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IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 05<sup>TH</sup> DAY OF MAY, 2020

BEFORE

**THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ**

CRIMINAL PETITION No.102200 OF 2019

**BETWEEN:**

1. DR. UDAYARAVI  
S/O CHANNABASAPPA  
AGED 33 YEARS  
NO.215, 6<sup>TH</sup> CROSS  
11<sup>TH</sup> MAIN ROAD  
HANUMANTHANAGAR  
BANGALORE-560050

2. DR. SANTHOSH R  
S/O RUDRAPPA  
AGED 32 YEARS  
BEHIND WATER TANK  
SUBRAMANYA LAYOUT  
GARUDACHAR PLAYA  
MAHADEVPURA POST  
BANGALORE-560048

... PETITIONERS

(BY SRI. RAVI B. NAIK, SENIOR COUNSEL FOR  
SRI. AVINASH ANGADI, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY CID  
REP BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
DHARWAD-580011

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2. DR. PREM KUMAR  
S/O K.M. DODDALINAGAPPA  
AGE: MAJOR  
VICE CHANCELLOR  
RAJIV GANDHI UNIVERSITY OF  
HEALTH SCIENCE, KARNATAKA  
JAYANAGAR 4<sup>TH</sup> 'T' BLOCK  
BANGALORE-560041  
H.NO.411(A-2), GHATPRABHA BLOCK  
NATIONAL GAMES VILLAGE  
KORAMANGAL-560034

... RESPONDENTS

(SRI.RAJA RAGHAVENDRA NAIK, HCGP FOR R1  
SRI.S.H.MITTALKOD, ADV. FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE ENTIRE CHARGE SHEET AGAINST THE PETITIONERS AND CONSEQUENTLY THE CRIMINAL PROCEEDINGS PENDING BEFORE THE HON'BLE PRL. DISTRICT AND SESSIONS COURT, BELLARY IN SPL.C.NO.126/2012 (IN CRIME NO.56/2011 OF COWL BAZAAR P.S.) FOR OFFENCES PUNISHABLE UNDER SECTION 417, 418, 420, 465, 468, 409, 109, 114, 161 OF IPC AND SECTIONS 117, 118, 119, 120, 121 AND 138 OF KARNATAKA EDUCATION ACT 1983 AND UNDER SECTIONS 13(1)(C), 13(1)(D) READ WITH ORDER 13(2) OF P.C. ACT 1988.

THIS CRIMINAL PETITION BEING HEARD AND RESERVED FOR ORDERS ON 11.02.2020, THIS DAY, THE COURT THROUGH VIDEO CONFERENCE MADE THE FOLLOWING:

### **ORDER**

1. The petitioners are before this Court seeking for quashing of the charge sheet against the petitioners who are accused Nos.12 and 14 therein and consequently quashing of the Criminal

proceedings pending on the file of the Prl. District and Sessions Court, Bellary in Spl.C.No.126/2012 (in Crime No.56/2011 of Cowlbazaar P.S.) for the offences punishable under Section 417, 41, 420, 465, 468, 409, 109, 114, 161 of IPC and Sections 117, 118, 119, 120, 121 and 138 of Karnataka Education Act, 1983 ('Act' for short) and under Section 13(1)(c), 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988.

2. The case of the prosecution as stated in the charge sheet is that every year Rajiv Gandhi University of Health Sciences (RGUHS) conducts entrance exam for Post Graduation studies in different disciplines of medical and dental sciences, which examination is held at different centres, one such centre in the year 2011 was designated to be that of Vijayanagar Institute of Medical Sciences (VIMS).

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3. It is the case of the prosecution that accused No.1 Dr.Vinaya Prasanna was serving in the teaching line in VIMS had allegedly conspired with others to adopt malpractices to help certain candidates to get better results. On the date of examination, i.e. 30.01.2011 accused No.1 illegally opened the question paper in his custody, took photographs of the question paper using his digital camera, sent the digital camera through accused No.1 to accused No.17, accused No.27 who was allegedly a computer operator took a print out of the question paper from the digital camera by connecting it to the computer present in the residence of accused No.17. On that basis, accused Nos.6 to 15 prepared answers to the questions, entered the said answers in the same computer and copy chits in the form of print outs were prepared in respect of the question paper. Accused No.7, in turn,

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handed the chits back to accused No.1, who circulated them to selected students viz., accused Nos.16 to 26, who copied the answers from the chits and managed to get high rank in the examination.

4. Initially, an FIR was registered on 15.03.2011 in Crime NO.56/2011 based on the complaint given by one Dr.D.Premkumar of RGUHS, Bengaluru; however, the Cowlbazaar P.S., Bellary, upon investigation had filed a B-report.
5. In the meanwhile, results of accused Nos.16 to 26 had been annulled, which they challenged by filing W.P.No.13774/2011 and other connected matters before the High Court of Karnataka at Bengaluru. By way of order dated 26.05.2011, this Court had directed a further in-depth investigation by a special agency viz., Central Investigation

Department by an officer not below the rank of Inspector General of Police to be completed within three months from that date.

