

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE**

**&
HON'BLE SHRI JUSTICE VIVEK JAIN**

MISC. CRIMINAL CASE No. 3804 of 2025

SURESH SINGH BHADORIA

Versus

CENTRAL BUREAU OF INVESTIGATION

Appearance:

Shri Siddharth Sharma and Hemendra Jain - Advocates for the applicant.

Shri Vikram Singh – Advocate for the respondent – C.B.I.

WITH

MISC. CRIMINAL CASE No. 3812 of 2025

SURESH SINGH BHADORIA

Versus

CENTRAL BUREAU OF INVESTIGATION

Appearance:

Shri Siddharth Sharma and Hemendra Jain - Advocates for the applicant.

Shri Vikram Singh – Advocate for the respondent – C.B.I.

ORDER

(Reserved on : 08.04.2025)

(Pronounced on : 28.04.2025)

Per: Hon'ble Shri Justice Vivek Jain, Judge

The present petitions have been filed for quashing of the final reports/supplementary charge sheet presented by the C.B.I. against the present

applicant and only difference in the two cases is that M.Cr.C. No.3804/2025 relates to PreMedical Test-2012 while M.Cr.C. No.3812/2025 relates to Pre-Medical Test-2013. The nature of allegations and the role assigned to the present applicant in both the cases is identical. Therefore, the present petitions are analogously heard and being decided by this Common order.

2. M.Cr.C. No.3804/2025 has been filed for quashing of the final reports/supplementary charge sheet No.02/2021 arising out of C.B.I. FIR Crime No.RC2172015A0025 resulting in pending Sessions Trial No.9500317/2014 before the IXth Additional Sessions Judge (VYAPAM Cases), C.B.I., Bhopal. M.Cr.C. No.3812/2025 has been filed for quashing of charge sheet of C.B.I. FIR Crime No.RC2172015A0108 registered by C.B.I., Bhopal resulting in pending Sessions Trial No.1200740/2014 before IXth Additional Sessions Judge (VYAPAM Cases), C.B.I., Bhopal so also the order dated 17.02.2022 passed in the said trial whereby cognizance has been taken against the applicant.

3. The case of the counsel for the applicant is that the matter pertains to alleged irregularities in PreMedical Test (for short 'PMT') - 2012 and 2013 held in June, 2012 and 2013 respectively conducted by M.P. Professional Examination Board, then known as VYAPAM which was the acronym of its name in Hindi, i.e. M.P. Vyavasayik Pariksha Mandal. It is argued that acting on a tip off, at the time of PMT-2013, certain students were apprehended by Indore Police belonging to different States other than Madhya Pradesh camping in some hotels in Indore and during investigation by local police, it was

revealed to prosecution that similar fraud was committed during PMT-2012 as well and then FIR was registered by STF and during course of investigation, the present applicant was also arrayed as accused.

4. Later on, the investigation was transferred from STF to CBI under the orders of the Hon'ble Supreme Court in W.P. (C) No.417/2015 dated 09.07.2015 (Digvijay Singh and others vs. State of M.P. and others). It is argued that thereafter the scope of investigation was wrongfully expanded by the CBI and the matter of VYAPAM scam, which was relating to the students wrongfully qualifying the competitive examination by allegedly resorting to appearance of impersonators in the examination as solvers and middleman for the said purpose, manipulation with the answer seats and results, etc. was extended wrongfully to the last date admissions taken by Private Medical Colleges, which was having no connection with the VYAPAM scandal in the matter of conducting PMT Examination as it is not a matter connected with the conduct of examinations by VYAPAM, but rather in the matter of admissions in the Colleges taken by the qualified and selected candidates, and having no connectivity with VYAPAM scandal.

5. It is further argued that the practice of last day admissions in Private Medical Colleges is well established so as to provide wasting of seats in such medical colleges on account of non-reporting/withdrawal of admissions by students allotted to such medical colleges. It is argued that such last date admissions have not been held to be illegal though the matter has been raised

time and again and subjected to judicial review before the High Courts and the Supreme Court of India. The said practice has not even been held to be illegal, much less held to be a criminal offence.

