IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

M.Cr.C. No. 39055/2021

BETWEEN :-

DR. AJAY GOENKA S/O SHRI S3.P.GOENKA, AGED ABOUT 57 YEARS, OCCUPATION : DOCTOR, R/O 11, PROFESSOR'S COLONY, BHOPAL (MADHYA PRADESH)

…..PETITIONER

(BY *SHRI AJAY GUPTA – SENIOR ADVOCATE WITH SHRI SANJAY SHUKLA, SHRI ISHAN PRADEEP AND SHRI DEVRAJ DIXIT - ADVOCATES*)

AND

CENTRAL BUREAU OF INVESTIGATION, B-1, PROFESSOR'S COLONY, BHOPAL (MADHYA PRADESH) - 462001

……. RESPONDENT

(*BY SHRI RAJU SHARMA AND SHRI AVINASH SHARMA - ADVOCATES*)

Reserved on : 12/02/2024
Delivered on : 21/02/2024

This petition coming on for hearing this day, ***Hon'ble Shri Justice Rohit Arya*** *passed the following:*

JUDGMENT

This petition, under section 482 of the Cr.P.C., is filed seeking quashment of charge-sheet filed by the CBI in FIR No. RC2172015S0009 registered at CBI Bhopal against the petitioner, as well as, annulment of order dated 7/1/2021 passed by IV Additional Sessions Judge, Gwalior designated as Special Judge (CBI) in Special Sessions Trial No. 1/2021, whereby cognizance has been taken against the petitioner for the offences punishable under sections 120B read with 201, 204, 408, 419, 420, 468, 471, 477A of the IPC, Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and section 4/3-D(1)(2) of the *Madhya Pradesh Pareeksha Adhiniyam*.

2. Relevant facts leading to filing of this case may be summarized thus:

(i) A written complaint was received at Police Station Jhansi Road, Gwalior made by one Ashish Kumar Chaturvedi with regard to alleged irregularities being committed in the Pre Medical Test Examination 2011 and its counselling sessions, mentioning therein that he had been instrumental in unearthing this scam since long and in the process had met a medical student of 2010 batch of G.R. Medical College, Gwalior namely Jai Pakash Baghel at PMT 2011 counselling session, who had come to get his, as well as that of some of his friends' candidature cancelled. Medical Student J.P.Baghel informed the complainant that he had been asked by his old friend Savendra Jadon to re-appear in PMT 2011 examination and get his candidature cancelled

after getting a seat allotted in Private Medical College through counselling, as it would result in blocking of the said seat which would ultimately get transferred to payment quota thus benefitting the private Institution, and in lieu whereof he and Sabendra Jadon would receive substantial consideration from the concerned Private College. In pursuance of said set-up for participating in the counselling, J.P.Baghel obtained his original documents through Parmanand Wadhwa,Clerk at G.R.Medical College on payment of illegal gratification of Rs.35,000/- and thereafter got a seat allotted at Chirayu Medical College, Bhopal and subsequently got the same cancelled on receiving a sum of Rs.1,25,000/- from Chirayu Medical College, while an equal amount was also received by Savendra Jadon. It is further alleged therein that information as to complicity of students in such scam was well within the knowledge of clerks of Medical Colleges including G.R.Medical College and the entire conspiracy was hatched in collusion with Private Medical Colleges. On receiving such complaint, offence was registered as Crime No.271/2014 on 7/7/2014 at Police Station Jhansi Road, Gwalior.

(ii) However, the investigation of the said case was transferred by STF to CBI in pursuance of order dated 9/7/2015 passed by Hon'ble Supreme Court in W.P. (Civil) No. 417/2015 (*Digvijay Singh and Others Vs. State of M.P.)* and connected matters, treating it to be a Vyapam Scam Case. Pursuant to transfer of the aforesaid FIR of P.S. Jhansi Road, Gwalior, CBI registered FIR No. RC2172015S0009. After investigation supplementary charge-sheet was filed by the CBI before the learned Court below on 17/01/2021

(iii) On 7/1/2021, the learned trial Court passed the impugned order

accepting the charge-sheet and taking cognizance against the petitioner and other accused persons. Hence, this petition.

