

Punjab-Haryana High Court

Arushi Aggarwal & Ors vs Central Bureau Of Investigation on 5 April, 2022

CRM-M-15444-2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15444-2016

Date of decision: April 01, 2022

Arushi Aggarwal and others

....Petitioners

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Rai, Senior Advocate with
Ms. Rubina Vermani, Advocate
for the petitioners.

Mr. Rajeev Anand, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.RC 0512010Soo8 dated 7.9.2010 under Sections 120-B, 420, 467, 468 and 471 IP|C, registered at Police Station CBI, Chandigarh.

It is worth noticing that vide order dated 15.9.2016, the proceedings before the trial Court were stayed. Thereafter, an application for extension of time was moved and it was directed to hear the main case. Accordingly, the main case is taken up and heard in the urgent hearing.

Learned Senior counsel for the petitioners submits that an FIR was registered against 11 students, who were around the age of 18 years with the allegations that all of them have taken admission in Punjab Engineering College, Sector 12, Chandigarh under the Direct Admission of Students 1 of 34 Abroad Scheme-2010 (DASA-2010) during the academic sessions 2010-11 posing themselves to be citizens of Nepal.

It is stated that the said scheme has come into force w.e.f. 2001-02 as per the Government of India's directions, which was primarily to streamline the admission of foreign nationals studying in India as well as Indian students studying abroad in Undergraduate Engineering Programmes in centrally funded engineering institutions, other than Indian Institutes of Technology and for all the foreign students, who were eligible and 15% of the total number of seats, were reserved.

Learned Senior counsel submits that as per the case of the prosecution, all the 11 students by submitting the Nepalese Citizenship Card have applied in the aforesaid category and were granted admissions which were centrally coordinated and conducted by NITK, Surathkal, Karnataka, which was to verify the copies of the required documents of the students. Learned Senior counsel has further referred to the report submitted under Section 173 Cr.P.C., wherein the prosecution has detailed the procedure of acquisition of Nepalese citizenship by descent; birth; naturalization; by honorary award and by acquisition of territory.

Learned Senior counsel has further referred to the investigation part qua petitioner No.2-Pavneet Singh, which is identical qua petitioners No.1 and 3 as well. The operative part of the report reads as under :-

"Pavneet Singh Investigation has revealed that Pavneet Singh is a bonafide citizen of India. He took admission in BE (Mechanical 1 st 2 of 34 year, PEC University of Technology, Chandigarh under DASA Scheme 2010-11 as Foreign National on the basis of fake and fictitious Nepalese Citizenship Certificate.

Investigation has revealed that Shri Amarjit Singh, father of accused Pavneet Singh received SMS regarding admission under nominated quota for MBBS, MBA, M.Tech. B.Tech in prestigious colleges, on his mobile phone from accused Mohinder Bajaj c/o Gera Labs, Hissar. Shri Amarjeet Singh, contacted Dr. Mohinder Bajaj over phone, on which he told that he can manage admission for his son in any prestigious Engineering College like Delhi College of Engineering, Punjab Engineering College, NIT Jaipur, NIT Jalandhar, IIT Roorkie etc. on payment of advance Rs.2-3 lacs. Thereafter, in the first week of June, 2010, Pavneet Singh along with his mother and father went to the house of Dr. Mohinder Bajaj, who took them to Dr. Nishi Kant Arya. Accused Nishi Kant Arya demanded Rs.10 lacs for admission in any prestigious college, which was settled to Rs.9.5 lacs. Accused Pavneet Singh handed over his original educational certificates/documents to accused Dr. Nishi Kant Arya. Shri Amarjit Singh paid an advance amount of Rs.2 lacs to accused Dr. Nishi Kant Arya. Dr. Mohinder Bajaj asked Shri Amarjit Singh to deposit Rs.1 lac in his bank account with oriental Bank of Commerce and the same was subsequently deposited by Shri Neeraj Bindra @ Sonu, an employee of Shri Amarjit Singh.

