

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5341 OF 2022

BETWEEN:

DR. NEHA BANSAL
D/O ASHOK KUMAR BANSAL
AGED ABOUT 41 YEARS
R/AT C/O MR. PRATAP NARAIN AGARWAL
NO.2, A/393, AZAD NAGAR
KANPUR – 208 002.

PRESENTLY RESIDING AT
NO.7/19-301, PARVATI BAGAL ROAD
TILAK NAGAR, KANPUR
UTTARPRADESH – 208 002.

... PETITIONER

(BY SRI MAHESH S., ADVOCATE)

AND:

CENTRAL BUREAU OF INVESTIGATION/A.C.B
BENGALURU
REPRESENTED BY THE
SPECIAL PUBLIC PROSECUTOR
HIGH COURT BUILDING

BENGALURU – 01.

NOTE: AMENDED VIDE COURT ORDER DATED 08.06.2023.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 27.01.2020 IN SPL.C.C.NO.106/2008 INITIATED BY CENTRAL BUREAU OF INVESTIGATION, PENDING ON THE FILE OF THE XLVII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPL. JUDGE FOR CBI CASES (CCH-48) BANGALORE AND DISCHARGE THE PETITIONER OF ALL CHARGES AGAINST HER.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.8 is before this Court calling in question order dated 27-01-2020 by which the XLVII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru rejects the application filed by the petitioner in Special C.C.No.106 of 2008 seeking her discharge from the array of accused.

2. Facts adumbrated are as follows:-

The petitioner is a doctor by profession, a participant in the postgraduate entrance test conducted by the Rajiv Gandhi University of Health Sciences ('the University' for short) for admission to postgraduate course. The petitioner came out successful in the written test securing high percentage of marks and was accordingly given admission to postgraduate course. A little later a paper publication crops up to the effect that few of the students who had poor academic career hitherto had secured high marks in the post graduate entrance examination. The issue was blown out in the media which necessitated the Government to constitute a Committee to go into veracity of the allegations made in the conduct of examination as projected by the media. This led to the matter being entrusted to the Central Bureau of Investigation ('CBI' for short) as certain conspiracy came about in the opinion of the Committee, which had opined that all was not well with the conduct of postgraduate entrance examination. The CBI then steps in, registers a crime alleging that accused No.1 who was the Vice-Chancellor of the University and accused No.2, the then Registrar of

the University, during their period between 22-07-2005 and 21-07-2007 along with Dr. Hanumantha Prasad, Assistant Registrar of the University had hatched a conspiracy with other accused who were candidates in the entrance examination and pursuant to the criminal conspiracy so hatched, question papers of the entrance examination were leaked specifically to persons who had been named as accused in the FIR. The CBI then conducts investigation and files a charge sheet before the concerned Court. The petitioner is arrayed as accused No.8. On filing of the charge sheet the petitioner had approached this Court seeking a direction of registration of her postgraduate degree in general medicine as it was not done on account of the charge sheet being filed by the Police against the petitioner. This Court disposed of the writ petition with certain directions. The petitioner then prefers an application under Section 227 of the Cr.P.C. seeking her discharge from the array of accused. The concerned Court in terms of its order dated 27-01-2020 rejects the application for discharge not only of the petitioner but all those who had preferred discharge applications before the concerned Court in Special C.C.No.106 of 2008. It is the order that refuses to discharge the petitioner, along

with entire proceedings, that are called in question in the subject petition.

3. Heard Sri Mahesh S, learned counsel appearing for the petitioner and Sri P. Prasanna Kumar, learned Special Public Prosecutor appearing for the respondent.

4. The learned counsel appearing for the petitioner would contend that accused Nos. 3 to 20 took Post Graduate Entrance Test 2006 ('PGET' for short) and all of them emerged successful which was perceived to be product of malpractice. The submission that one of the aspects projected to prove the commission of offence is that among 16 candidates arrayed as accused, they had previously secured low marks and suddenly got up to the marks and secured rank in the PGET. The learned counsel submits that this projection is inapplicable to the case of the petitioner as the petitioner has been a bright student throughout in the postgraduate exams or otherwise. The prosecution projects the polygraph examination and brain mapping analysis which has turned out to be positive in the case of several candidates including the petitioner. It

is for that reason the concerned Court has rejected the discharge application of the petitioner. He would contend that mere result of the polygraph test or the narcotic analysis cannot pin down the petitioner as an accused, unless there is corroborative material that appends to the charge sheet. It is his further case that the prosecution is solely relying on the statements rendered under Section 164 of the Cr.P.C. of two persons who turned approvers. It is his case that if the prosecution is permitted to continue chances of conviction of the petitioner is too bleak and, therefore, the petitioner should be discharged from the array of accused.

