

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18<sup>TH</sup> DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1644 OF 2022

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**BETWEEN:**

SRI PALAKSHA S.S.,  
S/O SRI. SHIVANNA  
AGED ABOUT 39 YEARS  
ADVOCATE BY PROFESSION  
R/AT "HORIHOLE BASAVESHWRA NILAYA"  
NEAR SARJI CONVENTION HALL  
S.V.N. LAYOUT  
KUVEMPU NAGAR  
SHIVAMOGGA - 577 204.

PERMANENT RESIDENT OF

SEEGEHOSUR VILLAGE  
KUSHALNAGAR HOBLI,  
SOMAWARPETE TLAUK  
KODAGU DISTRICT - 571 234.

... PETITIONER

(BY SRI K.N.PHANINDRA, SR.ADVOCATE A/W  
SRI AKKI MANJUNATH GOWDA, ADVOCATE)

**AND:**

1 . THE STATE BY VIDHANA SOUDHA P.S.  
REPRESENTED BY S.P.P.,  
HIGH COURT OF KARNATAKA  
BENGALURU - 560 001.

2 . THE JOINT REGISTRAR  
GOB - I BRANCH  
HIGH COURT OF KARNATAKA  
DR. B.R. AMBEDKAR VEEDHI  
BENGALURU CITY  
PIN 560 001.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;  
SRI S.S.NAGANANDA, SR. ADVOCATE A/W  
SRI KRISHNA S., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUSH THE ENTIRE PROCEEDINGS/CHARGE SHEET IN C.C.NO.14766/2021 REGISTERED BY THE VIDHANA SOUDHA P.S., FOR THE OFFENCE P/U/S.420 OF IPC PENDING ON THE FILE OF XXXIX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioner is before this Court calling in question proceedings in C.C.No.14766 of 2021 pending before the XXXIX Additional Chief Metropolitan Magistrate, Bengaluru arising out of crime in Crime No.1 of 2021 registered for offence under Section 420 of the IPC.

2. *Shorn* of unnecessary details, the facts in brief germane are as follows:-

The petitioner avers that he is a practicing Advocate having got himself enrolled at the Karnataka State Bar Council on 15-09-2006 and his principal place of practice being Coorg at the relevant point in time, when the petitioner had practice of 13 years, the High Court of Karnataka, issues a notification inviting applications for the posts of District Judges on 21-10-2019. The petitioner finding himself eligible, applies for the post of District Judge, appears in the preliminary examination, clears the same and between 15-02-2020 and 16-02-2020 the final examinations were conducted for the said post. The petitioner cleared the final examination as well, and was called for a viva-voce. The petitioner emerged successful even in the viva voce and a final select list was notified by the High Court on 14-08-2020. The petitioner was one amongst the three candidates in the select list, who were recommended for appointment to the post of District Judges.

3. After the notification of the select list, an anonymous complaint reaches the High Court which results in a show cause notice being issued to the petitioner alleging that he has suppressed or tendered false information while submitting the application *qua* the cases pending against him and directs to show cause as to why proceedings should not be initiated against him. The petitioner submits two separate explanations on 28-10-2020 and 18-11-2020. The petitioner then was given a personal hearing before the Committee and the Committee resolved to terminate the candidature of the petitioner and further to register a criminal case against the petitioner for having furnished false information or suppressed relevant information.

4. This results a complaint being registered and the complaint becomes a crime in Crime No.1 of 2021 for offence punishable under Section 420 of the IPC. This was called in question by the petitioner before this Court in Criminal Petition No.959 of 2021. During the pendency of the said criminal petition charge sheet comes to be filed by the jurisdictional police on completion of investigation. It is then the criminal petition aforesaid was

withdrawn reserving liberty to call in question the charge sheet. After filing of the charge sheet, the learned Magistrate takes cognizance of the offence punishable under Section 420 of the IPC. It then leads the petitioner to this Court in the subject petition calling in question proceedings in C.C.No.14766 of 2021.