6. In furtherance of the said order of this Court, CID concluded Investigation statements of accused and witnesses were recorded, and charge sheet was filed by CID on 28.12.2011, towards which cognizance was taken by Special Judge in Spl. Case No.126/2012, an additional final charge sheet also came to be filed by CID on 14.12.2012.
7. Petitioners are before this Court seeking for quashing of the said charge sheet. Though several grounds have been urged in the petition, the learned Senior counsel Sri. Ravi B.Naik limited his arguments as regards the veracity of the Hard Disk which was seized containing the answers prepared by Accused Nos.6 to 15 on which basis the copy

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chits were prepared. According to him, in the absence of the said hard disk no case can be said to be made out as against the Petitioners.

8. He submits that the petitioners had on 6.6.2016 filed an application under Section 207 of Cr.P.C. for furnishing the mirror image of the Hard Disk which was so allowed on 21.06.2018 and the mirror image was furnished on 4.08.2018. The analysis of the mirror image and photograph of the Hard Disk indicated the serial number of Hard Disk to be WCAYUL626996, which is now in the custody of the Sessions Court as per PF 8/11.
9. On enquiry made by the petitioners and as per the report received from the manufacturer he would submit that the Hard Disk was manufactured on 25.03.2011 and therefore, the contention of the prosecution that the said Hard Disk contains a file

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said to be saved on 30.01.2011 is unbelievable. The Hard Disk and the file which forms the very basis of the prosecution case was not in existence at the time the crime was alleged to have been committed. Hence, he contends that the entire story of the prosecution is manufactured; concocted and on that basis he would contend that the petitioners are being harassed, maliciously prosecuted and therefore, the proceedings against the petitioners are to be quashed.

10. Learned Addl. Advocate General appearing for the respondent would contend that it is not only the Hard Disk which the prosecution is relying upon, but there are various other statements of witnesses and a huge number of pieces of evidence collected by the CID which forms the basis for the prosecution of the accused. The offences which have been committed by the accused are very



serious in nature. The accused have indulged themselves in malpractices obtained favourable admission in medical and dental colleges even though they may not have been so qualified. The impact on society at large is huge. Therefore, this being an offence which affects the society as a whole has to be considered and at present merely on the ground that the Hard Disk is stated to be manufactured subsequently ought not to be a ground to quash the charge sheet, she, however, submits that even this ground is not available to the petitioners at the stage of consideration of petition under section 482 of the Cr.P.C., the same is to be established during the course of the trial.

11. The matter having been heard on 11.02.2020 was reserved for orders. The counsel for the petitioners moved the matter for 'being spoken to' and filed a memo along with certain additional documents

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after serving copies on the counsel for the respondents.

12. Sri. Avinash Angadi, learned counsel appearing on behalf of the petitioners, would submit that subsequent to the arguments being advanced, they have also come across various other factors which, according to him, would aid in quashing of the proceedings against the petitioners. In that, he contends that each file, when saved, the Master File Table (MFT) records the changes in respect of time, name, file size, location and content. He further submits that file entry modified time relied upon by the prosecution is earlier than that claimed by the prosecution and that the entry modified time can only be accessed using forensic/anti-forensic tools. He submits that the files have been tampered with and false evidence built up. He further submits that not only the timestamps are different, but the

whole contents of the file are tampered with. There are two mirror images and two serial numbers in the same Hard Disk, apart therefrom he also makes various submissions as regards the technicalities of saving the files, saving of the same on the Hard disk, usage of forensic tools, usage of digital cameras, different laptops being used etc., Relying on the decision in the case of **Vittal Kumar vs. State of Karnataka in CrI. P.No. 4858/2016 DD 2.11.2018**, he contends that if the court were of the opinion and/or has a strong suspicion with regard to the case of the prosecution than this Court would have to exercise powers under Section 482 of Cr.P.C. to quash the said proceedings.

13. In reply, learned AAG submitted that the additional arguments now advanced on 17.02.20020 would lead to the inescapable conclusion that the trial has to be conducted and there is not even a single

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factor which can be said to be established as on today. She submits that there are no grounds whatsoever made out by the petitioners for quashing of the above complaint.