Investigation has revealed that accused Dr. Mohinder Bajaj informed Shri Amarjeet Singh over phone to reach PEC, Chandigarh along with accused Pavneet Singh and bring Rs.11.50 lacs on 28.7.2010. Accordingly, they reached PEC, Chandigarh and met accused Dr. Mohinder Bajaj and Dr. Nishi Kant Arya. Shri Amarjeet Singh paid 3 of 34 Rs.11.50 lacs to accused Dr. Mohinder Bajaj. Thereafter, accused Dr. Nishi Kant Arya and Dr. Mohinder Bajaj went inside the building and after about one hour came out and handed over receipt No.33 of PEC, Chandigarh regarding deposit of Rs.43,500/- as admission and other charges for first semester of B.E. (Mech.), Dr. Nishi Kant Arya informed Shri Amarjit Singh that the counseling for DASA students would be held on 1.8.2010. Accordingly, accused Pavneet Singh along with his father

reached PEC, Chandigarh on 1.8.2010 and contracted accused Dr. Nishi Kant Arya and accused Dr. Mohinder Bajaj. They informed accused Pavneet Singh and his father to come on next day at 8.00 a.m. Accordingly, they visited PEC, Chandigarh on 2.8.2010 and contacted accused Dr. Nishi Kant Arya and Dr. Mohinder Bajaj. The original certificates/documents of accused Pavneet Singh were retained by accused Nishi Kant Arya.

Investigation has revealed that Pavneet Singh had submitted online application for admission in BE under DASA Scheme 2010-11 and mentioned his nationality as Nepal. Accused Pavneet Singh mentioned the SAT-II details as SAT-II Registration NO.021099876, Physics-700, Chemistry-640 and Maths-720. He also submitted the details of his passport No.308992, place of issue Kanchanpur, Nepal issued on 12.5.2008 and valid upto 12.4.2018. However, he enclosed the photocopy of Nepalese Citizenship Certificate. The online application form captured the IP address as 115.108.246.8 of the computer from which application was filled accused Pavneet Singh has also enclosed the copy of SAT score report along with the online application. Accused Pavneet Singh (Registration No.20101948, Rank 257) was admitted to Mechanical Engineering Branch in Punjab Engineering 4 of 34 College, Sector 12, Chandigarh under the category of Foreign National as Nepalese Citizen on 1.8.2010 and his fees was submitted vide demand draft of Rs.1,14,000/- No.018005 of HDFC Bank in favour of NITK, DASA.

Investigation has revealed that Pavneet Singh was not citizen of Nepal. He is a bonafide Indian citizen.

Investigation has revealed that accused Pavneet Swingh did not visit the office of NITK, Surathkal. Accused Dr. Nishi Kant Arya and Dr. Mohinder Bajaj managed the admission of Pavneet Singh as a Foreign National on the basis of forged, fake and fictitious Citizenship Certificate of Nepal."

It is further argued that in investigation of CBI, the petitioners, who are the students of young age of around 18 years, had no active participation in procuring the Nepalese Citizenship Certificate. He has further submitted that as per the investigation, it is stated that the online applications of all the 11 students were captured from IP address as 115.108.2468.8 from the Computer Cafe of one Monika Mittal along with the demand draft of the fee(s) were also submitted. Learned Senior counsel has further submitted that only the co-accused Dr. Nishi Kant Arya and Dr. Mohinder Bajaj, who managed admissions of all the students as foreign nationals as per the investigation, all the documents, which are alleged to be forged or fake, including the Citizenship Certificates of Nepal were submitted by Dr. Nishi Kant Arya and even during investigation all the original Citizenship Card of all the 11 students were recovered from Dr. Nishi Kant Arya.

5 of 34 It is submitted that it is also the case of CBI that the parents of all the 11 students have paid Rs.11.50 lacs each to Dr. Mohinder Bajaj and Dr. Nishi Kant Arya, who managed the admissions in DASA Scheme.

It is also submitted that out of 11 students 6 were declared juvenile and these 6 students, namely, Siddharth Malik, Charni Thukral, Barunpreet Singh, Shivali, Bhanu Papneja and Yash Saluja faced the full length trial before the Juvenile Justice Board, Chandigarh, wherein as many as 59 prosecution witnesses were recorded and they were held guilty of offence and were later on convicted.