3. Assailing the legality, validity and propriety of the impugned order, learned Senior Counsel made the following submissions:--

(a) Allegations as levelled in the FIR, if taken in their entirety, relate to alleged irregularity being committed by Private Medical Colleges in granting admissions. The petitioner had no role to play, nor was remotely connected with granting admissions in Chirayu Medical College. In this regard, learned Senior Counsel referred to Rule 10 of the *Madhya Pradesh Medical Tatha Dental Snatak Pravesh Pareeksha Niyam, 2011* (*for short the "Rules of 2011"*) which reads thus:-

> "10. प्रवेश – अभ्यर्थी, काउंसलिंग द्वारा पाठ्यक्रम एवं महाविघालय में प्रवेश के पश्चात्, अधिसूचित दिनांक एवं समय पर संबंधित महाविघालय के अधिष्ठाता/प्राचार्य को अपनी उपस्थिति की सूचना देगा ।
>
> 10.1 महाविघालय की प्रवेश समिति में अधिष्ठाता/प्राचार्य, दो प्राध्यापक तथा कम से कम दो आरक्षित प्रवर्गों के चिकित्सा शिक्षक रहेंगे । यह समिति मूल दस्तावेजों का सत्यापन भी करेगी तथा पात्र पाये जाने पर अभ्यर्थी को आवंटित पाठ्यक्रम एवं महाविघालय में प्रवेश देगी ।"

Thus, an Admission Committee was required to be constituted in pursuance of the above rule; responsible for granting admissions, comprising of Dean/Principal, two professors and at least two Medical Teachers of reserved category. The petitioner fell in none of the above categories and was only a Secretary of Society viz. Chirayu Charitable Foundation; a non profit earning Society engaged in social welfare and

public service. The Society runs many Institutes viz. Chirayu Medical College and Hospital, Chirayu Nursing College, Chirayu Paramedical Institute, Chirayu Cancer Hospital etc. Thus Chirayu Medical College and Hospital is one of the many units of Chirayu Charitable Foundation. The Society and its representative only looked after the developmental activities, expansion, modernization, setting-up of new/additional units and taking loans etc from bank to look after court cases relating to allotment of land, pollution and other policy matters. He has never been a Dean, neither a member of Admission Committee nor involved into the admission processes at Chirayu Medical College & Hospital in 2011. The day-to-day activities of admission, teaching in college, running of hospital, hostel etc. are the responsibility of the Dean and his team at every unit separately. To buttress his submissions, learned Senior Counsel referred to the Resolution (Annexure P/8) of the Society dated 7/7/2011, relevant portion whereof reads thus:-

> "सभा में अध्यक्ष द्वारा यह प्रस्ताव रखा गया कि संस्था द्वारा संचालित चिरायु मेडिकल कालेज एवं अस्पताल के सुचारू संचालन व्यवस्था के संबंध में संस्था सचिव डॉ0 अजय गोयनका को संस्था की ओर से पूर्ण अधिकार देते हुए अधिकृत किया जाऐ एवं मेडिकल कॉलेज में शिक्षण व्यवस्था हेतु प्रशासनिक एवं प्रवेश निदेशक श्री गिरीश कानिटकर एवं कॉलेज डीन को अधिकृत किया जाऐ कि वे मेडिकल कॉलेज में प्रवेश के लिये शासन द्वारा बनाये गए नियमों का सख्ती से पालन करते हुए प्रवेश देने की प्रक्रिया का संचालन करें । नियमों की अनदेखी होने पर निदेशक, प्रशासनिक एवं प्रवेश श्री गिरीष कानिटकर एवं कॉलेज डीन वैधानिक रूप से पूर्णतः जिम्मेदार एवं जवाबदार होंगे ।"
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> *(Emphasis supplied)*

Thus, by virtue of the above resolution, it was not the petitioner who was responsible for admissions, but Shri Girish Kanetkar and the Dean of the College. Pursuant to the resolution, Dean, Chirayu Medical

College passed the order dated 4/8/2011 consituting Admission Committee with Dr.Jitendra Kain as Chairman and Dr. Ravi Saxena, Dr. Sushil Gour and Dr. A.K.Jain as members.