14. The Petitioners have relied on the following Judgments:

14.1. Prashant Bharti Vs. State of Nct of Delhi (2013) 9 SCC 293 (Para 25)

14.2. Anil Khadkiwala Vs State. AIROnline 2019 SC 719 (Para 11)

14.3. G Sagar Suri vs The State of U P (2000) 2 SCC 636 (Paras 7 & 8)

14.4. Syed Ifthekar Ahmed v. State of Karnataka AIRonline 2018 Kar 1214 (Paras 40 & 42)

14.5. Mrs. Anjula Divedi and others Vs State reported in 2016 cri.L.J. (NOC) 320 (KAR.): 2016 (3) AKR 358 (Paras 30 & 32)

14.6. Prabhu Chawla v. State of Rajasthan, 2017 CRI. L.J.1080 (Paras 6, 7 & 9)

14.7. Harshendrakumar v. Rebatilata Koley and others.

15. The Learned AAG has relied on the following Judgments

15.1. Monica Kumar v/s State of Uttara Pradesh Reported in (2008) 8 SCC 781 (Paras 33, 36, 37 & 38)

15.2. Chilakamarthi Venkateshwarlu v/s The State of Andhra Pradesh Reported in AIR 2019 SCC 3913: AIR Online 2019 SC 733 (Paras 20 & 23)

15.3. Vinaya Tyagi V/s Irshad Ali Alias Deepak And Others Reported in (2013)5 SCC 762 (Para 40)

15.4. Dr. Lakshman V/s State of Karnataka and Others Reported in (2020) AIAR (Criminal) 47 (Paras 8, 9 & 10)

16. The Judgments passed by the various Courts, relied upon by both the petitioners and the respondents and the principles laid down therein cannot be disputed.

17. Exercise of jurisdiction to quash a criminal proceeding under Section 482 of Cr.P.C. by this

Court is predicated on the *exfacie* facts of each case. This court could exercise its jurisdiction if this Court were to be of the opinion that;

- 17.1. a completely false complaint has been filed;
- 17.2. there is no basis whatsoever for the complaint;
- 17.3. the ingredients of the offences alleged not having been made out;
- 17.4. that the process of criminal law has been set in motion in order to achieve malafide purposes, in that it is filed for wreaking vengeance and or blackmailing or the like,
- 17.5. the disputes are civil in nature and therefore, would require a detailed trial in a Civil Court and the criminal proceedings by itself was not maintainable.

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18. The above amongst certain other factors are predominant grounds for exercising power under Section 482 of Cr.P.C.
19. Learned counsel for the petitioners herein has produced four volumes of documents numbering page No.1 to 1923 relating to the above offences. The charge sheet has also been produced in two volumes though the said volumes are not numbered, it can safely be said that the charge sheet is about 600 pages.
20. The CID conducted a detailed investigation and submitted a charge sheet which has been taken cognizance of. The statements of innumerable witnesses have been recorded, various material objects and properties have been recovered, all of which have to be examined during the course of the trial.

21. Though there are several other grounds which have been raised in the petition, none of those grounds are argued, the only ground argued before this Court is as regards the technical nature in respect of the above matters, the written submissions filed are also restricted to the said technical matters. Hence, those contentions not argued or put-forth are not required to be considered by this Court.
22. The petitioners have contended as regards the technical nature that:
  - 22.1. The Hard disk which forms the foundation of the prosecution was manufactured subsequent to the alleged offence;
  - 22.2. The time date entry as regards the file relied upon by the prosecution differ;
  - 22.3. In the mirror image, there are two serial numbers of the hard disk;



22.4. The master file table is different, the hash rate of the drive differs

23. It is based on the above; the petitioners would contend that no case is made out against the accused.

24. There is a lot of force in the submission made by learned AAG that the arguments advanced and submissions made are required to be established during the course of the trial.

25. Whether the mirror image furnished was proper, whether the correct tools were used to create the mirror image? why are the dates of the files different? How is the MFT of the concerned file showing the date of creation to be much earlier than the date of the offence? are not matters which could be decided upon by this court in a summary manner in 482 proceedings. All the submissions

made on behalf of the petitioners are required to be established during the course of trial. The matter being technical in nature, the concerned experts would have to be examined and cross-examined. At this stage, it cannot on the basis of the submissions made be said that no offences have been committed by the petitioners.

26. In view of the above, I am of the considered opinion that it is not a fit and proper case to exercise powers under Section 482 of Cr.P.C to quash the above proceedings initiated against the petitioners. Hence, the above petition is dismissed with liberty to the petitioners to agitate all the contentions raised herein including the technical grounds and/or any defects in the accusation made against them. The trial Court shall proceed with the matter uninfluenced by any of the observations made in these proceedings.

27. Considering that the complaint has been pending from the year 2011, it is required to direct the Pri. District and Sessions Court, Bellary to expeditiously dispose of the matter, at any rate within a period of nine months from the date of receipt of this order.
28. The parties are also permitted to furnish a copy of this order to the trial Court.
29. Registry is directed to send a copy of this order to the District and Sessions Judge, Bellary, forthwith.

**Sd/-  
JUDGE**