Learned Senior counsel has referred to the operative part of the judgment, where the reference is given that the specimen fingerprints of all the 11 students were compared with the specimen fingerprints of accused Dr. Nishi Kant Arya and Dr. Mohinder Bajaj by the Director, Fingerprint Bureau, Phillaur, who vide his opinion dated 21.12.2020 observed that all the thumb- impressions on original Nepalese Citizenship Cards of 11 students are comparable and identical to each other, i.e. to say that the same were affixed by Dr. Rishi Kant Arya. The operative part of the report as per the opinion of PW56 Kashmir Singh, who appeared before the Board, reads as under :-

"That the CFSL report by GEQD expert dated 8.8.2011 also opined that handwriting/signatures on questioned documents of juveniles students are written in the hand of Dr. Nishiknt Arya which clearly establish that Nishi Kant Arya forged the handwriting/signatures of juveniles on the questioned documents. The GEQD opined that the handwriting/signatures on the citizenship cards of all the juveniles students are written in the hand of the accused Nishi Kant Arya. The second para on page 38 of 6 of 34 the report under Section 173 Cr.P.C. mentions the above mentioned facts regarding the forgery of handwriting/signatures by Nishi Kant Arya and the same is reproduced below :-

"The GEQD Expert vide letter NO.CFSL/784/ 2010/DOC/CX-227/2010-2900 dated 8.8.2011 has opined that handwriting/signatures of questioned documents of juveniles students S/Shri Pavneet Singh, Himanshu Sharma, Siddarth Malik, Lokesh Sangwan, Charmi Thukral, Barunpreet Singh, Shivika Chaudhary, Shivali, Bhanu Papneja, Arushi Aggarwal and Yash Saluja are written in the hand of accused Nishi Kant Arya which clearly established that accused Nishi Kant Arya forged the handwritings/signatures of juveniles on the questiioned documents. The GEQD Expert has also opined that the handwritings/signatures on the citizenship cards of all the above mentioned juvenile students are written in the hand of accused Nishikand Arya."

Counsel has also referred to the statement of the Investigating Officer, i.e. PW56 ASP, CBI, Chandigarh, recorded by 'the Board', who has stated in his examination-in-chief. The operative part of the same reads as under :-

"During investigation, it was established that Nishi Kant prepared fake Nepalese Citizenship Cards of juveniles which were submitted before the authorities for the purpose of counselling and admission of juveniles".

During my investigation, it was also established that the admission forms of juveniles and other accused persons had uploaded the relevant details of the juveniles and other 7 of 34 accused on the website of NITK Surathkal Mangalore which was done by co-accused Nishi Kant from private internet cafe, situated at Hisar. The parents of juveniles and other accused person handed over the documents (Education qualification certification) to accused Nishi Kant and Mehender Bajaj to obtain the admission in professional colleges and also paid amounts to Nishi Kant and Mahender Bajaj for their ulterior motive. Further, the requisite demand drafts/pay orders which were required for the purpose of admission under DASA Scheme were prepared by Nishi Kant. The money for this purpose was paid by the parents of the juveniles. On the basis of documents submitted by Nishi Kant in the name of the juveniles, they were shortlisted for B. Tech admission Nishi Kant and Mahender Bajaj took the juvenile to PEC, Chandigarh for counselling held on 1.8.2010 (page 8 of the statement of PW59).

"The fake Nepalese citizenship cards along with original documents of juveniles and other incriminating documents were recovered from the possession/house of accused Nishi Kant during investigation.

Counsel has further submitted that, in fact, all these students are themselves victims at the hands of Dr. Nishi Kant Arya and Dr. Mohinder Bajaj, who induced their parents to handover Rs.11.50 lacs each on the promise of getting the admissions in some good college against legal quota and they were not aware that the aforesaid two persons have, in fact, prepared any fake or bogus documents for getting their admissions under DASA Scheme.

