



HIGH COURT OF SIKKIM, GANGTOK
(Criminal Miscellaneous Jurisdiction)

CrI. M. C. No. 17/2013

PETITIONER

Shri Vinay Rai,
S/o Late Kulwant Rai,
aged about 64 years,
12, Aurangzeb Lane,
New Delhi.

Versus

RESPONDENT

State of Sikkim.

CrI. M. C. No. 18/2013

PETITIONER

Col. (Retd.) Alok Kumar Bhandari,
Registrar,
EIILM University,
R/o Majhigaon, Jorethang,
South Sikkim.

Versus

RESPONDENT

State of Sikkim.

CrI. M. C. No. 22/2013

PETITIONER

Shri Vinay Rai,
S/o Late Kulwant Rai,
aged about 64 years,
12, Aurangzeb Lane,
New Delhi.

Versus

RESPONDENT

State of Sikkim.

CrI. M. C. No. 23/2013

PETITIONER

Col. (Retd.) Alok Kumar Bhandari,
Registrar,
EIILM University,



R/o Majhigaon, Jorethang,
South Sikkim.

Versus

RESPONDENT

State of Sikkim.

CrI. M. C. No. 24/2013

PETITIONER

Smt. Amita Bhandari,
W/o Col. (Retd.) Alok Bhandari,
R/o Majhigaon, Jorethang,
South Sikkim.

Versus

RESPONDENT

State of Sikkim.

Criminal Miscellaneous Petitions under Section 482 of the Cr.P.C.

Appearance :

Mr. Ramesh Gupta, Senior Advocate with Mr. Shakeel Ahmed, Mrs. Chitra Sharma, Mr. Radhesh Makrandi and Ms. M. Begum, Advocates for the Petitioner(s).

Mr. J. B. Pradhan, Addl. Advocate General with Thinlay Dorjee Bhutia, Advocate, Mr. S. K. Chettri and Mrs. Pollin Rai, Asstt. Public Prosecutors and Mr. D. K. Siwakoti, Advocate for the State/Respondent.


ORDER

(15.10.2014)

Following Order of the Court was delivered by

SUNIL KUMAR SINHA, Actg. CJ.

1. The Petitioners herein are the Office Bearers of the Eastern Institute for Integrated Learning in Management



(EIILM) University. They are the three accused persons among the twelve in General Register Case No.119/2013, u/Ss.406, 420, 467, 120B/34 IPC, pending in the Court of the Chief Judicial Magistrate (South & West), Namchi, which arises out of FIR No.51/2012 of Jorethang Police Station of District South Sikkim. The Petitioners have prayed for quashing of the proceedings of the said criminal case, FIR No.51/2012 and the entire charge-sheet filed against them.

2. The facts, briefly stated, are as under: -

2.1 The EIILM University (in short, the University) was established by the Government of Sikkim vide notification No.GOS/DTE/2005/VIII(14)/100 dated 26.05.2006 enacting "Eastern Institute for Integrated Learning in Management, University, Sikkim Act, 2006 (hereinafter referred to as the Act of 2006). It was granted approval by the University Grants Commission (UGC) vide letter No.F-9-19/2007 (CPP-1) dated 22.07.2008. The documents filed with the charge-sheet would show that Distance Education Council (in short, DEC) had accorded recognition to the University for one year only, i.e. 2009-10, for conducting 3 programmes through distance mode, i.e. B.A.



(Hospitality & Tourism), B.C.A. & M.B.A. The said recognition has expired in September, 2010. According to the prosecution, it came to the notice of the State authorities that the University has been offering more than 50 distance learning courses through its regional centres, off-campus institutions and study centres and it revealed during the investigation that the Petitioners and other accused persons by their fraudulent act by fabricating records/documents committing instances of mis-representation and forgery, have cheated lakhs of students and their so-called coordinators running their various centres all over the country.

2.2 During the course of investigation, it was found that as per the Act of 2006, total 46 programmes were allowed to be conducted by the University and for those programmes alone, the University was entitled to award degrees, whereas the authorities of the University were fraudulently conducting 74 courses in the distance education mode without any recognition/approval from the concerned accreditation bodies. The list of 46 programmes which were allowed as per Section 10 of the Act and the list of the programmes, which the accused were running through distance



education mode, have been filed with the charge-sheet.

2.3 In further investigation, it was found that D.E.C. through its letter dated 07.05.2012 addressed to Pro-Vice Chancellor, O.B. Vijayan (accused No.3, not before us) barred the University from conducting any course in distance mode, but the accused persons did not discontinue their activities and continued running these courses by cheating their coordinators all over the Country and by issuing unauthorized degrees/diplomas/certificates to the lakhs of students, who were enrolled through various centres throughout the Country.

