IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.7422 OF 2022

BETWEEN:

SRI SHIVAKUMAR

... PETITIONER

(BY SRI SHIVAPRASAD SHANTANAGOUDAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH TILAKNAGAR POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT BUILDING
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2. M.R.RAVIKUMAR
REGISTRAR
RAJIV GANDHI UNIVERSITY
OF HEALTH SCIENCES
4TH 'T' BLOCK
BENGALURU – 560 041.

... RESPONDENTS

(BY SRI K.S.ABHIJITH, HCGP FOR R1;
SRI MURTHY D.NAIK, SR.ADVOCATE A/W
SRI GIRISH KUMAR R., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT DATED 29.07.2022 (ANNEXURE-A) THE FIR IN CR.NO.163/2022 DATED 29.07.2022 REGISTERED BY THE RESPONDENT POLICE (ANNEXURE-B) FOR THE OFFENCE P/U/S 417, 420, 196, 199, 201, 205 OF IPC REGISTERED AGAINST THE PETITIONER AND ALL FURTHER PROCEEDINGS ARISING THEREFROM PENDING BEFORE THE COURT OF THE XXXVII ACMM, BANGALORE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.163 of 2022 registered on 29.07.2022 for offences punishable under Sections 417, 420, 196, 199, 201 and 205 of the IPC.

2. The facts that have driven the petitioner to this Court calling in question the registration of crime, as borne out from the pleadings, in brief, are as follows:-

The petitioner, a practicing Advocate put in a service in the profession for 27 years has been representing the 2nd respondent /Rajiv Gandhi University of Health Sciences, Karnataka ('the University' for short), the complainant herein for over 15 years. The petition narrates that there has been no blemish whatsoever against the petitioner in his appearances for the University before this Court. Criminal Petition Nos. 101638 of 2021, 100998 of 2022, 101172 of 2022, 101186 of 2022, 101228 of 2022, 101258 of 2022, 101368 of 2022, 101369 of 2022, 101370 of 2022, 101374 of 2022 and 101384 of 2022 were either filed or pending before the Dharwad Bench of this Court seeking quashment of proceedings in Spl.C.No.126 of 2012 registered against several accused alleging their involvement of malpractice in the conduct of Post Graduate Entrance Test ('PGET-2010). Those accused against whom criminal cases were registered were also proceeded departmentally. In the departmental enquiry, it appears, that those accused were all exonerated after a full blown enquiry. The issue in the enquiry is what concerns this Court in the case at hand. Based upon the said exoneration in the enquiry, the afore-quoted criminal petitions were filed before the Dharwad Bench of this Court. A Co-ordinate Bench

of this Court allowed those petitions and quashed criminal proceedings that were pending, relying upon a judgment rendered by a Co-ordinate Bench of this Court in Writ Petition No.19700 of 2018 decided on 27.07.2021. In those cases, the accused were different. The State of Karnataka was represented by the learned High Court Government Pleader. The 2nd respondent who was arrayed as Vice-Chancellor of Rajiv Gandhi University of Health Sciences, Karnataka had either been represented or the Court directed the petitioner herein to accept notice for the University. It is averred in the petition that owing to the fact that the petitioner was representing the University in the cases before this Court for long, the said direction was issued and accepted by the petitioner. Orders were passed on 7th, 18th, 20th and 21st April, 2022 allowing those petitions following the judgment rendered by a Co-ordinate Bench in Writ Petition No.19700 of 2018.

3. The issue in the writ petition *(supra)* was whether the criminal trial should be permitted to continue where the guilt will have to be proved beyond all reasonable doubt in the teeth of accused therein getting exonerated in a departmental enquiry

where probabilities are preponderant and if on preponderance of probabilities the charge could not be proved on the departmental side, it can hardly be said to be proved beyond all reasonable doubt in a criminal trial, is what was held by the Co-ordinate Bench in the aforesaid writ petition, which was followed by another Co-ordinate Bench in all the aforesaid cases. The petitioner herein is shown to have appeared for the 2nd respondent/University in all the cases except one case which is Criminal Petition No.101638 of 2021 disposed of on 7.04.2022. After the disposal of all the petitions, the petitioner communicates to the University that the Court has allowed the petitions and he had appeared for the University. In all the 10 matters it is recorded that the petitioner had appeared and in the connected matter which was disposed of on 7.04.2022, the name of the petitioner is not shown. Based upon this, prodigious action is taken against the petitioner.