5. Heard Sri K.N. Phanindra, learned senior counsel appearing for the petitioner, Smt. K.P. Yashoda, learned High Court Government Pleader appearing for respondent No.1 and Sri S.S. Nagananda, learned senior counsel appearing for respondent No.2.

6. The learned senior counsel representing the petitioner would seek to contend that no doubt criminal cases were pending against him. But, as on the date of the notification and appearance before the Selection Committee for viva voce, no criminal case was pending against him, as all of them had ended in acquittal or settled before the Lok Adalat. Out of the list of criminal cases that the show cause notice mentions, four of them were registered by the petitioner himself. Therefore, he was a complainant in all those cases and not the accused. Since no case was pending against him

as on the date of the notification, he misread the condition in the application thinking that if there were any cases pending against him he had to answer in the affirmative and accordingly he has answered it. Nonetheless he would admit, yes it is a mistake and a human error. The learned senior counsel would further contend that this by no stretch of imagination can be termed as an offence under Section 420 of the IPC for cheating, as the intention of the petitioner was never to cheat. He would reiterate that intention of cheating was not right from the inception, as no case was pending against him on the date of the application. They were all past cases. He would seek quashment of the entire proceedings.

7. Per-contra, the learned senior counsel Sri S.S. Naganand representing the complainant would vehemently refute the submissions to contend that the petitioner has induced the Committee to consider his candidature for selection to the post of District Judge, as otherwise any other candidate would have made it to the select list. The inducement is on a dishonest intention right from the inception. He would submit that reference to the word 'property' in Section 415 of the IPC would not mean property *ipso*

*facto*. It would be in fact, deception by the accused. Therefore, he would submit that these are seriously disputed questions of fact and on the said seriously disputed questions of fact this Court under Section 482 of the Cr.P.C., should not interfere, more so, in the light of the charge sheet being filed by the jurisdictional police.

8. The learned senior counsel for the petitioner would in reply submit that the charge sheet is filed, no doubt, as the complainant is the High Court. But, whether it would meet the ingredients of Section 415 of the IPC is what is required to be noticed for the petitioner to be prosecuted in a criminal case. It is his repeated contention that the mistake of the petitioner in not mentioning 'yes' or 'no' appropriately was due to inadvertence, which is neither intentional nor deliberate or even *mala fide* or with any ulterior motive. As the software requires to say 'yes' or 'no', the petitioner answered as 'No' as there was no criminal case pending on the date of the application. He has misread the word "was" in the application.

9. The learned High Court Government Pleader would only toe the submissions made by the learned senior counsel representing the complainant.

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

11. The afore-narrated facts, though not in dispute, would require reiteration *qua* the relevant dates. The 2<sup>nd</sup> respondent issues a notification calling for applications from eligible candidates for recruitment to the posts of District Judges on 21.10.2019. The petitioner finding himself eligible, submits his application. The application contained a query, at clause 19 which reads as follows:

**"19. Whether the applicant is/was involved in any Civil/Criminal/quasi Judicial Proceedings in any capacity."**

The clause indicates that if the applicant is or was involved in any civil or criminal or quasi judicial proceedings in any capacity. The petitioner answers to this query with an unequivocal and emphatic **"No"**. This application is submitted on 25-10-2019. Based upon



the said application submitted along with a declaration that whatever has been said has been correctly said, further proceedings are taken up. He is allowed to participate in the preliminary examination, final examination and viva voce as the petitioner emerged successful at every rung of selection. After the selection proceedings, a select list comes to be notified by the 2<sup>nd</sup> respondent in which the petitioner was one of the three candidates selected to the posts of District Judges. The recommendation was made by the Committee for appointment of the petitioner along with two others and the same was communicated to the State Government for issuance of appointment orders. Pending issuance of appointment orders, there emerges an anonymous complaint against the petitioner that he has been embroiled in plethora of cases. This results in a show cause notice being issued to the petitioner by the 2<sup>nd</sup> respondent on 15-10-2020. The show cause notice assumes certain significance and is quoted for the purpose of ready reference:

".... ....