(b) As such, the appellant could not have been held responsible for admission making process. Besides, he could also not have been made vicariously liable, inasmuch as there is no room for vicarious liability in criminal offences unless specifically provided by the legislation like Negotiable Instruments Act, 1882, Drugs and Cosmetic Act, CGST Act etc. There is no provision of vicarious liability in Indian Penal Code, Prevention of Corruption Act or even in M.P. Registered Examination Act. For this, learned counsel placed reliance on decisions of the Apex Court in **Maksud Saiyed Vs. State of Gujarat ((2008)5 SCC 668), Sunil Bharti Mittal Vs. Central Bureau of Investigation ((2015)4 SCC 609)** followed in **Shiv Kumar Jatia Vs. State of NCT of Delhi ((2019)7 SCC 193)** and **Ravindranath Bajpe Vs. Mangalore Special Economic Zone Ltd. And Others (2021 SCC OnLine SC 806)** .

(c) That apart, even the petitioner could not have been roped in with the aid of S.120B of the IPC as the ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved by direct or circumstantial evidence. In the case in hand, there is nothing in the chargesheet filed by the CBI as against the present petitioner to infer that he was a party to agreement of such nature. There is no document establishing proximity or complicity of the petitioner. Petitioner's name has appeared in statements of only four

witnesses viz. PW34, PW40, PW47 and PW48 out of 97 prosecution witnesses, but none of them have stated anything to connect the petitioner with the alleged crime. PW34 Gagan Katare has only said -

> *"On being asked I state that I joined Chirayu Medical College (CMC), Bhopal as Manager since 2011. I look after the maintenance and smooth functioning of Chirayu Medical College. I work under the Dean, Chirayu Medical College, Dr. Ajay Goenka is the owner (Secretary and Managing Trustee) of the College and Sh. Ravi Saxena is the Dean presently....."*.

PW 40 Vaibhav Aggarwal made the following statement under section 161, Cr.P.C. on 27/9/2017 about the petitioner Dr. Ajay Goenka as under:-

> *"..... I further state that Dr. Ajay Goenka was authorized to look after all the affairs pertaining to smooth running of Chirayu Medical College and Hospital vide Minutes of Meeting dated 07/07/2011. All the Office bearers of Chirayu Charitable Foundation were present during the meeting. In order to implement rules and regulations during admissions of the candidates in the college Sh. Girish Kanitkar and Dean of the College were authorized....."*

PW47 Mahendra Sharma has made the following statement under S.161 of Cr.P.C. on 24/8/2017 about the petitioner Dr. Ajay Golenka :

> *"I am as above on being asked it is stated that I*

joined Chirayu Medical College in June 2010 as Cook/Tea Maker. In the year 2010 Chirayu Medical College, Bairagah was under construction. I met Dr. Ajay Goenka in his office at CMCH, Bairagarh and requested for job in the College. He enquired about my qualification and experience. I informed him that I can prepare tea and also have experience in cooking. He allowed me to join CMCH and since then I am working in the College. Presently, I am getting Rs.7000/- per month as salary from the College....."

PW48 Pankaj Kumar Dubey made the following statement under section 161 Cr.P.C. on 24/8/2017:

"I am as above on being asked I state that I joined Chirayu Medical College in April 2010 as Accountant. In the year 2010 Chirayu Medical College, Bairagarh was under construction. I met Dr. Ajay Goenka in his office at CMC, Bairagarh and requested for a job in the college. He enquired about my qualification and experience. He sent me to HR section and I was allowed to join CMC as accountant and since then I am working as such. Presently I am getting Rs.20,000/- per month as salary from the College....."

A bare perusal of the above statements reflect that the same are innocuous in nature and in no way link the petitioner with the admission making process. Hiring a cook or an accountant is only in line with the resolution for smooth running of the college and in no

way makes him liable for the admissions made, for which the Admission Committee was responsible. Thus neither by direct evidence nor by circumstantial evience, the CBI has been able to bring home any ingredient of agreement against the petitioner.