4. The petitioner is removed from the panel by the University which power the University always had. Not stopping at that, the impugned crime is registered against the petitioner for offences punishable under Sections 417, 420, 196, 199, 201 and 205 of the

IPC by registering a criminal complaint before the jurisdictional Police, that he has connived with the opponents and has seen to it that the criminal petitions are allowed. The complaint is registered on 27-07-2022. Two days later, an FIR comes to be registered on 29-07-2022 on quoting the orders passed by a Co-ordinate Bench of this Court. Again not stopping at that, a newspaper publication is said to have been made against the petitioner describing him that he has cheated the University branding him as guilty of offences punishable under the afore-quoted provisions. It is these acts of the University that drives the petitioner to this Court in the subject petition.

5. Heard Sri Shivaprasad Shantanagoudar, learned counsel appearing for the petitioner, Sri K.S.Abhijith, learned High Court Government Pleader appearing for respondent No.1 and Sri Murthy D.Naik, learned senior counsel appearing for respondent No.2.

6. The learned counsel appearing for the petitioner would contend with vehemence that the petitioner being a panel Advocate had been appearing for the University for more than 15 years and

has only obeyed the directions of the Court to accept the notice, since the matter was covered by the judgment rendered by this Court, as afore-quoted, what the Co-ordinate Bench has done was only following the earlier judgment. No appeal is filed by the University against the said orders, though the learned counsel would submit that applications for recall of the orders are pending consideration before the Bench which has passed the orders and would submit, without availing all those remedies which are available in law, the University in a haste has gone on, to register a criminal complaint against the petitioner, branding him that he has cheated the University, removed him from the panel and also saw to it that the matter appears in the newspaper that the petitioner has cheated the University. He would submit that if such criminal complaint is allowed to be registered and proceedings permitted to continue, the fraternity would be unsafe, as the moment the Authority would lose the case, it would point its fingers at the Advocate.

7. On the other hand, the learned senior counsel appearing for the 2nd respondent/University would only place the explanation

offered by the Registrar who has registered the complaint against the petitioner and would stop at that and would not lend any support to the action of the University in registering the crime against the Advocate who has appeared before the Court on the direction of the Court, in a matter that is covered by the earlier judgment.

8. The learned High Court Government Pleader would only toe the lines of the learned senior counsel representing the University.

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

10. Before embarking upon merits of the matter, I deem it appropriate to trace the genesis of the problem. Writ Petition No.19700 of 2018 was disposed of by an order of this Court on 27.07.2021 following the judgment of a three Judge Bench of the Apex Court in the case of ***ASHOO SURENDRANATH TEWARI v. CBI – (2020) 9 SCC 636***. This judgment, as on the date of this Court considering the other cases has become final. Therefore,

following the said judgment the Co-ordinate Bench allows close to 11 petitions. In all these 11 petitions, the name of the petitioner was shown to be appearing for the 2nd respondent except in one case. The averment in the petition is that the Court directed the petitioner to take notice and, therefore, his name figures. After disposal of a particular petition, the petitioner sent a communication to the University informing it that he has appeared for the University in the said case and the petition has been allowed. The Court in the said matter did not record the name of the petitioner as having appeared for the University but in rest of the matters the name of the counsel is reflected. An error of fact or a typographical error cannot be ruled out. The moment the communication is sent by the petitioner to the University with regard to allowing of the petitions, the Registrar of the University springs into action, not for challenging the said orders, not availing of any remedy available in law to call in question the orders passed by the Co-ordinate Bench, but altogether a different route outlandish, by registering a criminal complaint against the petitioner. What is more shocking is the offences so alleged against the petitioner.

11. Since the entire issue now springs from the complaint, I deem it appropriate to quote the complaint in extenso for the purpose of ready reference:

"ಕಛೇರಿ ಆದೇಶ

ವಿಷಯ: ಶ್ರೀ ಶಿವಕುಮಾರ್ ಎಸ್.ಬಾದವಡಗಿ ವಕೀಲರು, ಧಾರವಾಡ ಇವರ ಮೇಲೆ ವಂಚನೆ ಮತ್ತು ನ್ಯಾಯಾಲಯದಲ್ಲಿ *RGUHS ನ್ನು ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಪ್ರತಿನಿಧಿಸಿರುವ ಬಗ್ಗೆ ಕ್ರಮ ಕೈಗೊಳ್ಳುವ ಕುರಿತು:–*