*In the meantime, it has come to notice of the Hon'ble High Court that you are/were involved in the following civil/criminal proceedings which are pending or disposed:*

- 1) *Criminal Case No.1160/2010 on the file of the Court of Addl. Civil Judge and JMFC, Somwarpet (FIR No. 176/2010 dated 18.06.2010 filed by Kushalnagar Police Station).*
- 2) *Special Case (Atrocity) No.4/2012 on the file of the Court of Prl. District and Sessions Judge, Kodagu, Madikeri.*
- 3) *Criminal Case No.648/2012 on the file of the Court of Addl. Civil Judge and JMFC., Somwarpet.*
- 4) *Criminal Case No.1968/2013 on the file of the Court of Addl Civil Judge and JMFC., Somwarpet*
- 5) *Criminal Case No.428/2018 on the file of the Court of Civil Judge and JMFC., Kushalnagar.*
- 6) *Criminal Case No.429/2018 on the file of the Court of Civil Judge and JMFC, Kushalnagar.*
- 7) *Unnumbered Private Complaint on the file of the Court of Civil Judge and JMFC, Kushalngar, which was registered in pursuance of the order dated 02.11.2018 of the Civil Judge and JMFC, Kushalnagar and FIR No.138/2018 dated 05.11.2018 filed by Kushalnagar Police Station.*
- 8) *Criminal Revision Petition No. 210/2018 on the file of the Court of I Addl. District and Sessions Judge, Kodagu Madikeri.*
- 9) *Cri. Misc. Case No.35/2019 on the file of the Court of Civil Judge and JMFC, Kushalnagar.*

*However, while submitting your online application for the post of District Judge by direct recruitment in pursuance of this Office Notification dated 21.10.2019, you have **answered as "No"** to the question at column No. 19 of the online application which reads as under:*

***"Whether the applicant is/was involved in any Civil/Criminal/Quasi Judicial proceedings in any capacity? If yes, give details:-"***

*In this regard, I am inviting your attention to this Office Notification dated 21.10.2019 inviting online applications for the post of District Judges by direct recruitment, wherein it is stated as under:*

***"If any information furnished by the applicants in the application is found to be false, their candidature is liable for rejection and also they are liable for criminal prosecution for furnishing false information."***

*The Hon'ble Committee for Direct Recruitment of District Judges is of the opinion that there is prima facie suppression of material information/facts by you and your answer to the question at column No. 19 of the online application is prima facie false.*

*Hence, I am directed to issue this Show Cause Notice to you to submit your explanation as to whether the answer given by you at column No. 19 of the above said online application is correct or not and also to explain as to why further action should not be initiated against you in terms of this Office Notification dated 21.10.2019. Your explanation shall be submitted to the Hon'ble High Court within fifteen days from the date of receipt of this Show Cause Notice."*

The show cause notice narrates nine cases in which the petitioner was involved and the latest being in Criminal Miscellaneous No.35 of 2019. The petitioner submits his reply. In the reply it is admitted by the petitioner that it was due to inadvertence he has not indicated about all the cases. The explanation is that all the cases

pending against him, few of them in the capacity of being the complainant, had all ended either in acquittal or settled before concerned Courts. The only case that was pending was a proceeding instituted by his wife in Criminal Miscellaneous No.35 of 2019 under Section 125 of the Cr.P.C. It is his reply that a divorce was granted by the concerned Court and the petitioner had married another lady on 05-03-2020. Therefore, all the matters are closed. But, the emphatic admission is dubbed as human error. Therefore, it becomes an admitted fact that there were nine cases, four initiated by the petitioner and five against him in various jurisdictions between 2010 and 2019, in which he was involved.

