

SUPREME COURT OF INDIA

All India Council for Technical Education

Vs.

Rakesh Sachan & Anr.

CrI.A.No.190 of 2013

(H.L. Dattu and Ranjan Gogoi, JJ.)

22.01.2013

ORDER

H.L. Dattu,J.

1. Leave granted.

2. All India Council for Technical Education ("AICTE" for short) is the appellant in this appeal. It calls in question the correctness or otherwise of the judgment and order passed by the High Court of Judicature of Allahabad at Lucknow in Criminal Misc. Application No. 4107 of 2011, dated 15.09.2011. By the impugned judgment and order the High Court without affording an opportunity of hearing to the AICTE has remitted the matter to the Trial Court with a direction to decide the application filed under Section 320 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short) by the respondents.

3. The Aicte has been constituted under the All India Council for Technical Education Act, 1987. The said Act provides for the establishment of an All India Council for Technical Education with a view to ensure proper planning and coordinate development of the technical education system throughout the country and also to promote the qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

4. The first respondent is the Chairman of Abhinav Shikshan Evam Samaj Seva Sanstha, Kanpur and the Central Bureau of Investigation ("CBI" for short) is the second respondent.

5. Briefly stated, the facts are: The CBI as well as AICTE had alleged that the Respondent No.1 had entered into a criminal conspiracy during the year 2008 with the known officers of

the AICTE at Kanpur and Delhi and that in pursuance of such conspiracy he had obtained approval in respect of opening a new engineering college at Village Murlipur, Tehsil Ghatampur, District Kanpur Nagar, under the name and style of Abhinav Institute of Engineering and Management. The said approval is based on a false declaration submitted by Respondent No. 1 and the bogus report submitted by the Expert Committee of AICTE.

6. Accordingly, CBI on 01.09.2009 had lodged an FIR against the Respondent No. 1 under Sections 120-B and 420 of the Indian Penal Code, 1860 ("IPC" for short) read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 on the allegation that the Respondent No. 1, in connivance with the known officers of AICTE at Kanpur and Delhi, had obtained approval to run Anubhav Institute of Engineering and Management, Kanpur on the basis of forged and bogus documents and reports. Thereafter, upon enquiry, a Final Report, as envisaged under Section 173 of the Cr.P.C. was filed by the CBI in the Court of Special Judicial Magistrate, CBI, Lucknow in Case No. 29/2010 on 30.11.2010.

7. An application was filed by Respondent No. 1 under Section 320 of the Cr.P.C., before the learned Magistrate for compounding of the offence in Case No. 29/2010. The said application was rejected by the learned Magistrate on 25.04.2011, whereafter the Respondent No.1 preferred a Criminal Miscellaneous Application against the same before the High Court. The High Court has allowed the same and has directed the learned Magistrate to consider the application filed by Respondent No.1 for compounding of the Offence in Case No.29/2010 pending before it.

8. The CBI had not filed its objection to the fresh application filed before the learned Magistrate, but had conceded to the request made by the Respondent No.1. However, the learned Magistrate thought it fit to issue a notice, dated 31.05.2011, to the AICTE to clarify its stand before the Court on the application filed by the respondent. The AICTE has filed its objection to the application filed by the Respondent No.1.

9. The learned Magistrate taking into consideration the aforesaid, by his order dated 20.08.2011, has rejected the application filed by the Respondent No.1.

10. Aggrieved by the aforesaid order, the Respondent No. 1 had filed a petition under Section 482 of Cr.P.C. Before the High Court. The High Court has allowed the aforesaid petition and in the course of the impugned judgment and order has observed that the AICTE does not have any locus to object to the application, filed by Respondent No. 1, for compounding of offence under Section 320 of Cr.P.C. Aggrieved by the said judgment and order passed by the High Court, the AICTE is before us in this appeal.

11. We have heard Shri Rakesh Dwivedi, learned senior counsel for the appellant and Shri S.R. Singh, learned senior counsel for the respondents.

12. Sh. Dwivedi, would submit that Section 320 of Cr.P.C. provides for compounding of offence punishable under Sections notified in the table therein. He would draw our attention to the said table provided under sub-section (2) of Section 320 of Cr.P.C., wherein it is notified that the offence can be compounded only by the person who is cheated.

13. Sh. S.R.Singh, learned senior counsel would submit that the CBI had suo moto initiated proceedings under the provisions of the IPC and also under the provisions of Prevention of Corruption Act, 1988 and not at the instance of AICTE and, therefore, AICTE cannot be said to be an aggrieved person and, thus, the High Court was justified in allowing the petition filed by the Respondent No.1.

14. We have considered the rival submissions of both the learned senior counsels and perused documents on record. The only question which requires to be answered by us is, does the AICTE has locus to object to the application filed by the Respondent No.1 under Section 320 of the Cr.P.C. for compounding of offence under Section 420 of the IPC.

15. The relevant provision, i.e., Sub-Section (2) of Section 320 of Cr.P.C. reads as under:

"(2) The offences punishable under the section of the Indian Penal code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:-"

The table appended to said sub-section is also extracted below:-

Offence	Section of the	Person by whom
	Indian Penal Code	may be compounded
	applicable	
1	2	3
Cheating and dishonestly	420	The person
cheated.		
inducing delivery of		
property or the making,		
alteration or destruction		
of a valuable security		

Column 1 of the table provides for the categories of the offences which can be compounded, column 2 provides for the Section of the IPC which is applicable and column 3 provides for the person at whose instance the offence may be compounded. The relevant

clause under Section 420 of the IPC, the table clearly indicates that the said offence can only be compounded by a person "who has been cheated".

16. In the instant case, the CBI has initiated the proceedings suo moto. It is clearly mentioned in the Final Report and the charge sheet filed by them, that the Respondent No.1 with the assistance of known officials of AICTE had produced forged and fraudulent documents to obtain recognition of the aforementioned institution from AICTE, and, thereby cheated the AICTE.

17. In this case, it unfolds that it is not the CBI who has been cheated by the actions of the Respondent No.1, but in fact the AICTE. The CBI because is only an investigating agency carrying out inquiry in the matter. Therefore, the application of the Respondent no. 1 could not have been considered by the learned Magistrate without affording an opportunity of hearing to the AICTE, as doing such would deprive the person so cheated, under Section 420 of the IPC, of his statutory right. In that view of the matter, the High Court was not justified in directing the learned Magistrate to re-consider the application filed by Respondent No. 1 under Section 320 of the Cr.P.C. without recording the stand of AICTE.

18. In the aforesaid view of the matter, we allow this appeal and set aside the impugned judgment and order passed by the High Court. We now direct the learned Special Judicial Magistrate, CBI, Lucknow to re-consider the application filed by the Respondent No. 1, under Section 320 of the Cr.P.C, after considering the objections filed by the AICTE and affording an opportunity of hearing to the AICTE. This exercise shall be completed by the learned Magistrate as expeditiously as possible, at any rate, within an outer limit of six months from the date of receipt of a copy of this Court's order.

Ordered accordingly.