2.4 In further investigation, it was found that the accused persons were running various technical programmes and granting diplomas in various engineering disciplines, like Electrical Engineering, Mechanical Engineering, Electronics and Telecommunications and many other technical courses. The list of the national coordinators, which could be found by the Investigating Officer, has also been filed along with the charge-sheet. This shows that there were 17 such national coordinators found by the Investigating Officer, who were having many admission centres for such courses and the



students were admitted and degrees/diplomas/certificates signed by the University authorities were issued to them for many courses for which the University was not authorized. According to the Investigating Officer, the national coordinators were, in fact, running study centres by their own names just to defeat the decision/norms of the UGC and other accreditation bodies and the lakhs of students and their guardians were cheated, who were paying heavy fees and thinking that they were getting proper and genuine degrees/diplomas/certificates.

2.5 Earlier the charge-sheet was filed against 11 accused persons including Mr. Vinay Rai and Col. (Retd.) Alok Kumar Bhandari, which is the subject matter of CrI. M.C. No.17/2013 and 18/2013. However, when supplementary charge-sheet was filed against them and Smt. Amita Bhandari, the 12th accused, with some additional materials, Mr. Vinay Rai and Col. (Retd.) Alok Kumar Bhandari again filed two miscellaneous cases, i.e. CrI. M.C. No.22/2013 and No.23/2013, and a separate CrI. M.C. No.24/2013 was filed by Smt. Amita Bhandari. Since the subject matter in all the petitions are same, they are being disposed of by this common order.



3. Mr. Ramesh Gupta, learned Senior Counsel, appearing on behalf of the Petitioners, has raised three-fold arguments. He, firstly, argued about the powers of the High Court u/S. 482 of the Cr.P.C., its ambit and instances of necessity when it has to be exercised. He cited many decisions (which shall be quoted later on) on these points. He, thereafter, argued that even the entire material collected by the prosecution is taken as it is, no offence is made out against the Petitioners. Lastly, he contended that if there was violation of any rules or regulations, applicable to the University, by the Petitioners, it may be a civil wrong and a criminal case cannot be prosecuted against them.


4. On the other hand, Mr. J. B. Pradhan, learned Additional Advocate General, appearing on behalf of the State, has opposed these arguments and submitted that the evidence collected by the prosecution would show that the Petitioners were deeply involved in cheating lakhs of students by issuing unauthorized degrees/diplomas and certificates by realizing huge amount by mis-representation and fraud. He relied on paragraph 27 of the judgment in



**Amit Kapoor vs. Ramesh Chander & Anr. : (2012) 9
SCC 460.**

5. Having heard Counsel for the parties, I have perused the records.

6. So far as jurisdiction of the High Court u/S.482 of the Cr.P.C. is concerned, it is well settled by many decisions of the Hon'ble Supreme Court, which Mr. Gupta has also cited. There is no dispute on this issue, therefore, I am not going to quote each judgment cited by Mr. Gupta, however, for ready reference and for just and proper decision, I would like to refer to various principles laid down by the Hon'ble Supreme Court in a concise form. The width of the powers of the High Court u/S. 482 of the Cr.P.C. and under Article 226 of the Constitution of India are unlimited and the High Court could make such orders as may be necessary to prevent abuse of the process of the Court, or otherwise to secure the ends of justice. Under Section 482 of the Cr.P.C., the High Court is free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be



maintained [**Rukmini Narvekar vs. Vijaya Satardekar & Ors. : (2008) 14 SCC 1**]. The High Court, in its jurisdiction u/S. 482 of the Cr.P.C., must make a just and rightful choice. It is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations leveled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law [**Rajiv Thapar & Ors. Vs. Madan Lal Kapoor : (2013) 3 SCC 330**].



7. Many a times, by way of illustration, the categories of cases, wherein inherent powers u/S. 482 of the CrP.C. or powers under Article 226 of the Constitution of India, can be exercised, have been defined by the Supreme Court. In **State of Haryana & Ors. Vs. Bhajan Lal & Ors. : 1992 Supp (1) SCC 335**; we find following categories of cases, wherein such power may be exercised:

“ (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.



(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with male fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance of the accused and with a view to spite him due to private and personal grudge."

8. Some more principles in this regard were further added and reiterated by the Hon'ble Supreme Court in paragraph 27 of the judgment of **Amit Kapoor (supra)**, wherein along with other principles, it was laid down that the quashing of the charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of



the documents or records but is an opinion formed prima facie.