12. The reply is placed before the Committee and a personal hearing was also rendered to the petitioner, who appears before the Committee and submitted his written explanation. The written explanation is in reiteration of what he has replied in reply to the show cause notice. The resolution of the committee was to cancel the selection and appointment of the petitioner and submit him to criminal jurisdiction by directing registration of a complaint as he has deceived the 2<sup>nd</sup> respondent by submitting false information

deliberately. The complaint becomes a crime in Crime No.1 of 2021 for offence punishable under Section 420 of the IPC. The petitioner files a criminal petition before this Court challenging the said action. During its pendency the Police file a charge sheet against the petitioner. Column No.7 of the charge sheet reads as follows:

“ಈ ದೋಷರೋಪಣಾ ಪಟ್ಟಿ ಕಾಲಂ-2 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಆರೋಪಿಯು ದಿನಾಂಕ:21/10/2019 ರಂದು ಜಿಲ್ಲಾ ನ್ಯಾಯಾಧೀಶರ ಹುದ್ದೆಗೆ ಆನ್‌ಲೈನ್ ಮೂಲಕ ಅರ್ಜಿ ಸಲ್ಲಿಸಿದ್ದು ಅರ್ಜಿಯ ಕಾಲಂ-19ರಲ್ಲಿ *“Whether the applicant is/was involved in any Civil/Criminal/Quasi Judicial. Proceedings in any capacity? If yes give details”* ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಆರೋಪಿಯು *“No”* ಎಂದು, ಆರೋಪಿಯು ತಾನು ಈ ಹಿಂದೆ ಯಾವುದೇ ಕ್ರಿಮಿನಲ್ /ಸಿವಿಲ್ ಕೇಸುಗಳಲ್ಲಿ ಭಾಗಿಯಾಗುವುದಿಲ್ಲವೆಂದು ನಮೂದಿಸಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಿ, ನೇಮಕಾತಿ ಪ್ರಕ್ರಿಯೆಯಲ್ಲಿ ನಡೆಸಿದ್ದ ಎಲ್ಲಾ ಪರೀಕ್ಷೆಗಳಲ್ಲಿ ಉತ್ತೀರ್ಣನಾಗಿ ಜಿಲ್ಲಾ ನ್ಯಾಯಾಧೀಶರ ಹುದ್ದೆಗೆ ಆಯ್ಕೆಯಾಗಿರುತ್ತಾನೆ. ಮಾನ್ಯ ರಿಜಿಸ್ಟ್ರಾರ್ ರವರ ಕಛೇರಿಗೆ ಬಂದ ಅನಾಮಧೇಯ ಪತ್ರದಲ್ಲಿ ಆರೋಪಿಯು ಈ ಹಿಂದೆ ಸಿವಿಲ್/ಕ್ರಿಮಿನಲ್ ಕೇಸುಗಳಲ್ಲಿ ಭಾಗಿಯಾಗುವುದಾಗಿ ತಿಳಿಸಿದ್ದು, ಈ ಬಗ್ಗೆ ಆರೋಪಿಗೆ ನೋಟಿಸ್ ಜಾರಿ ಮಾಡಿ ವಿಚಾರ ಮಾಡಲಾಗಿ ಆರೋಪಿಯು ಈ ಹಿಂದೆ ಕೆಲವು ಪ್ರಕರಣಗಳಲ್ಲಿ ಭಾಗಿಯಾಗಿರುವುದಾಗಿಯೂ, ಅರ್ಜಿ ಸಲ್ಲಿಸುವಾಗ ಕಣ್ ತಪ್ಪಿನಿಂದ & ತಾಂತ್ರಿಕ ದೋಷದಿಂದ ತಪ್ಪಾಗಿ ನಮೂದಿಸಿರುವುದಾಗಿ ಲಿಖಿತ ಉತ್ತರ ನೀಡಿರುತ್ತಾನೆ.