ಮೇಲ್ಕಾಣಿಸಿದ ವಿಷಯ ಕುರಿತಂತೆ ಈ ಮೂಲಕ ನೀಡುವ ದೂರು ಏನೆಂದರೆ – ರಾಜೀವ್ ಗಾಂಧಿ ಆರೋಗ್ಯ ಮತ್ತು ವಿಜ್ಞಾನಗಳ ವಿಶ್ವವಿದ್ಯಾಲಯ (*RGUHS) 2005 ರಿಂದ 2011ರ ಅವಧಿಯಲ್ಲಿ ವೈದ್ಯಕೀಯ ಸ್ನಾತಕೋತ್ತರ ಪದವಿ ಪ್ರವೇಶ ಪರೀಕ್ಷೆಗಳನ್ನು (PEGT) ನಡೆಸಲು ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ವೈದ್ಯಕೀಯ ಇಲಾಖೆಯಿಂದ ನಿರ್ದೇಶಿಸಲ್ಪಟ್ಟಿತ್ತು. ಅದರಂತೆ PEGT-2010 ಪರೀಕ್ಷೆಗಳನ್ನು ದಿನಾಂಕ 30.01.2011ರಲ್ಲಿ ನಡೆಸಲಾಗಿದ್ದು, ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿ ಬಳ್ಳಾರಿಯ ಪರೀಕ್ಷಾ ಕೇಂದ್ರ ವಿಜಯನಗರ ಇನ್ಸಿಟ್ಯೂಟ್ ಆಫ್ ಮೆಡಿಕಲ್ ಸೈನ್ಸ್ (VIMS) ಪರೀಕ್ಷಾ ಕೇಂದ್ರದಲ್ಲಿ ಪರೀಕ್ಷಾ ಅಕ್ರಮಗಳು ನಡೆದಿದ್ದರ ಬಗ್ಗೆ ಸರ್ಕಾರದ ಆದೇಶದ ಮೇರೆಗೆ RGUHS ಕುಲ ಸಚಿವರು ದೂರು ನೀಡಿದ್ದು, ನಂತರ ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶದ ಮೇರೆಗೆ ಸಿ.ಐ.ಡಿ ತನಿಖಾ ಸಂಸ್ಥೆಯು ತನಿಖೆ ನಡೆಸಿ, ಪರೀಕ್ಷಾ ಅಕ್ರಮ ನಡೆಸಿದ ತಪ್ಪಿತಸ್ಥರ ಮೇಲೆ ಬಳ್ಳಾರಿಯ ವಿಶೇಷ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ವಿಶೇಷ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣ ನಂ:126/2012ನ್ನು ದಾಖಲಾಗಿತ್ತು.*

ವಿವಿಧ ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ RGUHS ಗೆ ಸಂಬಂದಿಸಿದಂತೆ ಯಾವುದಾದರೂ ಪ್ರಕರಣಗಳು ದಾಖಲಾದರೆ ಅವುಗಳಲ್ಲಿ RGUHS ನ್ನು ಪ್ರತಿನಿಧಿಸಲು ಫ್ಯಾನಲ್ ವಕೀಲರ ಪಟ್ಟಿಯನ್ನು ಮಾಡಲಾಗಿದ್ದು, ಶ್ರೀ.ಶಿವಕುಮಾರ್ ಎಸ್.ಬಾದವಡಗಿ ವಕೀಲರು RGUHS ನ್ನು 2010ನೇ ಸಾಲಿನಿಂದ ಪ್ರತಿನಿಧಿಸುತ್ತಿದ್ದಾರೆ. RGUHS ಪರವಾಗಿ ಯಾವುದೇ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರಕರಣ ದಾಖಿಲಿಸ ಬೇಕಾದರೆ ಅಥವಾ ವಿಶ್ವವಿದ್ಯಾಲಯದ ಪರವಾಗಿ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರಾಗ ಬೇಕಾದರೆ RGUHS ನ ಕಾನೂನು ಇಲಾಖೆಯಿಂದ ವಿಶ್ವವಿದ್ಯಾಲಯವನ್ನು ಪ್ರತಿನಿಧಿಸಲು ಅಧಿಕಾರ ಪತ್ರವನ್ನು ಕೊಡಬೇಕಾಗಿರುತ್ತದೆ.