Learned Senior counsel has further submitted that though the Juvenile Justice Board (for short 'the Board') has held the aforesaid 06 persons 8 of 34 guilty of offences and vide order of sentence they were directed to be sent to the Observation Home/Special Home for six months for reformation for commission of the offence under Section 120-B IPC and further for three years reformation for the substantive offences under Sections 420, 467, 468 and 471 IPC yet the finding recorded by the Board holding the juveniles guilty under Sections 420, 467, 468 and 471 IPC is not binding as it is erroneous and contrary to observation of the Hon'ble Supreme Court in Criminal Appeal No.359-360 of 2010, Sheila Sebastian Vs. R. Jawaharaj and another etc., wherein relying upon earlier judgment in case Md. Ibrahim and others Vs. State of Bihar and another, (2009) 8 SCC 751. The operative part of the judgment reads as under :-

19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463, IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section

465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and untill ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete 9 of 34 CRM-M-15444-2016 - 10 -

20. The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 of IPC. As Collin J., puts it precisely in *Dickins v. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.

21. It is observed in the case *Md. Ibrahim and Ors. vs. State of Bihar and Anr.*, (2009) 8 SCC 751 that-

"a person is said to have made a 'false document', if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practicing deception, or from a person not in control of his senses."

22. In *Md. Ibrahim* (supra), this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

23. The Court in *Md. Ibrahim* (supra) observed that:-

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"There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document

conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

24. In *Mir Nagvi Askari vs. Central Bureau of Investigation*, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows:

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"A person is said to make a false document or record if he satisfies one of the three conditions as noticed here- in-before and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.

The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.

25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is 12 of 34 CRM-M-15444-2016 - 13

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made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

Learned Senior counsel for the petitioners has submitted that as per the investigation of the CBI, it is apparent that the documents like, Nepalese Citizenship Cards or Passports were, in fact, got prepared by Dr. Mohinder Bajaj and Dr. Nishi Kant Arya and the petitioners have no role in preparation of the same and, therefore, they cannot be held liable for the offences under Sections 420 of 471, 468 and 471 IPC.

Learned Senior counsel submits that in fact, the ingredients of Section 461 IPC, if any, are made out only against Dr. Mohinder Bajaj and Dr. Nishi Kant Arya, whereas the petitioners are themselves the victims of the offence of cheating committed by them.

Learned State counsel has next argued that in pursuance to the registration of the present FIR, the admission of all the 11 students have been cancelled by the Punjab Engineering College, Chandigarh and their right is double jeopardized as on one hand they are facing the prosecution in the present FIR and on the other, their admissions were cancelled in 2011 and since then, they have not been able to study further and have lost important years of their life as a period of about 11 years has already elapsed. It has also been argued that there was a fiduciary relationship between the parents and the petitioners, who at a very young age believed the action of their parents to be a legal action while taking admissions in the Punjab Engineering College and had no knowledge about their dealing with Dr. Nishi Kant Arya and Dr. Mohinder Bajaj and, therefore, there is no mens rea on the part of the 13 of 34 CRM-M-15444-2016 - 14 -

petitioners, who themselves became victims of circumstances by believing that whatever their parents have done is to procure the admissions by adopting a legal procedure.

Learned Senior counsel for the petitioners has submitted that as per the investigation, the charge-sheet is submitted only against the students and their parents have been cited as witnesses. Learned Senior counsel for the petitioners has further submitted that the impugned order dated 18.4.2015 passed by the Chief Judicial Magistrate, framing the charges, is totally a non-speaking order. It is also argued that in the order dated 31.8.2014 passed by the Special Judge, CBI, Chandigarh has also not discussed the aforesaid issues though raised by counsel for the petitioners.

Learned Senior counsel has submitted that though the revisional Court has observed that it is the co-accused Dr. Nishi Kant Arya, who has prepared/obtained forged and fake Nepalese Citizenship

Cards/Certificates but despite that the charges have been framed under Sections 467, 468 and 471 IPC against the petitioners only. Learned Senior counsel has further submitted that the revisional Court has wrongly allowed the revision of CBI thereby directing the trial Court to additionally frame the charge under Section 467 IPC against all the accused persons though the allegations of forgery are only against one accused, i.e. Dr. Nishi Kant Arya.

Learned Senior counsel has then referred to the Nepalese Citizenship Act, 2063 (2006) AD, which which is part of the 173 Cr.P.C. report to submit that the acquisition of Nepali Citizenship can be -

(i) Descent;

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(ii) By birth;

(iii) By naturalisation;

(iv) Award of honourary Nepalese Citizenship, which provides that the Government of Nepal may award Honourary Nepalese Citizenship to any internationally renowned person; and

(vi) In case of accession of territory.