ಆರೋಪಿಯು ಈ ಹಿಂದೆ ಸಿವಿಲ್ / ಕ್ರಿಮಿನಲ್ ಕೇಸುಗಳಲ್ಲಿ ಭಾಗಿಯಾಗಿದ್ದ ವಿಷಯ ಮರೆಮಾಚಿ ವಂಚನೆಯಿಂದ ಜಿಲ್ಲಾ ನ್ಯಾಯಾಧೀಶರ ಹುದ್ದೆಯನ್ನು ಪಡೆಯಲು ಪ್ರಯತ್ನಿಸಿರುವುದು ಇದುವರೆಗಿನ ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುವುದರಿಂದ ಆರೋಪಿಯ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ದೋಷರೋಪಣಾ ಪಟ್ಟಿ ಸಲ್ಲಿಸಿದೆ.”

The product of the investigation is also the fact that the petitioner had suppressed pendency of criminal cases. The issue now is whether it amounts to an offence under Section 420 of the IPC or

otherwise. Section 420 has its ingredients in Section 415 of the IPC. Section 415 reads as follows:

**"415. Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section."

Section 415 directs that if an accused is *prima facie* guilty of a transaction which is a product of a dishonest intention on his part right from the inception, he would be *prima facie* guilty of cheating. The Apex Court in plethora of cases has interpreted what would be the ingredients of Section 415 for it to become an offence under Section 420 of the IPC.

13. The Apex Court holds that there are several forms and hues of the offence of cheating. If it is a deliberate act with a dishonest intention, it would amount to attracting ingredients of cheating under Section 415. But, if it is a cloak for a dispute which is seemingly civil in nature and criminal justice system is used to

settle those civil scores, the Apex Court has held that such crimes should be obliterated. The other set of judgments rendered by the Apex Court are, if the criminal law is set into motion on breach of contract, those cases should be obliterated as mere breach of contract would not amount to an offence under Section 406 or 420 of the IPC. The third set of judgments rendered by the Apex court are where criminal law is set into motion for recovery of money and that recovery of money is arising out of a breach of contract, even then the criminal law cannot be set into motion. It is these three principles which have led to quashment of criminal cases against the accused in the respective cases before the Apex Court or before the constitutional Courts.

14. Referring to every one of the judgments would only lead to the bulk of the subject order. The principles so laid down are not in dispute and there is no qualm about the principles so laid down by the Apex Court. It is to be noticed whether they are applicable to the facts of the case or otherwise, as every fact obtaining before the Apex Court, in all the judgments rendered, is decided on the

strength of facts of those cases. The same brush cannot be used to paint the facts in the case at hand as well.

15. Strenuous submissions are made with regard to the term 'property' as obtaining in Section 415 of the IPC, to mean property and nothing else. I decline to accept the said contention however strenuous it may be, for the reason that, the term 'property' cannot be rendered an attenuated view, as in the peculiar facts of the case property would mean, the service that the petitioner would have entered into, as it provides security of tenure which is valuable. Therefore, the valuable security is akin to property, in the facts of the case. The petitioner has deliberately suppressed the cases that were pending against him therefore, it amounts to seeking to secure employment on account of misrepresentation. It is, therefore, in cases where fraud and misrepresentation form the foundation for securing employment, can in a given case, be brought under the umbrella of the ingredients of cheating.

16. It is to be noticed that the petitioner is a practicing Advocate for close to 13 years prior to submitting his application for



the post of District Judge. He cannot be compared to an applicant who has applied for a Group-D post who can take shelter that by inadvertence he has not answered the query by properly understanding it. The query, in the case at hand, has unequivocally read as **"is/was"**. 'Is' would clearly mean if there is anything pending and 'was' would clearly mean whatever was over. If it would have been a case where the petitioner was not at all involved in any case or any trivial case of the past is not projected, it would have been a circumstance altogether different. It is an admitted fact that there were nine cases in which the petitioner was either complainant or accused be it any family dispute or otherwise. Therefore, the petitioner cannot feign ignorance of the cases that he had initiated or pending against him at the time of filing of the application, as the application is clearly worded that if there are past cases also the same had to be disclosed. Therefore, *prima facie*, the petitioner is guilty of suppressing the fact of him involving in nine cases *albeit* their closure, just prior to the notification issued by the 2<sup>nd</sup> respondent.