5. On the other hand, the learned counsel representing the CBI would seek to refute the submissions to contend that evidence whatever is available would be pitted against the petitioner in the trial. The discharge application has been rightly rejected, as the scope of consideration of the material at the time of discharge by the concerned Court is extremely limited. He would seek dismissal of the petition and contend that it is for the petitioner to come out clean in a full-blown trial, as the issue is already 17 years old. This Court may direct the concerned Court to expedite the trial.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The incident that led to registration of crime is as afore-quoted. But, I deem it appropriate to elaborate it in some more detail. The University in the month of February 2006 sought to conduct an entrance examination for postgraduate degree in medicine. The examination was conducted and its results were announced. Some candidates who did not get through the entrance test alleged malpractice in the conduct of examination on the score that there was a leakage of question papers to some candidates who have secured very high marks. The Government of Karnataka constituted an Inquiry Committee, as by then the issue was blown through the media. The Members of the Inquiry Committee were all members of the Health and Family Welfare Department. The Inquiry Committee filed its report observing that all was not well with the conduct of entrance examination. The confidentiality that had to be maintained during the conduct of examination was

breached and there was malpractice in the conduct of entrance examination.

8. This report led to further seriousness of the issue and the Government of Karnataka then resolves to hand over investigation to the CBI. The CBI then conducts investigation and draws up 20 accused into the web of crime. The allegations were against public servants and the students who had participated in the entrance examination who have been alleged to have secured high marks as accused in the crime. Since the accused were an amalgam of both public servants and private citizens, both offences under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ('Act' for short) along with Sections 409, 420 and 120B of the IPC were alleged against the accused. The investigation was, as observed hereinabove, handed over to the CBI. The CBI conducts investigation. Insofar as the present petitioner is concerned, statements were recorded and polygraph and brain mapping tests were conducted. The result of the polygraph is as follows:

"9.7 Dr.Neha Bansal:

The Polygraph examination of Dr. Neha Bansal was conducted on 02-05-08. During the Polygraph examination, Dr. Neha Bansal was asked the question which included the relevant (crime related) issues. The relevant issues and the answers given by Dr. Neha Bansal were as follows:

<i>Issues</i>	<i>Answer</i>
<i>i. Is it true that you had contacted Mr. Reddy for getting question papers of PGET-06 before the exam?</i>	<i>No</i>
<i>ii. Is it true that on 11-02-06 evening you were brought to lalbagh west gate by associate of Mr. Reddy?</i>	<i>No</i>
<i>iii. Is it true that one person by name Mr. Shekar picked you up near Lalbagh west in Green color car?</i>	<i>No</i>
<i>iv. Is it true that you had requested Mr. Hukkeri for question papers before exam of PGET-06?</i>	<i>No</i>
<i>v. Is it true that Mr. Hukkeri had asked you to contact Mr. Reddy?</i>	<i>No</i>
<i>vi. Is it true that when you were picked up at lalbagh west gate there were other candidates along with you?</i>	<i>No</i>
<i>vii. Is it true that you were brought by to UD residency from Lalbagh by Shekar in the car?</i>	<i>No</i>
<i>viii. Is it true that you were made to stay at Hotel UD residency over night on 11-02-06?</i>	<i>No</i>
<i>ix. Is it true that there were several other candidates with you in other rooms of UD residency on that night?</i>	<i>No</i>