(d) The last day admissions granted by the College were the need of the hour and not an illegality, much less a scam as alleged by the CBI, since medical seats cannot be allowed to go vacant as it would amount to national waste of resources as held by Hon'ble Supreme Court in catena of decisions including **Index Medical College Vs. State of M.P. (Civil Appeal No. 867 of 2021)**. Indeed in the Rules of 2011, there was no provision for dealing with the situation as to what is to be done if after all rounds of counselling the seats still remain vacant. Thus, in absence of any specific provision, the College/Institute was in its right to grant admission to the eligible candidates who had appeared in PMT. In fact there are three government/statutory agencies which are involved in the admission process - (i) VYAPAM which is responsible for conducing entrance test and declaration of result; (ii) Director Medical Education which is responsible for conducting counselling and allotment of seats in various Medical Colleges and (iii) The Admission and Fee Regulatory Committee (AFRC), a Supreme Court mandated committee constituted under the statute which is responsible to regulate the admission process. As per the directions of the Hon'ble Supreme Court 30th September is the last date for granting Medical admissions. After each counselling session, the vacant seats are reported to the DME. However, even after last round of counselling, some of the students take admission but do not report for variety of reasons. The report about such students is sent to the DME, but as there

is no time left for conducting next counselling session by the DME, College Level Counselling is conducted by the Colleges since the seats cannot be allowed to go vacant. This has been an age-old practice and if there is any irregularity in the such College Level Counselling, the same can always be checked by the AFRC – the body responsible for regulating Admissions including taking of fees/capitation fees by Colleges. In the instant case, the AFRC did not object to any of the admissions granted in College Level Counselling by the Chirayu Medical College. As such, granting admissions in College Level Counselling could not have been frowned upon by the CBI.

(e) In view of the above, it can safely be said that the learned Special Judge has mechanically taken cognizance against the petitioner without applying his mind. While referring to decision in the case of **Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others ((1998)5 SCC 749),** learned counsel further contended that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Further, relying on a decision of the Apex Court in the case of **Anand Kumar Mohatta & Anr. Vs. State (NCT of Delhi) Department of Home & Anr. ((2019)11 SCC 706)** recently followed in **C.V.K.Balakrishnan & Anr. Vs. The State of Tamil Nadu & Anr (Special Leave Petition (Crl.) No. 1733/2023)**, learned Senior Counsel submitted that powers under section 482 of the Cr.P.C. can be exercised even at an advance stage as abuse of process caused by FIR stands aggravated if the FIR has taken the form of a chargesheet after investigation. The power is

undoubtedly conferred to prevent abuse of process of power of any Court. Further, relying on the decision in the case of **P.N.Poddar Vs. State of Maharashtra and Others ((2007)15 SCC 705)**, learned counsel contended that discharge can be sought even after filing of charge-sheet and in the instant case relegating the petitioner to face trial upon unfounded allegations, that too after 12 years of the incident in question when all the students have already completed their degrees and are practicing or pursuing specialization/super specialization is an abuse of process of Court and liable to be interfered with, particularly when no specific role of the petitioner is discernable from the evidence brought on record. To buttress his submissions that inherent powers under S.482 of the Cr.P.C. can be exercised to quash the prosecution in absence of any specific role ascribed to the petitioner, learned counsel placed reliance on decision in the case of **Chunduru Siva Ram Krishna and Another Vs. Peddi Ravindra Babu and Another ((2009)11 SCC 203)**.

(f) The transfer of case by STF to CBI in purported compliance of Apex Court's order dated 9/7/2015 (Supra) was uncalled for, inasmuch as by the said order cases related to VYAPAM Scam were directed to be transferred to CBI, whereas the instant case did not relate to VYAPAM Scam. The role of VYAPAM ended after the results were declared. Counselling/College-level counselling are not in the domain of VYAPAM and hence the instant case did not fall within the definition of VYAPAM Scam cases.

(g) In fact, Chirayu Medical College has been singled out, while the age old practice of giving last day admissions was there in all the private medical colleges in Madhya Pradesh. In any case, it was for the

AFRC to object to any suspicious admission, but in the instant case no such objection has ever been taken by the AFRC.

With the aforesaid submissions, the order impugned has been sought to be annulled.

4. *Per contra*, Shri Raju Sharma, while referring to the reply filed by the CBI made the following submissions:-

(a) So far as objection to jurisdiction of CBI to take-up this case is concerned, the same has already been decided by a co-ordinate Bench of this Court at the Principal Seat in M.Cr.C. No.26749/2017 (*S.N. Vijaywargiya Vs. Central Bureau of Investigation);* a petition u/s 482 challenging the order taking cognizance, wherein it has been categorically held in paragraph 16 that illegalities in the process of examination of VYAPAM were for admission only, therefore, the VYAPAM scam starts from examination process and ends with the admissions. Therefore, the CBI is competent to investigate the offences relating to admissions of the candidates by the private medical colleges.