17. Reference being made to the judgments rendered by the High Courts of Allahabad and Rajasthan, which held that an appointment letter falls under valuable security for the purpose of interpretation of Section 420 of the IPC, becomes apposite. The Courts were dealing with identical cases of applicants. The High Court of Allahabad in a judgment rendered in **STATE OF U.P. v. RAM DHANI PANDE**<sup>1</sup> has held as follows:

*"12. PW 13 Sri Shivram Singh is the Hand Writing Expert. PW 16 N.B. Singh is the Magistrate who conducted the identification parade. PW 17 Shri Tambreshwar Prasad was the Minister for Irrigation and Power and he stated that the disputed letters Ex. Ka-26, Ka-29 and Ka-30 and envelop Ex. Ka-27 were neither written nor signed by him. He further stated that respondent was not known to him. PW 19 Shri Varmeshwar Pandey, the then Minister L.S.G.D. stated that the respondent was not his brother. Lastly PW 18 Inspector S.U. Zubedi of Crime Branch C.I.D. was the Investigating Officer of this case.*

*13. The accused pleaded not guilty. He denied that he ever gave out his name as Dharnidhar Pandey or represented to any one that he was brother of Sri Varmeshwar Pandey, Minister. He admitted that he had gone to Obra and met officers there several times but he did not remember their names. He also did not remember when and for whom he arranged the jobs. About previous conviction, he admitted that he was convicted under Secs. 170 and 420 IPC and had also filed an appeal in the High Court but did not know its result and in the meanwhile he had served out the full sentence. He alleged false implication by the police with a view to character assassination. He did not adduce any defence evidence.*

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<sup>1</sup> 1986 SCC OnLine All 605

**20. As regards charge under section 420 IPC the learned Sessions Judge observed that the officers deceived did not deliver any property and hence the offence of cheating by delivery of property was not committed, He further mentioned that there was no evidence that formal letter of appointment which constituted a valuable security had been delivered to any one. In our, opinion, these observations and findings of the learned Sessions Judge were not correct. There was definite evidence on the record that by cheating the officers, the respondent dishonestly induced them to make or prepare appointment letters and deliver the same and on that basis appointments were actually given to Ram Murti and certain other candidates who were still in service. The letter of appointment of Ram Murti dated 19-10-1967 is on the record as Ext. Ka-28 and the same was proved by Sri V.M. Mongalik PW 8. The statement of Sri R.K. Sanyal PW 7 shows that the candidates who were given appointments on the basis of the forged letters produced by the respondent were still in service and they could not be removed on account of certain difficulties. PW 8 V.M. Mongalik and PW 9 B.P. Singh had also stated that the act of the respondent caused mental damage to them. There can be no doubt that the letter of appointment was "property" and also "valuable security" within the meaning of those terms appearing in section 420 IPC. Consequently, the charge under section 420 IPC is also made out against respondent and the learned Sessions Judge had fallen into an error in recording a finding to the contrary.**

*(Emphasis supplied)*

Likewise, the High Court of Rajasthan in **SMT. PREMLATA v. STATE OF RAJASTHAN**<sup>2</sup> has held as follows:

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<sup>2</sup> 1997 SCC OnLine Raj.325

**"17. So far as charge under Section 420 IPC is concerned prima facie it appears that Smt. Premlata wanted employment as "Pracheta". In all public services appointment is made by means of an appointment letter which is to be issued after the selection process is over. The appointment letter is, therefore, the document which shows that the person in whose favour it has been issued is selected and is being offered the post mentioned in the letter. Such a document must be treated as properly within the meaning of Section 420 IPC. The use of the certificate by Smt. Premlata for the purpose of obtaining appointment letter thus prima facie attracts Section 420 IPC, because if a person who is not eligible for appointment, obtains appointment by making false representation regarding his/her eligibility and on the basis of that false representation the Appointing Authority gives appointment, the person must be said to be indulging in cheating. For reasons mentioned above charges under Section 420 IPC cannot be quashed at this stage.**