6. It was also argued that as per M.P. Medical and Dental Undergraduate Entrance Examination Rules, 2012 vide Notification dated 03.04.2012 the process to govern admission to MBBS and BDS Courses was set up by the State. Under these rules, PMT-2012 was conducted. Rule 12(1) provided for allocation of seats in Private Medical Colleges through Online Counseling conducted by the Counseling Committee of the State comprising of highly placed government officials chaired by Director of Medical Education, Madhya Pradesh. The students were allotted to the Medical College with which the applicant has been alleged to be associated and the admissions granted have not been held to be illegal. It is argued that after blocking their seat in the first round of counseling some students used to withdraw the candidature at a later stage due to getting better college in subsequent rounds of counseling or getting Government College in said subsequent rounds or for taking a gap year for preparation to get a better college, because medical education in private colleges is costly.

7. Such withdrawals led to the seats getting vacant which ultimately had to be filled up by the Private Medical Colleges by offering last day admissions and this practice did not prejudice the right of any deserving meritorious candidate because earlier the seats were blocked by candidates which were

allotted to the concerned medical college in the counseling. It is argued that final list of admitted students including last day admissions was duly sent to be Medical Council of India and other statutory authorities and none of the authorities had taken any objection that the Medical College concerned, i.e. Index Medical College had resorted to any illegality in the matter of admissions.

8. It is the case of the applicant herein that the present applicant is the Chairman of the Society known as Mayank Welfare Society while the Dean of Index Medical College Hospital and Research Center (for short referred to as 'IMCHRC') was one Mr. B.N. Subnis while one Arun Arora was the Chairman of admissions in IMCHRC. Learned counsel for the applicant while pressing the case of the applicant submits that the aforesaid fact of the present applicant neither being Dean of the Medical College nor being Chairman of the Admission Committee of the College has been accepted by the C.B.I. also and in the impugned charge sheet the C.B.I. has roped in the present applicant on mere surmises and conjectures only on the ground that the present applicant was the Chairman of the Foundation Society of the Medical College known as Mayank Welfare Society and it has been presumed that in fact, it was the present applicant, who was actually running the Medical College and the Dean and Chairman of the Admission Committee were only the rubber stamps. It is argued that the said conclusion arrived at by the C.B.I. is not based on any material collected during the course of investigation by the C.B.I. and it is only based on surmises and conjectures and presumptions drawn by the C.B.I. to

hold that indeed it was the present applicant, who was actually running the Medical College and was looking after the admission process of the Medical College.

9. Learned counsel for the applicant has also relied on order passed in M.Cr.C. No.39055/2021 passed by the Co-ordinate Division Bench of this Court at Gwalior, wherein the matter related to PMT – 2011 and the Division Bench quashed the charge sheet and consequential proceedings primarily on the ground that the C.B.I. has not been able to point out any material to establish proximity of the petitioner therein with the middlemen and also that the applicant is not liable directly for admission making process and vicarious liability cannot be placed upon him and further that criminal liability being strict liability the material for harboring such grave suspicion is lacking in the instant case. It is argued that the said order was in the matter of the Chairman of Foundation Society running Chirayu Medical College and the allegations were exactly identical against the Chairman of the Foundation Society, which established the Medical College.

10. Learned counsel for the applicant while pressing MCRC No. 3804/2025 argued that this case is exactly identically placed with the aforesaid case and it has been held that to establish criminal culpability, the necessary ingredients of proximity of the Chairman of the Society are not made out by the material collected by the C.B.I. during the course of investigation and therefore, the present applicant being Chairman of Foundation Society of another Medical

College of the same period, therefore, he also deserves identical treatment as given in the case of Chairman of Foundation society of Chirayu Medical College.

11. It is further pointed out by learned counsel for the applicant that the aforesaid order in M.Cr.C. No.39055/2021 was in relation to PMT – 2011 and the same has been followed in the matter of PMT – 2012 & PMT – 2013 by the Division Bench at Jabalpur also in M.Cr.C. No.53249/2024 and M.Cr.C. No.53251/2024, therefore, there being no distinguishing feature in the present case, hence, the FIR, charge sheet and consequential proceedings emanating therefrom deserves to be quashed against the present applicant also.