9. It is on these broad principles, we shall now proceed to examine the case set forth by the prosecution. The EIILM University was established by an Act of State Legislature and was empowered to award degrees as specified by the UGC u/S. 22 of the UGC Act, 1956 with the approval of Statutory Councils, wherever required. The University had framed its Statutes and the Rules in exercise of the powers given by the Act. The Rules are called as the "Eastern Institute for Integrated Learning in Management University, Sikkim Rules 2008". Rule 10 deals with the award of Degrees, Diplomas, Certificates and other academic degrees. Rule 10(6) provides for the nomenclature of the Degree and Diploma that would be conferred by the University under different departments as per Annexure-I. Annexure-I contains many Degrees and Diplomas in various Departments and Subjects. For the sake of example, we take the Department of Engineering and Applied Sciences. It is at Sl. No.10. This has been



divided into three parts, namely (a) Bachelor's Degree; (b) Master's Degree and (c) Diploma. In Diploma, there are three subjects, namely, (i) Diploma in Forensic Science; (ii) Telecom Services and (iii) Diploma in Optoelectronics & Communication Systems. The prosecution has seized many documents to show that the University was running various courses, which were not at all included in Annexure-I. The prosecution has filed a list of courses illegally run by the University and many other documents illegally issued to the students relating to such Degree or Diploma. The contents of the admit cards issued to the various students (Annexure R-3 collectively taken out separately from the charge-sheet) would show that admit cards for appearing in the examination for the course of Diploma in Mechanical Engineering, Diploma in Electrical Engineering, Diploma in Electronics and Telecommunications etc. and many other courses, even not added in the Annexure-I, were issued to various students after realizing huge amount of fees.

10. That apart, the most important feature is that these courses related to engineering were being run through distance education mode. The contents of the charge-sheet



would show that many complaints in this regard were sent to the competent authorities. It is writ-large on record that the DEC had accorded recognition to EIILM University for one year only, i.e.2009-10 and for offering three programmes through distance mode, i.e. B.A. (Hospitality & Tourism), BCA and MBA, that is to say that except the above three programmes, the University was having no permission from the DEC for other programmes, however, it was running many courses through distance mode. In this regard, the Indira Gandhi National Open University (in short, IGNOU) had issued a letter of warning to accused O.B. Vijayan, Pro-Vice Chancellor, EIILM University on 07.05.2012. The complaints were to the effect that the University has entered into agreement with collaborators, which have further opened many centres. Copies of the various advertisements, website domains advertising one sitting degree/one year degree etc. were also sent to the concerned authorities, which were found misleading.

11. The prosecution has brought on record a letter dated 30.01.2013 issued by the IGNOU to show as to what was the factual scenario at the relevant time. Paragraph 13 of



the letter would show that the Universities were permitted to offer only those technical/professional programmes like MCA/MBA/PGDM which are allowed by AICTE. However, other technical programmes including BE/B.Tech etc. were not allowed to be offered through distance mode. The Universities were required to follow the norms of apex regulatory bodies like AICTE, UGC, NCTE etc. and wherever necessary also seek their recognition for technical/professional programmes as per requirement. According to the above letter, the Ministry of Human Resource Department, Government of India, New Delhi, vide D.O. No.6-7/2009-DL dated 29.07.2009, had directed the DEC to withdraw permission granted to various institutions to conduct B. Tech./B.E. programmes through distance mode. Based on aforesaid letter of MHRD, the DEC had written, vide Letter No.DEC/2009/2513-2729 dated 13.08.2009, to all Open and Distance Learning (ODL) providers not to offer B. Tech./B.E. programmes through distance mode and also asked them to ensure that no student is admitted from the year 2009-2010 onwards. The contents of the above letter in paragraph 17 would further show that the DEC had



asked the University to immediately stop offering any programme through distance mode and issuing misleading advertisements. In addition, the University was requested to apply to DEC for continuation of recognition. However, the University has not applied to DEC, and the DEC has not continued its recognition, which was simply granted for the above three subjects for one year only.

12. Mr. Gupta, referring to the decision of **Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors. : (2001) 8 SCC 676**, has argued that EIILM University was an independent University and no prior approval of the All India Council for Technical Education (AICTE) was required to start a department for imparting a regular course or programme in technical education and the University itself was competent to conduct technical courses of its choice and selection. The point canvassed in the said matter was a different one. There, the stand of the University was that it will not fall under the definition of “technical institution” as defined u/S. 2(h) of the AICTE Act and consequently, the Regulations



made for seeking prior approval of AICTE even by the universities to commence a course or programme in technical education or a new department for the purpose, were in excess of the regulation-making powers of AICTE and consequently, were null and void and cannot be enforced against the University to the extent it obligates even universities to seek and secure such prior approval from AICTE. In the instant case, the question is quite different. Here, the courses offered by the University, as we have stated by example of Engineering courses, were not in its schedule Annexure-I. That apart, here the objection is about running such courses by distance mode. Thus, the above judgment, cited by Mr. Gupta is of no assistance to the petitioners in the facts and circumstances of the instant case.