Learned Senior counsel has argued that in the absence of any complaint from the Government of Nepal, which has a bilateral treaty relationship of acquiring citizenship with India, the Citizenship Card got issued by Dr. Nishi Kant Arora would fall under Clause (iv) of the Act and unless there is a complaint from the Government of Nepal, the prosecution has wrongly presumed that the same are forged or fake documents.

Learned Senior counsel has submitted that the investigation clearly reveals that all the original documents were recovered from Dr. Nishi Kant Arya and he was the instrument to allure the parents of all the 11 students, including the juveniles, who paid him Rs.11.50 lacs, each to procure the admission under the DASA Scheme.

In reply, filed by the CBI, the details of the FIR and the investigation conducted by the CBI are explained. It is submitted that the Special Judge, CBI, Chandigarh has rightly framed the charge vide order dated 18.4.2015, which was partly modified by the Special Judge, CBI, Chandigarh in revision filed by CBI vide order dated 21.3.2016 and thereafter, the Special Judge/CJM has framed additional charge under Section 467 IPC. It has also been submitted that co-accused, who were declared juveniles have already 15 of 34 CRM-M-15444-2016 - 16 -

been convicted by the Juvenile Justice Board as the charges qua them were proved.

In reply on merits, it is stated that the forged, fake/fictitious citizenship documents of Nepalese were prepared by Dr. Nishi Kant Arya and Dr. Mohinder Bajaj, however, it is stated that it was in a conspiracy with the petitioners. Surprisingly, the reply is silent about the role of the parents of petitioners, who contacted the aforesaid two accused and made payment of Rs.11.50 lacs per student to them for procuring the admissions and they are only cited as witnesses.

A careful perusal of the entire reply would reveal that it is nowhere stated that the petitioners had a meeting of mind with the aforesaid two co-accused in preparation of the fake documents as the accused were, in fact, under fiduciary relation of the parents as they had just passed their 10+2 examination and were looking for their bright future by taking admissions in some good engineering college in legal manner.

The fact that the CBI has only cited the parents of the students as witnesses is neither disputed nor denied.

Learned counsel for the C.B.I. has argued that charges are rightly framed and case is now fixed for prosecution evidence.

Learned counsel for the CBI, on the basis of FIR, Section 173 Cr.P.C. report or reply could not dispute that neither any one from Government of Nepal is a witness nor any document declaring Citizenship Card a false document is part of investigation report.

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In reply, the learned Senior counsel has submitted that there is no denial in the reply filed by the CBI that all the application forms were uploaded from the Cyber Cafe of one Monika Mittal, who is cited as a prosecution witness and all the 11 forms were uploaded by one IP address, i.e. 115.108.2468.8 by Dr. Nishi Kant Arya.

Learned Senior counsel for the petitioners submits that the CBI has not denied the fact that as per the Forensic and Handwriting Expert report, the thumb-impression of Dr. Nishi Kant Arya were found on all the 11 certificates, which reflects that the petitioners neither applied nor ever visited Nepal for obtaining such certificates and, therefore, there is no meeting of mind between the petitioners and Dr. Nishi Kant Arya and Dr. Mohinder Bajaj, who are the mastermind of the entire episode as the petitioners under the fiduciary relationship with their parents believed that whatever is done is, in fact, is a legal process to get admission in a good institutions.

Learned Senior counsel has submitted that that Dr. Nishi Kant Arya has now died and the charge under Sections 467, 468 and 471 IPC, if any, are made out against Dr. Nishi Kant Arya or Dr. Mohinder Bajaj only and not against the petitioners.

Learned Senior counsel has lastly argued that the petitioners are facing the trial for the last about 11 years and have lost their important years of education and life and, in fact, they are the victims at the hands of the others and, therefore, the FIR should be quashed.

Learned State counsel has argued that even if there is no complaint from the Government of Nepal about issuance of any fake or false certificate(s) and, therefore, even on the face of it the Nepalese Citizenship 17 of 34 CRM-M-15444-2016 - 18 -

Certificate/Cards were issued by the competent authority, which presumes that the same were issued in accordance with the guidelines issued by the Government of Nepal.

