to whether the offences alleged in the two FIRs are identical or not, a careful scrutiny of those were necessitated and we have accordingly done so. For convenience the FIRs are reproduced below: -

First FIR No. 51/2012 Dated 01.09.2012

"To,

C.J.M. (S & W)
NAMCHI
South Sikkim.

SUB: F.I.R.

Sir,

One Eastern Institute for Integrated Learning in Management
(E.I.I.L.M.) University headquartered at Jorethang, South Sikkim



has been established as a Private University by Act No.4, 2006 enacted by Govt. of Sikkim on 24.03.2006 and published by Government of Sikkim on 24.03.2006 and published by Government of Sikkim vide Gazette Notification No.28/LD/2006 dated 3rd April 2006. This University was granted permission by University Grant Commission vide No.49-19/2007(CPP-i) dated 22nd July 2008 to conduct programmes as per State Act with approval from concerned councils. Thereafter, the University has established global and a national nexus of institutions and started selling Degrees, Diplomas and Certificate of various courses to needy students through its established network for which it has not been granted permission by any competent authority either by the State Govt. of Sikkim or the Government of India.

This University was granted permission by Joint Committee of U.G.C. – A.I.C.T.E. – D.E.C. for conducting only three Distance Courses namely B.A. (Hospitality & Tourism), B.C.A. and MBA and that too only for the academic year 2009-2010. However, this University has been illegally offering more than a dozen courses beyond the period of the academic year in violation of the prescribed rules. Further, this University is offering more than 50 courses in Distance Learning Mode without any basis.

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E.I.I.L.M. University is also allegedly attracting these students who have failed their examination and providing them mark sheets after receiving money in the name of fees, tuition fees etc. The students who are being enrolled in this University as regular students are neither visiting the University Campus nor attending any classes for earning their degree.

E.I.I.L.M. University neither has any infrastructure to conduct classes nor any faculty for the same. Based on the inspection report conducted by U.G.C. on the 15th and 16th of March 2008 the University has reported to have a total land of 11 acres at 8th mile Malabesey, where in 14000 sq.ft. was for built up area. At the time of inspection it is noted that the construction work had started. Upon inspection of the land it is found that till date the building is found incomplete.

Further, the E.I.I.L.M. University is awarding degeees of students for courses for which it does not have any recognition from the competent authority as AICTE, Bar Council of India, Dental Council of India etc.

The enter (sic) illegal activity in the name of E.I.I.L.M. University is being done by Mr. Vinay Rai S/o Kulwant Rai, A-41, MCIE, Mathura Road, New Delhi in conspiring with Chancellor Ms. Usha Agrawala. Vide Chancellor Dr. O.B. Vijayan, Vice Chancellor Prof. Mini Juneja, Registrar Col. Alok Bhandari, Dr. R.P.Banerjee, Prof. S. Neelamegham, Dr. Rupa Raje Gupta, Prof. Jahar Shaha, Savita Sengar and following centers: -

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These individuals in criminal conspiracy with each other are indulging in these fraudulent activities by fabrications record/documents, committing forgery thereby cheating innocent victims in a violation of the establishment rules and provisions of law.

Therefore a Jorethang P.S. case No. 51/2012 dated 01.09.2012 u/s 206/420/467/120B/34 IPC registered against the Management of EIILM University on suo motu."

Second FIR No.92/2013 Dated 06.05.2013

"To,
Station House Office,
Sadar Police Station
Gangtok.

Dated 6/5/13

Sub - FIR against authorites of the EIILM University and Mandeep Kaur d/o Mr. Jasbir Singh.

Sir,

Mr. Neelam Choker, the Principle of Minerva College of Education, in Taraori, Karnal, Haryana had applied for information under the RTI Act 2005 U/s 6(3) on 15.5.2012 vide ref no: 13/MCE/12 for obtaining information pertaining to the genuineness of the mark sheet bearing Enrollment no: EIILMU/09/F6536 of one Mandeep Kaur d/o Mr. Jasbir Singh.

In response to the above request routed through Addl. District Collector-I (East Gangtok, Sikkim the Eastern Integrated Institute of Learning In Management (EIILM) University, main campus, 08 Mile Budang, Malabasey Sikkim, 737121 had replied that the statement of marks bearing No.223627 of Ms. Mandeep Kaur d/o Jasbir Singh enrolled with the EIILM University vide Enrolment No.EIILMU/09/F6536 for Master of Arts (Education) during the sessions July 2010 to June 2011 was verified and was found to be correct.

This report of EIILM referred above has however been found to be false after field verification as there is no department for Master of Arts (Education) course being run in campus of the said University, besides, no approval of the Distance Education Council (DEC) has been accorded to this University for running the said Course in distance mode. A copy of the letter from the DEC addressed to SDPO/Namchi dated 27/9/12 vide letter No.DEC/SIK/EIILM/2008 is attached herewith for your reference. In addition, it was revealed that there is no faculty member employed for the above stated course in the campus of the said University.



Thus, the information furnished by the EIILM University appears to be fake document which is being used as genuine by Ms. Mandeep Kaur d/o Shri Jasbir Singh....."

8. From the above, it is quite obvious that the first FIR being 51/2012 dated 01.09.2012 contains omnibus allegations, inter alia, of mass sale of false degrees, while the second one under FIR No.92/2013 dated 06.05.2013 registered by the Sadar PS., Gangtok, on the other hand, deals with a specific instance of such sale.

9. In the case of **Amitbhai Anilchandra Shah (supra)** involving triple murders, the first two of which took place in a different State than the third one, it has been held that in the facts and circumstances, those offences would form part of the same transaction. In paragraph 52 (a), (b), (c) and (d) of the judgment, the following principle has been laid down: -

" 52 a) This Court accepting the plea of the CBI in *Narmada Bai (supra)* that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed the CBI to "take over" the investigation and did not grant the relief prayed for i.e., registration of a fresh FIR. Accordingly, filing of a fresh FIR by the CBI is contrary to various decisions of this Court.

b) The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the First Information Report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of evidence collected, Investigating Officer has to form an opinion under



Section 169 or 170 of the Code and forward his report to the concerned Magistrate under Section 173 (2) of the Code.

c) Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the Court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

d) Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report (s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered



with by the High Court by exercise of
power under Section 482 of the Code or
under Articles 226/227 of the
Constitution.

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[underlining mine]

11. In view of the above principle and facts of the case briefly alluded to above, this Court is of the view that it would not be permissible for the second FIR No.92/2013 dated 06.05.2013 to survive and, therefore, it hereby stands quashed.

12. However, it is made clear that the investigating agency is at liberty to take up further investigation with regard to the offence under that FIR as a connected cognizable offence committed in the course of the same transaction involved in the first FIR and, file additional charge-sheet in the event of there being sufficient materials against the petitioners after such investigation.

13. It is also made clear that remarks and observations made herein shall not be construed as expressions of any opinion on the merit of the case.



14. With the above observation, the Criminal Misc. Case stands disposed of.

Sd/-

(S. P. Wangdi)
Judge
04.06.2013

Approved for Reporting : Yes / No

Internet : Yes / No

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