(b) The instant case relates to incorrect reporting of vacancies by Chirayu Medical College after each round of PMT counselling. In private medical colleges, 15% seats are allotted towards NRI quota and out of remaining 85% seats, 50% seats are to be filled-up through PMT Counselling while remaining 50% seats are to be filled-up by private medical colleges. In no case, the private medical colleges can traverse beyond their allocated quota of 50% seats. As a matter of practice, candidates appearing in each round of PMT counselling are allocated particular colleges and a date by which they have to take admission in that college. If by that date the said student(s) has/have not taken

admission, the College is under obligation to report the vacancy to the Director of Medical Education (DME). In the instant case, incorrect number of vacancies have been reported by Chirayu Medical College after each round of counselling. While referring to page 209 of the charge-sheet, learned counsel submitted that out of 63 seats allocated to Chirayu Medical College, after 1st round of counselling, 12 vacancies were reported by the College as against actual vacancy of 51; after second counselling only 1 vacancy was reported as against actual vacancy of 48 and after third counselling no vacancy was reported as against actual vacancy of 47 seats.

(c) In fact the petitioner is not only the Secretary but also the CMD of Chirayu Medical College and hence he cannot wash his hands of his liability. Out of 47 students who were allotted Chirayu Medical College by Counselling Committee of MPPMT-2011 and vacated the seats, learned counsel submitted that five candidates have been made accused in the present case as they were already pursuing their studies in Government Medical Colleges. The remaining candidates who did not take admission, re-appeared in the next year and got admissions in Govt. Medical Colleges. They were not made accused as they were not found to be involved in any conspiracy. He further submitted that during investigation it surfaced that DME and Joint DME were well aware of incorrect reporting of vacant seats and hence they have also been made accused in the case. Besides, the list of candidates admitted in Chirayu Medical College in the academic session 2011-2012 was not submitted to AFRC.

5. In response, learned counsel for the petitioner submitted that 57 candidates were allotted seat in Chirayu Medical College but it is false

allegation that college hid the exact vacancy position of 51 seats for the second counselling. As of the first counselling, the date was 30/08/2011 and that of second counselling, the reporting was to be done on 27/09/2011. On 29/09/2011, the candidates allotted were not prepared with their original documents and fees. Time was given to them up to 5 PM of 29/09/2011. As all the candidates who had taken time for the submission of fees and documents did not report, it resulted in vacancies on the last but one day of the admission and the matter was reported to DME and AFRC and thereafter college level counselling was started. While denying that petitioner was CMD of the College, learned counsel submitted that he was merely Secretary of the Society and as per resolution dated 7/7/2011, he was not authorized for making admissions in Chirayu Medical College but was authorized on the behalf of Society to take decisions in respect of legal matters and infrastructure development of various institutes being run by the society. Further, respondent/CBI has not been able to point out even a single document executed by the petitioner or a single decision taken by the petitioner regarding any stage or step of procedure involved in granting admissions to the students in 2011 in Chirayu Medical College. Respondent has not been able to point out any circumstance or document that how the petitioner acted in conspiracy with anyone. Refuting the contention that AFRC did not receive the list of candidates, learned counsel while referring to Annexure P/18 submitted that the list of students admitted was submitted to the Director Medical Education, as well as, the AFRC between 3rd and 6th October, 2011 and also on 30/11/2011.

6. Heard learned counsel for the parties.

7. Before adverting to the rival contentions touching the merits of the case, it would be expedient to recapitulate the law as regards taking cognizance and framing of charges in criminal matters.

8. S.227 of the Cr.P.C. deals with discharge and provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Further, S.228 provides that if, after such consideration and hearing, the Judge is of opinion that there is ground for presuming that t as aforesaid he accused has committed an offence, he may proceed for framing of charge.

Thus, for framing the charge, after hearing the accused, the Court should have sufficient material against the accused for *presuming* that he has committed the offence. In **State of Karanataka Vs. L.Muniswamy ((1977)2 SCC 699)**, a three-Judge Bench of the Apex Court had observed that at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasized.