ಮೇಲ್ಕಾಣಿಸಿದ ವಿಶೇಷ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣ ನಂ:126/2012 ನೇದ್ದನ್ನು ರದ್ದು ಪಡಿಸುವಂತೆ (to quash criminal proceedings) ಸದರಿ ಕ್ರಿಮಿನಲ್ ಪ್ರಕರಣದಲ್ಲಿ ಕಾಣಿಸಲಾದ 16 ಜನ ಆರೋಪಿಗಳು ಮಾನ್ಯ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಧಾರವಾಡ ಪೀಠದಲ್ಲಿ ಕ್ರಿಮಿನಲ್ ಪಿಟಿಷನ್ ನಂ:101638/2021, 100998/2022, 101169/2022, 101172/2022, 101186/2022, 101228/2022, 101258/2022, 101368/2022, 101369/2022, 101370/2022, 101374/2022, ಮತ್ತು 101384/2022 ಗಳನ್ನು ದಾಳಲಿಸಿದ್ದರು. ಸದರಿ ಪ್ರಕರಣಗಳಲ್ಲಿ 2ನೇ ಎದುರುದಾರರನ್ನು ಡಾ:ಪ್ರೇಮ್ ಕುಮಾರ, ಕುಲಪತಿಗಳು ಎಂದು Dr.Premkumar Vice Cancellor, Rajiv Gandhi

University of Health Sciences ಎಂದು ತೋರಿಸಲಾಗಿರುತ್ತದೆ. ಸದರಿಯವರು 2015 ರಿಂದಲೇ ಕುಲಸಚಿವರ ಹುದ್ದೆಯಿಂದ ನಿವೃತ್ತಿಯಾಗಿದ್ದು, ಅವರು ವಿಶ್ವವಿದ್ಯಾಲಯದಲ್ಲಿ ಯಾವತ್ತು ಕುಲಪತಿ/ಕುಲಸಚಿವರು ಹುದ್ದೆಯಲ್ಲಿ ಇರಲಿಲ್ಲ. ಆದರೆ ಸದರಿ ಶ್ರೀ.ಶಿವಕುಮಾರ್ ಎಸ್. ಬಾದವಡಗಿ ವಕೀಲರು ರಾಜೀವ್ ಗಾಂಧಿ ಆರೋಗ್ಯ ಮತ್ತು ವಿಜ್ಞಾನಗಳ ವಿಶ್ವವಿದ್ಯಾಲಯ (RGUHS) ವನ್ನು ಸಂಪರ್ಕಿಸದೇ, ವಿಶ್ವವಿದ್ಯಾಲಯದ ಕಾನೂನ ಶಾಖೆಯಿಂದ ಅಧಿಕಾರ ಪತ್ರ (Authorisation Letter) ಪಡೆಯದೆ, ಸದರಿ ಅರ್ಜಿಗಳಿಗೆ ತಕರಾರು ಸಲ್ಲಿಸದೇ, ಸದರಿ ಅರ್ಜಿಗಳು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅರ್ಜಿದಾರರ (ಪ್ರಕರಣದ ಆರೋಪಿಗಳ) ಪರ ವಿಲೇ ಆಗುವಂತೆ ಆರೋಪಿಗಳಿಗೆ ಸಹಕರಿಸಿರುತ್ತಾರೆ.

*ಸದರಿ ಪ್ರಕರಣಗಳಲ್ಲಿ ಮಾನ್ಯ ನ್ಯಾಯಾಲಕ್ಕೆ **RGUHS** ಇವರನ್ನು ಸಂಪರ್ಕಿಸಿ, ನೈಜ ಸಂಗತಿಗಳನ್ನು ನ್ಯಾಯಾಲಯಕ್ಕೆ ಮಂಡಿಸಿದ್ದಲ್ಲಿ ಸದರಿ ಅರ್ಜಿಗಳು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಮಾನ್ಯವಾಗುತ್ತಿರಲಿಲ್ಲ. ಆದರೆ ಶ್ರೀ.ಶಿವಕುಮಾರ್ ಎಸ್.ಬಾದವಡಗಿ ಇವರು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ನೈಜ ಸಂಗತಿಗಳನ್ನು ಮುಚ್ಚಿಟ್ಟು, ಆರೋಪಿ ಅರ್ಜಿದಾರರೊಂದಿಗೆ ಶಾಮೀಲಾಗಿ, ಅರ್ಜಿದಾರರುಗಳ ಅರ್ಜಿಗಳು ಅವರ ಪರವಾಗಿ ವಿಲೇ ಆಗಲಿಕ್ಕೆ ಕಾರಣವಾಗಿದ್ದು, ಎಲ್ಲಾ ಪ್ರಕರಣಗಳು ನ್ಯಾಯೋಚಿತವಲ್ಲವ ರೀತಿಯಲ್ಲಿ ಮುಕ್ತಾಯವಾಗುವುದಕ್ಕೆ ಕಾರಣರಾಗಿದ್ದಾರೆ.*