- x. *Is it true that you were supplied with copy of question papers along with answers on the night of 11-02-06?* No
- xi. *Is it true that you were made to stay in the Hotel till morning of 12-02-06 during which you prepared for PGET-06?* No
- xii. *Is it true that you have signed for room bills on receipt on 12-02-06?* No
- xiii. *Is it true that during your stay at Hotel you were not allowed to use mobile?* No
- xiv. *Is it true that the question papers were collected back the next day morning?* No
- xv. *Is it true that you have contact with Vice Chancellor of RGUHS Mr. Prabhakaran?* No
- xvi. *Is it true that Sri. Hukkeri arranged for your stay at Hotel UD Residency?* No
- xvii. *Is it true that Hanumanth Prasad arranged for your stay at Hotel?* No
- xviii. *Is it true that you paid some money for getting papers of PGET-06 prior examination?* No
- xix. *Is it true that you paid the amount to V.I.Hukkeri* No
- xx. *Is it true that you paid the amount to Shri. Prabhakaran?* No
- xxi. *Is it true that you had paid Rs. 5000/- towards Hotel expenditure on night of 12-02-06?* No
- xxii. *Is it true that while leaving the Hotel mobile was given back to you?* No
- xxiii. *Is it true that Dr. Girish was with you in* No

Hotel on night of 12-02-06?

xxiv. Is it true that Dr. Shantahnu was with in the Hotel on night of 12-02-06? No

xxv. Is it true that Dr. Raman M.H. was with in the Hotel on night of 12-02-06? No

xxvi. Is it true that Dr. Harsha was with in the Hotel on night of 12-02-06? No

xxvii. Is it true that Dr. Nandita D. Shetty was with in the Hotel on night of 12-02-06? No

xxviii. Is it true that Dr. Babitha R. was with in the Hotel on night on 12-02-06? No

xxix. Is it true that Dr. Mekhala Dwarkanth was with in the Hotel on night of 12-02-06? No

xxx. Is it true that Dr. Giridhar was with in the Hotel on night of 12-02-06? No

xxxii. Is it true that Dr. Ananda Halyal was with in the Hotel on night of 12-02-06? No

xxxii. Is it true that Dr. Nitish R. Desai was with in the Hotel on night of 12-02-06? No

xxxiii. Is it true that Dr. Sandeep B.E. was with in the Hotel on night of 12-02-06? No

xxxiv. Is it true that Dr. H.Srinivas was with in the Hotel on night of 12-02-06? No

xxxv. Is it true that Dr. Bhavani was with in the Hotel on night of 12-02-06?

xxxvi. Is it true that Dr. S.C.Ashok was with in the Hotel on night of 12-02-06? No

xxxvii. Is it true that Sankaranna Munavalli got you the PGET-06 question papers from Dr.V.I.Hukkeri? No

xxxviii. Is it true that Sankaranna paid some No amount to Dr. Hukkeri?

Opinion

On the basis of Polygraph examination and analysis of polygraph, the following opinion has been formulated in respect of Dr.Neha Bansal.

The analysis and evaluation of Polygraph reveal deceptive responses on the issues no (i) to (xxxviii), which indicates Dr. Neha Bansal is deceptive in his responses and is not truthful in his statement given and have the knowledge about the crime under reference."

(Emphasis added)

The opinion of the polygraph examination on an analysis and evaluation is that the polygraph test revealed deceptive responses on issues Nos.1 to 38 (*supra*) which is indicative of the fact that the petitioner is deceptive in her responses and is not truthful in the statements given and thus had the knowledge of crime under reference. Therefore, the polygraph test conducted upon the petitioner is completely against her. The next step that the CBI would take is conduct of a brain mapping analysis. The result of the brain mapping analysis reads as follows:

"Analysis & Interpretation:

A time domain analysis (Averaging) of the time locked (to the words] ERP signals of preset duration was carried out to detect the event related activity

associated with the processing of the target words and the neutral words. Average response was determined for each list of words, which were presented randomly. All changes were interpreted using MATLAB based on comparison of activation patterns emanated within the individual. Activation is seen with regard to all the "target words" framed Responses showed auditory semantic processing in both the trials.

Increase in activation pattern is seen with regard to the "target words" for Dr. Anand Halyal in Set-I, Dr. Bhavani in Set-II, Dr. Raman in Set-III, Dr. Neha Bansal in Set-IV, Dr. Sida Tagore in Set-V, Dr. Nitish Desai in Set-VI and Dr. Babitha R in Set- VII. Responses for these showed high auditory-semantic processing which were repetitive, consistent and reproducible. Responses of the target words were higher in magnitudes than those obtained for the neutral words.