It is well settled that the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. At the stage of framing of charge, the court has to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion

of trial (**State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659** and the **State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338**, referred to). The Apex Court in the case of **Union of India Vs. Prafull Kumar Sama ((1979)3 SCC 4)**, in this behalf, held as under:-

> "10. Thus, on consideration of the authorities mentioned above, the following principles emerge;
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
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> (2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

In the case of **State of M.P. Vs. S.B.Johari ((2000)2 SCC 57)**

> **"**4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for

coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijjayya and Others etc. reported in (1990) 4 SCC 76*, after considering the provisions of Sections 227 and 228, Cr.P.C., Court posed a question, whether at the stage of framing the charge, trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh (1977) 4 SCC 39, Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 and Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274*, and held thus: -

> "From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. <u>The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all</u>

> that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."
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> (*Emphasis supplied)*

Recently, in the case of **Ravindranath Baje Vs. Mangalore Special Economic Zone Ltd. And Others ((2021 SCC OnLine SC 806)**, the Apex Court reiterated with approval the observations made in **Pepsi Foods Ltd. Vs. Special Judicial Magistrate ((1998)5 SCC 749)** as *infra* :

> 26. As observed by this Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 and even thereafter in catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. In paragraph 28 in Pepsi Foods Limited (supra), it is observed and held as under:
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> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the

> allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. In the context of controversy in hand, *Madhya Pradesh Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhinyam, 2007* assume importance; published in the Official Gazette dated 4th August, 2007. Chapter II of the said Rules contemplate constitution of Admission and Fee Regulatory Committee (*"AFRC" for short*). Rule 4(2) provides that the Committe shall be presided by a Chairperson who has been a Vice-Chancellor of a Central University or a State University or an institution deemed to be University or a senior administrative officer not below the rank of Principal Secretary to the State Government or Joint Secretary to the Government of India and shall include four other members having expertise in the matters of finance, administration of law, technical education and medical education. Rule 4(9) confers exclusive jurisdiction upon the Committee in the following terms:-

> "9. The Committee may hear complaints with regards to admission in contravention of the provisions contained herein, collecting of capitation fee or fee in excess or fee determined or profiteering by any institution, and if the Committee after enquiry finds that there has been any violation of the provisions for admission on the part of the unaided professional colleges or institution, it shall make appropriate recommendations for returning any excess amount collected to the person concerned, and also recommend to the Government for imposing a fine upto rupees ten lakhs, and the Government may on receipt of such recommendation, fix the fine and collect the same in the case of each such violation or decide any other course of action as it deem fit and the amount so fixed together with interest thereon shall be recovered as if is an arrear of land revenue, and the committee may also declare

admission made in respect of any or all seats in a particular college or Institution to be dehors merit and therefore invalid communicate the same to the concerned university, and on the receipt of such communication, the University shall debar such candidates from appearing in the examination and cancel the results of the examination already appeared for."

(*Emphasis supplied)*

Thus ample powers have been provided under the statute to the AFRC to examine the complaints regarding collection of capitation fee or excess fee or profiteering by any Institution and the Committee can also declare the said admissions *dehors merit* and debar such candidates from appearing in the examination and also cancel the results of the examination already appeared for. It is noteworthy that no such action has been taken by the AFRC against the Institution or any of the students for the Academic Year 2011 at any point of time.

10. This brings us to the pivotal question as to the role of the petitioner in the admission process. The meeting of Management Committee of Chirayu Charitable Foundation was held on 7/7/2011. The Committee vide its resolution of the even date, specifically authorized Shri Girish Kanitkar and College Dean to supervise the process of granting admissions in Medical College in accordance with the rules framed by the State while categorically making them liable for legal repercussions in the event of deviation from the rules. At the same time, the Committee authorized the present petitioner Dr. Ajay Goenka to supervise legal and financial matters of all the units of Society, as well as, to ensure smooth functioning of Chirayu Medical College and Hospital. In pursuance of the said resolution, the Dean vide order dated 4/8/2011 (Annexure P/5) constituted Admission Committee of

the Chirayu Medical College for the year 2011-2012 with Dr. Jitendra Kain as Chairman and Dr. Ravi Saxena, Dr. Sushila Gour and Dr. A.K.Jain as members. The said Admission Committee draws statutory force from Rule 10.1 of the Rules of 2011, as quoted above.