In reply, the learned Senior counsel has also relied upon the judgment dated 7.10.2013 passed by Hon'ble the Supreme Court in Gulam Sarbar Vs. State of Bihar (now Jharkhand) in CRA-1316 with 1967 of 2012, wherein the Hon'ble Supreme Court has observed as under :-

"5. The essential ingredients of Criminal Conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence.

The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them 18 of 34 CRM-M-15444-2016 - 19 -

between the parties. Agreement is essential. (Vide: Kehar Singh & Ors. v. State (Delhi Admn.), AIR 1988 SC 1883; State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, AIR 2005 SC 3820; Mir Nagvi Askari v. CBI, AIR 2010 SC 528; Baldev Singh v. State of Punjab, (2009) 6 SCC 564; State of M.P. v. Sheetla Sahai & Ors., (2009) 8 SCC 617; R. Venkatkrishnan v. CBI, AIR 2010 SC 1812; and S.Arul Raja v. State of T.N., (2010) 8 SCC 233).

Learned Senior counsel for the petitioner has also referred to State of Kerala Vs. P. Sugathan in CRA-784-1994, wherein the Hon'ble Supreme Court has held as under :-

"12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State [1980(2) SCC 665] held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal 19 of 34 CRM-M-15444-2016 - 20 -

act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

13. In Kehar Singh vs. State [AIR 1988 SC 1883] it was noticed that Section 120A and Section 120B IPC have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code.

Learned Senior counsel has further relied upon judgment of Hon'ble the Supreme Court passed in Md. Ibrahim and others Vs. State of Bihar and another, wherein the Hon'ble Supreme Court has held as under :-

"7. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. [See: G. Sagar Suri v. State of U.P. [2000 (2) SCC 636] and Indian Oil Corporation vs. NEPC India Ltd. [2006 (6) SCC 736]. Let us examine the matter keeping the said principles in mind.

Sections 467 and 471 of the Penal Code

8. Let us first consider whether the complaint averments even assuming to be true make out the ingredients of the offences punishable either under section 467 or section 471 of Penal Code. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished 21 of 34 CRM-M-15444-2016 - 22 -

in the same manner as if he had forged such document. Section 470 defines a forged document as a false document made by forgery.

9. The term "forgery" used in these two sections is defined in section

463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464

defining "making a false document" is extracted below :

"464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any 22 of 34 CRM-M-15444-2016 - 23 -

material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009]."

The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale

deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

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10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor 24 of 34 CRM-M-15444-2016 - 25 -

colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his

even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted. Section 420 IPC

13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property 25 of 34 CRM-M-15444-2016 - 26 -

or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth

accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the ingredients of cheating as 26 of 34 CRM-M-15444-2016 - 27 -

stated in section 415 are not found, it cannot be said that there was an offence punishable under sections 417, 418, 419 or 420 of the Code.

A clarification

15. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. The term 'fraud' is not defined in the Code. The dictionary definition of 'fraud' is "deliberate deception, treachery or cheating intended to gain advantage". Section 17 of the Contract Act, 1872 defines 'fraud' with reference to a party to a contract. In *Dr. Vimla vs. Delhi Administration* - AIR 1963 SC 1572, this Court explained the meaning of the expression 'defraud' thus "The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied."

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The above definition was in essence reiterated in *State of UP vs. Ranjit Singh* - 1999 (2) SCC 617.

16. The Penal Code however defines 'fraudulently', an adjective form of the word 'fraud', in section 25, as follows : "A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise". The term "fraudulently" is

mostly used with the term "dishonestly" which is defined in section 24 as follows : "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "dishonestly". To 'defraud' or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (sec.206, 421, 424)

(ii) Fraudulent claim to property to prevent seizure (sec.

207).

(iii) Fraudulent suffering or obtaining a decree (sec. 208 and 210)

(iv) Fraudulent possession/delivery of counterfeit coin (sec.239, 240,242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (sec.