13. Counsel for both the parties have referred to UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003. These regulations were framed on account of the instances for setting up of private Universities through State Acts. These regulations define



“private university”, “off-campus centre”, “off-shore campus” and “study centre” as per regulations 2.1 to 2.4. Regulation 3.3.1 of these Regulations provides that the off-campus centre(s) and/or the study centre(s) shall be set up with the prior approval of the UGC and that of the State Government(s) where the centre(s) is/are proposed to be opened. Regulation 3.4 further provides that a Private university shall fulfill the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability, etc., as laid down from time to time by the UGC and other concerned statutory bodies such as the All India Council for Technical Education (AICTE), the Bar Council of India (BCI), the Distance Education Council (DEC), the Dental Council of India (DCI), the Indian Nursing Council (INC), the Medical Council of India (MCI), the National Council for Teacher Education (NCTE), the Pharmacy Council of India (PCI), etc.

14. The prosecution has made allegations that the University, in fact, was running various study centres by playing fraud and mis-representation. It comes in the statements of various National coordinators that the



authorities of the University told them that they had permission and recognition from the DCE to run above courses through distance education mode, whereas such permission or recognition was never granted to the University for running the courses for which they were directed to take admissions of the students through distance mode. The statement of Naveen Jindal would show that he was Public Relations Officer of a Trust, namely, Swastik Charitable Educational Trust, which was registered under the relevant provisions, in Bhatinda, Punjab. He had signed MOU with EIILM University on 26.07.2010 with Mr. O.B. Vijayan, the Vice Chancellor and Ms. Mini Juneja, Director of Distance Education and they gave him information that all the programmes offered by the University were approved by UGC and DEC. This was also reflected in the MOU. After signing on the MOU, they paid a sum of Rs.10 lakhs to EIILM University through the account of the Trust. A month later they received a copy of the MOU signed by the officials of EIILM University, i.e. Col. (Retd.) Alok Kumar Bhandari, Registrar of the University. Thereafter, they started the work according to the rules



and regulations prescribed in the MOU. They had 437 Admission Counseling Centres of EIILM University. He stated in clear words that till the date of recording his statement, around 50,000 students had passed through Swastik Educational Charitable Trust with Degree/Diploma of EIILM University Sikkim. This was position with one of the coordinators. The prosecution came with the case that it was able to trace out 17 such National coordinators, who were running thousands of Centres like that and unauthorized degrees and diplomas were issued to the lakhs of students after realizing huge amount in the above manner. The statements of the National coordinators and many other witnesses recorded u/Ss. 161 and 164 C.P.C. would show that the accused persons had mis-represented before them that they had all recognitions from DEC for running distance courses in accordance with the relevant provisions and they were also having recognition from other authorities like UGC etc., whereas, as stated above, there was no permission to the University except for the above three courses, which also was lapsed after one year, i.e. 2009-2010 batch in the above three disciplines.



15. Thus, there appears to be sufficient material against the Petitioners to continue the criminal prosecution against them.


16. Mr. Gupta has vehemently argued that even if there were violations of the regulations of the UGC or DEC, they were simply civil wrongs which could have been dealt with by the local authorities like Chancellor etc. and a criminal liability cannot be fastened on the Petitioners so as to prosecute them before a criminal court.

17. In **Thermax Limited & Ors. Vs. K.M. Johny & Ors.:** (2011) 13 SCC 412, relied by Mr. Gupta, it was held that if there is a flavor of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay, in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding. However, in **Amit Kapoor (supra)**, it was held by paragraph 27.8 that where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic



ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence. In the instant case, on the material available on record, prima facie it cannot be held that there is no “element of criminality” and it is simply an incidence of bundle of the civil wrongs committed by the accused persons. On the contrary, it appear from the record that there was an element of criminality and the continuous acts of the accused persons were predominantly of criminal nature with civil wrongs also committed by them.

18. I am of the view that in such situation, when the acts committed were not simply civil wrongs and were having an element of criminality, the charge-sheet cannot be quashed on this account. It is not the case in which the accused persons had made one or two wrong admissions on the wrong pretext or on mis-understanding of the law. Here, as it appear, the accused persons, using the umbrella of the University, had allegedly issued invalid Degrees/



Diplomas/Certificates to lakhs of students through distance mode, after realizing huge amounts.

19. I am of the view that prima facie there is sufficient material to continue the proceedings against the accused persons.

20. The petitions, therefore, are liable to be dismissed and are hereby dismissed.

21. No order as to cost(s).

Sd/-
(Sunil Kumar Sinha)
Acting Chief Justice
15.10.2014

Approved for Reporting : Yes
Internet : Yes

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