11. From the resolution of the Society brought on record, as well as the order of the Dean, as indicated above, it is apparent that the petitioner, being Secretary of the Society with specific diverse role other than managing admission process, cannot be held liable directly for admission making process. At this juncture, it is to be seen whether vicarious or joint liability can be saddled upon him in any way. In this behalf the observations of Hon'ble Apex Court in **Maksud Saiyed (Supra)** assume relevance viz;

> "13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

The Apex Court in **Shiv Kumar Jatia Vs. State of NCT of Delhi**

((2019)17 SCC 193), while referring to the decision in the cases of **Maksud Saiyed (Supra) and Sunil Bharti Mittal (Ibid),** held thus:

> "21. By applying the ratio laid down by this Court in *Sunil Bharti Mittal* it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of *Maksud Saiyed vs. State of Gujarat & Ors.* this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. It is further held that Statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

Similarly, in the case of **Sushil Sethi Vs. Arunachal Pradesh ((2020)3 SCC 240)**, it has been held as under:-

> "8.2. It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In the case of *Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668*, it is observed and held by this Court that the penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the

> company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

12. Thus, even if the argument of learned counsel for respondent/CBI is accepted that petitioner was not the Secretary but CMD of the College, then too he cannot be held vicariously liable in terms of the aforesaid precedents. Moreover, learned counsel for the respondent/CBI has not been able to point out any material to establish proximity/link of the petitioner either with J.P.Baghel, Savendra Jadon (the accused persons named in the FIR) or Middleman Pramod Sharma who allegedly arranged the deal as per the charge-sheet filed by the CBI or for that matter any other accused person/middleman. Learned Special Court has taken cognizance against the petitioner for the offences punishable under Ss. 120B read with 201, 204, 408, 419, 468, 471, 477 of the IPC, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and 4/3 D (1)(2) of the M.P Pareeksha Adhiniyam. It is trite that essential ingredients to commit an offence of criminal conspiracy is an agreement between two and more persons and the agreement which is formed must be in relation to committing an illegal act or an act done by illegal means. Surprisingly, learned counsel for the

respondent/CBI could not point out any material from record so as to infer any agreement between the petitioner and the students or College Management Committee or Admission Committee;statutory committee to hire students for blocking seats in order to cause pecuniary gain to the College/Society. What evidence/documents/electronic record have been destroyed by the petitioner or which documents/electronic record have been forged by him or which forged documents have been used by him or which document has been cancelled/destroyed/defaced by him so as to attract the provisions of Ss. 201, 204, 468, 471 and 477 of the IPC is also not forthcoming. What property was entrusted to the petitioner and how he committed criminal breach of trust so as to attract the provisions of Ss.408 and 409, IPC is also not explained by the learned counsel for respondent/CBI. Similarly no explanation has been rendered with respect to the imputed provisions of PC Act and Pareeksha Adhiniyam against the petitioner. The statements of PW34, PW40, PW47 and PW48, quoted above, are not inculpatory as against the petitioner. It is well settled that for taking cognizance there should be grave suspicion against the accused leading to presumption. Criminal liability being a strict liability, the material for harboring such *grave suspicion* should be discernable from record, which is lacking in the instant case as against the petitioner. It appears that the learned Special Judge has mechanically taken cognizance against the petitioner without applying his mind.

13. In fact, in the matter at hand, last day admissions and College Level Counselling conducted by Chirayu Medical College are under the lens. The thrust of the allegations in the instant case stem from an

FIR made by one Ashish Kumar Chaturvedi alleging that a Medical Student J.P.Baghel had informed him that he had been offered to re-appear in PMT 2011 examination and get his candidature cancelled after getting a seat allotted in Private Medical College through conselling, in order to benefit the private Institution. As discussed above, the present petitioner had no role either in admission making process or for that matter reporting the number of vacant seats to the DME as the same were not his domain as per the resolution and order of the Dean (Annexure P/5).