246 to 253)

(vi) Fraudulent acts relating to stamps (sec. 261-261)

(vii) Fraudulent use of false instruments/weight/measure (sec.264 to 266)

(viii) Cheating (sec. 415 to 420) 28 of 34 CRM-M-15444-2016 - 29 -

(ix) Fraudulent prevention of debt being available to creditors (sec. 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (sec. 423).

(xi) Forgery making or executing a false document (sec.

463 to 471 and 474)

(xii) Fraudulent cancellation/destruction of valuable security etc.(sec. 477)

(xiii) Fraudulently going through marriage ceremony (sec.496). It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law. Section 504 of Penal Code After hearing the learned counsel for the parties, I find merit in this petition for the following reasons :-

(i) Though in proceedings before the Juvenile Justice Board, where the similarly situated 06 students/juveniles faced the full length trial, a finding is recorded that they have committed the offence punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC and they were convicted and sent to the Observation Home/Special Home for a period of three years each for reformation vide judgment of conviction and order of sentence dated 14.11.2018. However, this Court is not agreeing with the finding recorded by the Board. The entire prosecution of CBI revolves around a presumption that the petitioners have conspired with other accused, i.e. Dr. Nishi Kant Arya 29 of 34 CRM-M-15444-2016 - 30 -

(dead) and Dr. Mohinder Bajaj, who have conspired to obtain fake Nepalese Citizenship Card for taking admission in Punjab Engineering College, Chandigarh and, therefore, they have committed the offence under Sections 420, 467, 468, 471 read with Section 120-B IPC. However, a careful perusal of the report submitted under Section 173 Cr.P.C. by the CBI in the present case as well as of the judgment dated 14.11.2018 passed by the 'Board' would clearly reveal that nothing has come on record that CBI, at any point of time, has obtained any clarification from the Government of Nepal or the Nepalese Embassy that their citizenship card, on the basis of which the petitioners have taken the admissions, are fake;

(ii) A perusal of the report under Section 173 Cr.P.C. further reveals that a reference is made with regard to the Nepalese Citizenship Act, 2006 (3) 2006. AD, which provides acquisition of Nepalese Citizenship by descent; by birth; naturalization; by acquisition of territory and lastly by award of honorary Nepalese Citizenship by the Government of Nepal. The report further states with reference to the Act that the Nepalese Authorities can issue Nepalese Citizenship Certificate by descent or birth or naturalisation, however, has not considered that there is another clause which provides that the Government of Nepal can award honorary Nepalese Citizenship as well;

(iii) During investigation no witness of Nepalese Government was joined and no statement under Section 161 Cr.P.C. was recorded that the alleged Citizenship Cards are false. The list of witnesses and document attached with report under Section 173 Cr.P.C. clearly reveal that no such effort was made by CBI to join a witness from Government of Nepal or its Embassy. Even perusal of judgment dated 14.11.2018 by the Juvenile Justice Board 30 of 34 CRM-M-15444-2016 - 31 -

reveals that no such witness was either cited by the CBI or examined. Therefore, even the Board held the 06 students guilty only on a supposition that Citizenship Cards are false.

(iv) Therefore, in the absence of any investigation, whether the petitioners were granted the Nepalese Citizenship Card as 'honorary' was never inquired into by the CBI. The Government of India as well as the Government of Nepal have a reciprocal agreement that the citizens of both the countries, without even seeking visa, can even acquire government jobs. Therefore, in the absence of any specific evidence, the investigation conducted by CBI in this regard without citing any witness from the Government of Nepal that the Nepalese Citizenship Card issued in favour of the petitioners were, in fact, fake, the entire prosecution fall flat as the petitioners are being prosecuted only on the basis of presumption that since they are citizens of India by birth, therefore, their Nepalese Citizenship Cards are fake or forged document. This aspect was not at all dealt with by the Board

while convicting 06 of the similarly situated juveniles.

(v) Even otherwise, it is concluded in the report under Section 173 Cr.P.C. as also held by the Board that Dr. Mohinder Bajaj and Dr. Nishkant Arya (since deceased), by taking money i.e. Rs.11.50 lacks each from the parents of the petitioners procured the Nepalese Citizenship Card by putting thumb-impression of Dr. Nishi Kant Arya on all the 11 applications and uploaded the applications forms by a single IP address, i.e. 115.108.2468.8 the original of the same were recovered from the said two accused would reflect that the offence of 'forgery', if any, as defined under Section 467 IPC was committed by the said two accused only as there was no meeting of mind 31 of 34 CRM-M-15444-2016 - 32 -

between petitioners and the two co-accused only as there was no meeting of mind between petitioners and the two co-accused.