12. *Per contra*, it was argued by learned counsel for the C.B.I. that there are distinguishing features in the present case as compared to the case of Dr. Ajay Goenka in M.Cr.C. Nos.39055/2021, 53249/2024 and 53251/2024. To point out the distinguishing features, it was argued by learned counsel for the C.B.I. by taking this Court to various paragraphs of the reply that during investigation, the documents collected from Index Medical College and Directorate of Medical Education (“DME” for short) as well as statements of witnesses has established that management of the said Medical College has dishonestly furnished false information to DME about admission of 80 accused engine candidates in the Medical College, whereas they had not actually taken admission and had only consumed the seats, because they were not intending to take admission as some of them were even students of other Medical Colleges

and vide a letter under signature of Arun Arora, the Chairman of Admission Committee, the College informed DME that many of these students have taken admission in the College by 21.09.2012, i.e. before the start of second round of counseling. It is further pleaded that the admissions were shown by the Medical College with dishonest intention to the DME, which would allow them to use that vacant seats on 30.09.2012, i.e. last date of admission to fill on their own without due process. In M.Cr.C. No.3804/2025, it is clearly pleaded that the letters were received under signatures of Arun Arora, Chairman of Admission Committee and nothing overtly done by present applicant has been pleaded in the reply and the respondents have not made any serious attempt to distinguish the case of the present applicant with the case of Dr. Ajay Goenka, the prosecution against whom relating to PMT – 2011, 2012 & 2013 has been quashed by this Court.

13. During the course of argument, learned counsel for the respondents argued that the post of Dean at Index Medical College, Indore during the relevant period was only an ornamental post and it was in fact the present applicant, who was actually taking all the decisions in connection with the college concerned. It is further argued that co-accused Arun Arora in conspiracy with other Members of Admission Committee were in fact carrying out the orders and directions of the present applicant only and therefore, whatever was done, was at the instance of the present applicant only.

14. However, apart from plainly stating this much in the reply, nothing has been stated in the entire reply that what material has been collected by the C.B.I. to conclude that in fact, it was the present applicant, who was actually running the show in the Medical College and others being Dean and Chairman of Admission Committee were nothing, but ornamental posts and the show was being run by the applicant. In the entire reply, apart from stating that in fact, all other officials of the Medical College concerned were holding ornamental position, nothing has been pleaded that how the C.B.I. has *prima facie* reached to conclusion and what is the material available with the C.B.I. that indeed it was the present applicant, who was taking all the decisions connected with admissions in the Medical College. Vague averments have been made in the reply that the applicant was taking all the decisions connected with the admission process, but nothing specific has been pointed out in the reply nor during the course of arguments that what material has been collected by the C.B.I. to *prima facie* conclude criminal proximity of the present applicant with something which was done under signatures of Dean and Chairman of Admission Committee.

15. So far as the question of parity with the case of Dr. Ajay Goenka is concerned, in para 3.2 of the reply the respondents have simply stated that principle of parity cannot be invoked blindly when the present case involved distinct evidence establishing the applicant culpability. However, nothing has been pointed out that what is the distinguishing feature in the present case and

how in the present case, the C.B.I. has concluded and collected the material to show that the day to day functioning of the said Medical College was being carried out by the present applicant and he was being referred to as Chairman of Index Medical College.

16. On the contrary, in M.Cr.C. No.3804/2025, it has been pleaded in para 3.17 of the reply that the conspiracy is hatched in secrecy and executed in darkness and it is almost impossible to prove conspiracy by direct evidence and therefore, it is well settled law that circumstantial evidence is the best evidence to prove criminal conspiracy and prosecution has in its possession, all the material with all preponderance. Therefore, the respondents have in fact admitted that they have no direct evidence against the present applicant. Neither in the reply nor during the course of arguments, learned counsel for the respondent was able to point out that what is the material available with the C.B.I. to conclude that the posts of Dean and Chairman Admission Committee were ornamental posts in Index Medical College at the relevant point of time.