As a matter of fact, last day admissions and College level counselling are not an irregularity but a needed practice as medical seats being national resource cannot be allowed to go waste. In fact, the controversy already stands settled by the decision of the Apex Court in the case of **Index Medical College, Hospital & Research Centre (Supra)**. In that case, constitutional validity of Rule 12(8)(a) of the Madhya Pradesh Chikitsa Shiksha Pravesh Niyam, 2018 was under challenge. The said Rule provided as under:-

> "(8) (a) The vacant seats as a result of allotted candidates from MOP-UP round not taking admission or candidates resigning from admitted seat shall not be included in the college level counseling (CLC) being conducted after MOP-UP round"

In this backdrop, while declaring the said Rule ultra vires, the Hon'ble Apex Court held as under:-

> "**24.** There is no doubt that the object with which Rule 12 (8) (a) is made is appropriate as malpractice by students in the admission process should be curtailed. Rule 12 (7) (c) provides that students who do not take admission after issuance of an allotment letter will not be entitled to seek refund of the advance admission fee of Rs.2 lakhs which

would stand forfeited automatically. According to Rule 12 (8) (b), those students who do not join after being allotted a seat through mop-up round will automatically be declared ineligible for the next round of counselling. They will not be entitled for admission to any other medical/dental colleges. Suitable steps are taken to prevent such students from participating in the next round of counselling, forfeiting the advance admission fee and making them ineligible for admission in any medical college. However, the medical colleges who have no part to play in the manipulation as detailed above are penalised by not being permitted to fill up all the seats. The measure taken by the Government of proscribing the managements from filling up those seats that fall vacant due to non-joining of the candidates in mop-up round is an excessive and unreasonable restriction.

25. The right to admit students which is a part of the management's right to occupation under Article 19 (1) (g) of the Constitution of India stands defeated by Rule 12 (8) (a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college. Not filling up all the medical seats is not a solution to the problem. Moreover, seats being kept vacant results in huge financial loss to the management of the educational institutions apart from being a national waste of resources. Interest of the general public is not subserved by seats being kept vacant. On the other hand, seats in recognised medical colleges not being filled up is detrimental to public interest. We are constrained to observe that the policy of not permitting the managements from filling up all the seats does not have any nexus with the object sought to be achieved by Rule 12 (8) (a). The classification of seats remaining vacant due to non-joining may be based on intelligible differentia but it does not have any rational connection with the object sought to be achieved by Rule 12 (8) (a). Applying the test of proportionality, we are of the opinion that the restriction imposed by the Rule is unreasonable. Ergo, Rule 12 (8)(a) is violative of Articles

14 and 19 (1) (g) of the Constitution."

(*Emphasis supplied)*

Thus, no illegality can be attached to the last-day admissions or College-level counseling unertaken by a Private Medical College.

14. In view of the above, it can safely be said that the instant case falls within categories (1) and (3) as enunciated in paragraph 102 of the celebrated decision in the case of **State of Haryana Vs. Bhajanlal (1992 Supp (1) SCC 335)** followed in catena of decisions, warranting exercise of powers under section 482 of the Cr.P.C. for preventing abuse of process of Court as infra:

> *"(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.*
> *(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"*

Besides, interference u/s 482 Cr.P.C. is also warranted for want of ingredients of the charges imputed against the petitioner as discussed above (**Abhishek Saxena Vs. State of Uttar Pradesh and another (2023 SCC OnLine SC 1711)**, referred to).

15. At this juncture, another important facet of the matter cannot be lost sight of. The admissions pertain to the year 2011 and about 12 years have passed by. The medical students who took admission in the year 2011, pursued their studies for 5 years. During this period no action was taken against them or the College by the AFRC which is a

statutory body to look into the matter despite registration of instant FIR in the year 2014. Now today, much water has flown under the bridge. Besides, now at a distance of time of more than 12 years, if petitioner is forced to underto the orderal of trial, in the obtaining facts and cirumstances of the case;on unfounded material as discussed above, in fact and in effect would tantamount to travesty of justice. Hence, it is a fit case warranting interference under section 482 of the Cr.P.C.

Consequently, the instant petition is allowed. The CBI charge-sheet, as well as, the impugned order dated 7/1/2021 taking cognizance, so far as they relate to the present petitioner, stand quashed.

(ROHIT ARYA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

(and)