(vi) In view of the judgment of the Hon'ble Supreme Court in Sheila Sebastian Vs. R.Jawaharaj @ another etc., wherein it has been held that the charge of forgery cannot be imposed on a person who is not maker of the document as making of a documents is different than causing it to be made in terms of Section 467 IPC and, therefore, the petitioners cannot be prosecuted for committing the offence under Sections 420, 467, 468, 471 IPC.

(vii) So far the offence of conspiracy under Section 120-B IPC is concerned, it is well settled that a criminal conspiracy must be put into action inasmuch as a crime is generated in the mind of an accused and merely if a crime is generated in the mind of an accused, it does not become punishable. A crime is not punishable when it is in thoughts unless the same is of criminal in character and is committed when it takes a concrete shape of an agreement to do or caused to be done an illegal act or an act which although not by illegal means, and if nothing further is done, the agreement would give rise to a criminal conspiracy.

In the instant case, all the petitioners were of tender age and were under the fiduciary relationship of their parents. As per the report under Section 173 Cr.P.C. it is the parents of all the 11 students who made payment of Rs.11.50 lacs to Dr. Nishi Kant Arya (since deceased) and Dr. Mohinder Bajaj to get admission in good institution perhaps believing that they will get admission in accordance with a legal procedure.

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(viii) There is nothing on record which suggests that as per the

investigation of CBI, there was any meeting of mind between the students in and the aforesaid two accused Dr. Mohinder Bajaj and Nishi Kant Arya , who procured the Nepalese Citizenship Certificate for the petitioners by putting their own thumb-impression on all the 11 applications and then uploading the same by using their own IP address, i.e. 115.108.246.8 as the investigation suggests that it is the parents of the students who contacted the said two accused and made the payment. There can be a meeting of mind between the parents of the students and the two accused, namely, Dr. Nishi Kant Arya and Dr. Mohinder Bajaj but there is no direct or indirect evidence to show that the students have any meeting of mind with the aforesaid two persons as they were believing that whatever action is being taken by their parents is to procure a legal admission in an Engineering College and, therefore, it cannot be held that they have committed any offence of conspiracy under Section 120-B IPC.

(ix) The arguments raised by the learned counsel for CBI that after framing of the charge, the present petition is not maintainable is without any substance as it is a well settled principle of law that in exercise of power under Section 482 Cr.P.C. in order to do justice, the prosecution can be quashed at any stage of trial. The learned counsel for the CBI could not dispute during the arguments that there is no document attached to the report under Section 173 Cr.P.C. which was produced before the Juvenile Justice Board as well as in the trial Court with regard to the trial of the present petitioners and two other students to suggest that the CBI has sought any opinion from the Government 33 of 34 CRM-M-15444-2016 - 34 -

of Nepal that the Nepalese Citizenship Card issued in favour of the petitioners was, in fact, forged or fabricated document.

Needless to say that the petitioners on the one hand have lost their admission in college; lost 11 years of their prime youth as because of the prosecution they could not get regular admission elsewhere in the intervening 11 years and the CBI after conclusion of the trial by the Board cannot produce any new evidence that the Nepalese Citizenship Card issued to the petitioners were not in accordance with the Nepalese Citizenship Act 2063(2006) AD.

In view of the judgment of the Hon'ble Supreme Court State Of Haryana And Ors vs Ch. Bhajan Lal And Ors , 1992 AIR 604, 1990, the prosecution of the petitioners is nothing but misuse of process of law.

Accordingly, this petition is allowed, FIR No.RC8/2010 dated 7.9.2010 under Sections 420, 467, 468 and 471 read with Section 120-B IPC, registered at Police Station CBI SCB, Chandigarh, qua the petitioners-Arushi Aggarwal, Pavneet Singh, Shivika Chaudhary as well as non-petitioners Himanshu Sharma and Lokesh, is quashed, being misuse of process of law.

April 01, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO

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