**18.** As regards charge under Section 120-B IPC it is well known that there can be no direct evidence of conspiracy and, therefore, to prove the charge of conspiracy the evidence has to be produced would be circumstantial evidence. The circumstances which are prima facie established in the instant case are (a) that Smt. Premlata wanted employment as "Pracheta" (b) that in order to be eligible to apply for the post of "Pracheta" she had to show that she was regularly selected for appointment in the institution and that she was working on the post in the institution (c) that in fact Smt. Premlata was neither a regularly selected teacher in the institution nor she was working as a teacher in any institution. (d) that the co-accused Pradeep who was the Head Master of the Institution knew well that Smt. Premlata was not holding the post of teacher and that she was not regularly selected and appointed as teacher in the institution and, therefore, no question of conducting any department inquiry could arise. (e) that in the certificate of accused Pradeep purporting to act in the capacity of the Head Master of the Institution not only certified that experience of giving lessons to the students he further certified that she was holding the post of teacher and that she had put more than 5

*years of service in the Institution and that no departmental inquiry was pending against her. Mention of departmental inquiry in the certificate was prima facie calculated to give the impression that Smt. Premlata was a regularly appointed teacher in the Institution, because the question of departmental inquiry can arise only against those persons who are regularly appointed teachers on that post. A bare reading of the certificate shows that prima facie this certificate was calculated to help Smt. Premlata in fulfilling eligibility clause of the notification. In the facts and circumstances of the case at least a strong suspicion arises that there was a conspiracy between Smt. Premlata and Shri Pradeep with the object of deceiving the department by means of the certificate. Therefore, charge under Section 120-B IPC cannot be quashed at this stage."*

*(Emphasis supplied)*

In the light of the aforesaid undisputed facts and judgments of High Courts of Allahabad and Rajasthan the subject petition does not merit any favourable consideration at this juncture.

18. It would be useful to refer to the judgment of the Apex Court in the case of **STATE OF TAMIL NADU v. G.HEMALATHAA**<sup>3</sup>. The Apex Court has held as follows:

**"8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under**

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<sup>3</sup> (2020) 19 SCC 430

**Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission** [M. Vennila v. T.N. Public Service Commission, 2006 SCC OnLine Mad 465: (2006) 3 Mad LJ 376].

**9. The High Court after summoning and perusing the answer sheet of the respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the respondent on a sympathetic consideration on humanitarian ground.** The judgments cited by the learned Senior Counsel for the respondent in *Taherakhatoon v. Salambin Mohammad* [Taherakhatoon v. Salambin Mohammad, (1999) 2 SCC 635] and *Chandra Singh v. State of Rajasthan* [Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545: 2003 SCC (L&S) 951] in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

**10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.**

... ..

**13. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law.** The other submission made by Ms Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

(Emphasis supplied)

The Apex Court holds that mandatory questions that are in the application should not be given a liberal view as the High Court cannot modify/relax the instructions in an application issued by the Commission therein and in spite of finding that there was no adherence to the instructions, the High Court granted the relief to a person who has violated mandatory instructions, and violating mandatory instructions and granting relief to such person would be laying down a bad law. The case was also concerning recruitment process initiated for the post of Civil Judge. The Apex Court further holds that instructions issued for recruitment to the post of Civil Judge were mandatory to be followed with strict compliance thereof. What would unmistakably emerge from the preceding analysis is, that interference at this stage in exercise of jurisdiction under Article 482 of the CrPC, in the peculiar facts of this case, is unwarranted.

19. Finding no merit in the petition, the petition stands rejected.

It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and the same would not bind any of the proceedings pending against the petitioner.

**Sd/-  
JUDGE**

bkp  
CT:MJ