The changes in the activation pattern produced by the list of target words for Dr. Anand Halyal, Dr. Bhavani, Dr. Raman, Dr. Neha Bansal, Dr. Sida Tagore, Dr. Nitish Desai and Dr. Babitha R for the activities listed above have elicited greater positive activation pattern consistent with experiential knowledge of the same. High auditory semantic processing were indicative of their active involvement for the activities listed above. Greater activation seen in the trial 2 further supported their involvement in the activities listed above. The separate analysis of these components showed significant changes.

The changes in the activation pattern were not found with the presentation of list of target words for Dr. Mekhala Dwarkanth and Dr. Sandeep. B.E. for the activities listed Activation pattern of the target words were equivalent with that of the neutral words. The separate analysis of these components showed no significant changes.

The responses showed greater activation and active processing of the relevant words as seen in the evoked activity than to neutral words. The primary encoding, high level of activation and high auditory semantic processing

are seen in both the trails. This is supportive of the active participation of Dr. Anand Halyal, Dr. Bhavani, Dr. Raman, Dr. Neha Bansal, Dr. Sida Tagore, Dr. Nitish Desai and Dr. Babitha R in each of the activities.

Conclusion

The major findings supported by the "Brain mapping" tests are indicative of the possession of knowledge about the activities listed above by Dr. Anand Halyal, Dr. Bhavani, Dr. Raman, Dr. Neha Bansal, Dr. Sida Tagore, Dr. Nitish Desai and Dr. Babitha R activation during information processing and generation of such ERP responses associated with target words are suggestive of primary encoding information with Dr. Anand Halyal, Dr. Bhavani, Dr. Raman, Dr. Neha Bansal, Dr. Sida Tagore, Dr. Nitish Desai, Dr. Babitha R. The major findings supported by the "Brain mapping" tests are indicative of absence possession of knowledge about the activities listed above by Dr. Mekhala Dwarkanth and Dr. Sandeep. B.E."

(Emphasis added)

The findings of brain mapping insofar as few of the members are concerned are that the information processing and generation of ERP responses are indicative of the possession of knowledge of the activities and associated with the targeted words of primary encoding which is indicative of the fact that the petitioner was aware of what was happening in the entire alleged episode of crime.

9. What would unmistakably emerge from the aforesaid test is the knowledge of the episode of crime *qua* the petitioner and her participation. It is trite law that brain mapping or polygraph test is

not conclusive piece of evidence to quash, acquit or convict any accused. There should be corroborative material. The corroborative material is found in the charge sheet so filed by the CBI on the basis of the statements tendered by CW-56 one Anil Kumar. The statements of CW-56 reveal that the petitioner was picked up by him and brought to U.D. Residency at the instance of CW-55 and accused No.2. Ex.D75 is the mahazar in respect of recovery of the evidence from CW-56. CW-56 identifies the photo of the petitioner for picking her up and giving the question paper to her. Those were recovered at the time of mahazar from CW-56. With the statements of CWs-55, 56 and the documents it cannot be said that the petitioner is entitled for a discharge from the array of accused. Polygraph test may be the foundation. But, the evidence is on the basis of documents and statements as well. Therefore, these statements will have to be put to test in a trial in which it is for the petitioner to come out clean.

10. The submission of the learned counsel for the petitioner that chances of conviction being very bleak, the proceedings should be quashed is unacceptable, as the entire proceedings are shrouded

with seriously disputed questions of fact. If the submission of the learned counsel is accepted and proceedings are closed, it would run foul of the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**¹ wherein the Apex Court has held as follows:

"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not

¹ (2021) 9 SCC 35

required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683]* in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. **It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191: (2020) 3 SCC (Cri) 672]* after considering the decisions of this Court in *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426]*, it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in *Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686: (2020) 1 SCC (Cri) 94]*, *Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87: (2020) 3 SCC (Cri) 702]* and in *XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337: (2020) 1 SCC (Cri) 173]*, referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has

failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam

Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

(Emphasis supplied)

11. Finding no merit in the petition and no error much less an error apparent warranting interference with the order passed by the concerned Court on 27-01-2020, the petition stands rejected.

Consequently, interim order operating in this case shall stand dissolved.

**Sd/-
JUDGE**

bkp
CT:SS