17. Learned counsel for the respondent referred to internal page 202 of the charge sheet, which mentions that it has been revealed that some of the students were called to Amaltas Hotel, which is owned by the present applicant for brokering the deal for seat cancellation. However, even this page 202 of the charge sheet does not mention that any material is available with the C.B.I. to conclude that in fact, it was the present applicant, who had entered into a deal

with the students or was present at the time of alleged brokerage of the deal. In para III & VI of page 202 of the charge sheet following has been mentioned :-

“III. Investigation revealed that during the admission year 2012, fresh admission committee was not constituted. The admission process was looked after by a committee comprising 5 members - namely Shri Arun Arora (Chairman of admission committee), Dr. K. K. Saxena, Dr. Pawan Bambani, Shri Nitin Gothwal and Shri Jagat Rawat and the said committee used to work under the orders and directions of accused Suresh Singh Bhadoria, Accused Suresh Singh Bhadoria was actively involved in the admission process for IMCI for the admission year 2012 as all decisions, with respect to the said admission process, were taken as per orders and directions of accused Suresh Singh Bhadoria.

VI. Investigation has further revealed that some of the candidates, who had been allotted an MBBS seat in Index Medical College, Indore in 2012, were contacted and were called to Amaltas Hotel, Indore, which belongs to accused Suresh Singh Bhadoria, for brokering the deal for seat cancellation (against money) in lieu of first taking false admission, which is merely reported by the medical college but actual admission was not taken, against the allotted seat in MBBS Course in the said medical college and subsequently vacating the same so that the said medical college can admit any student of their choice. The said “candidates were told submit a representation to the said Medical College for providing them extended time till 30.09.2012 for submitting full admission fees of 1st year of MBBS course in the admission year 2012.”

Even the said contents of the charge sheet do not inspire any confidence, which were heavily relied by learned counsel for the applicant.

18. So far as in M.Cr.C. No.3812/2025 is concerned, the same relates to PMT-2013. The allegations against the applicant are similar to M.Cr.C. No.3804/2025 and the reply is also on identical terms without any real

difference. Learned counsel for the respondent – C.B.I. has pointed out to various paragraphs of the reply, which are identical to the reply filed in M.Cr.C. No.3804/2025 so also relied on pages 77 and 78 of the charge sheet against the present applicant and argued that Chairman of the Society is elected by the Members and the applicant was the Chairman of the Society while Shri Arun Arora was one of the Members of the Society and was also Chairman of Admissions in Index Medical College. On such averments, it has been argued that there is sufficient material collected by the C.B.I. to proceed against the present applicant.

19. From the aforesaid factual matrix, we do not find any distinguishing feature in the present case from the one decided in the case of Ajay Goenka in M.Cr.C. No.39055/2021 as followed in M.Cr.C. Nos.53249/2024 & 53251/2024. In M.Cr.C. No.39055/2021 which is the basic case, the Co-ordinate Division Bench at Gwalior has held as under:-

“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 Committee 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 de hors 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 de hors 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 reappear 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 nonjoining 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 undertaken 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 undergo the ordeal of trial, in the obtaining facts and circumstances 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.”

20. As has been held by as above, learned counsel for the C.B.I. was unable to distinguish the said order from the present case. The Co-ordinate Division Bench has already held that the applicant therein who was Chairman of the Foundation Society owning and establishing the Medical College cannot be held vicariously liable looking to his role in the foundation society as he is not connected with activities of the Medical College and resolution dated 07.07.2011 was considered by the Division Bench therein. In similar terms, bye-laws of the society of which the present applicant is the Chairman has been placed on record with the present petition, so also the resolution dated 15.8.2011, whereby the Dean of the Medical College has been authorized vide resolution dated 15.08.2011 to carry out all the day to day activities of the Medical College including correspondence with all statutory bodies and councils, admission of students, their expulsion, appointment of employees and their termination, etc. The said resolution has not been doubted by the respondents in any manner in their reply, which is identical to the one as was available in M.Cr.C. No.39055/2021. As no distinguishing features from the aforesaid matter have been pointed out in the present case, the applicant herein is entitled to similar benefit in the present case also. However, we make it clear here that we have not made any comments on merits relating to allegations against the Medical College concerned.

21. Consequently, both the petitions are **allowed**. The impugned charge sheets and all proceedings consequential thereto against the applicant are quashed.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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