*ಡಾ:ಪ್ರೇಮ್ ಕುಮಾರ, ಇವರು ಈಗ **RGUHS** ನ ಹಾಲಿ ಕುಲಪತಿಗಳು ಎಂಬುವಂತೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಂಬಿಸಿ, ಅವರು ಅಥವಾ **RGUHS** ಎಂದ ಸದರಿ ಪ್ರಕರಣಗಳಲ್ಲಿ ಹಾಜರಾಗಿ ಅರ್ಜಿದಾರರುಗಳ ಕೋರಿಕೆಗಳನ್ನು ಒಪ್ಪುವಂತೆ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಮನವಿ ಮಾಡಿ, **RGUHS** ಗೆ ವಂಚಿಸಿ ಅನ್ಯಾಯ ಮಾಡಿದ್ದಾರೆ. ಇದರಿಂದ ಆರೋಪಿತರು ಎಸಗಿರುವ ಅಕ್ರಮಗಳು ನ್ಯಾಯೋಚಿತ ನಿರ್ಣಯಕ್ಕೆ ಒಳಪಡದಂತೆ ವ್ಯವಸ್ಥಿತವಾಗಿ ಸಂಚು ಮಾಡಿರುವುದು ಕಂಡು ಬರುತ್ತದೆ. ಅಲ್ಲದೆ **RGUHS** ನ ಮತ್ತು ಸಿ.ಐ.ಡಿ. ಇವರ ಶ್ರಮವು ನ್ಯಾಯೋಚಿತವಲ್ಲವ ರೀತಿಯಲ್ಲಿ ಕೊನೆಗೊಳ್ಳುವಂತೆ ಮಾಡಿರುತ್ತಾರೆ.*

*ಕಾರಣ ಸದರಿಯವರು ತಮ್ಮ ವೃತ್ತಿ ಧರ್ಮಕ್ಕೂ ಅನ್ಯಾಯ ಮಾಡಿದ್ದು, ಅವರನ್ನು **RGUHS** ನ ವಕೀಲರ ಪ್ಯಾನಲ್ ನಿಂದ ಕೈ ಬಿಡಲಾಗಿದ್ದು, ರಾಜ್ಯ ಬಾರ್ ಕೌನ್ಸಿಲ್‌ಗೂ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮಕ್ಕಾಗಿ ಬರೆಮಕೊಳ್ಳಲಾಗಿದ್ದು, ಸದರಿಯವರ ಕೃತ್ಯವು ನ್ಯಾಯವಿತರಣೆಯ ಕ್ರಮದಲ್ಲೂ ನ್ಯಾಯಾಲಕ್ಕೆ ಸುಳ್ಳು ಮಂಡನೆ ಮಾಡಿ **RGUHS** ಗೆ ವಂಚಿಸಿರುವುದು ಸ್ಪಷ್ಟವಾಗಿರುತ್ತದೆ. ಆ ಮೂಲಕ ಆರೋಪಿಯು ಭಾ.ದಂ.ಸಂ ಕಲಂ 417, 420, 196, 199, 201 ಮತ್ತು 205 ಭಾ.ಧಂ.ಸಂ.ಅಡಿಯಲ್ಲಿ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧ ಎಸಗಿದ್ದು, ಸದರಿ ಕೃತ್ಯದಿಂದ **RGUHS** ಗೆ ಅನ್ಯಾಯವಾಗಿರುತ್ತದೆ. ಕಾರಣ ಧಂ.ಪ್ರ.ಸಂ. ಕಲಂ: 179 ಅಡಿಯಲ್ಲಿ ಈ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ಈ ಪ್ರಕರಣದ ತನಿಖೆಯ ವ್ಯಾಪ್ತಿ ಇರುವುದರಿಂದ ಸದರಿ ಆರೋಪಿಯ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಕೈಗೊಳ್ಳುವಂತೆ ಈ ಮೂಲಕ ಕೋರಲಾಗಿದೆ."*

(Emphasis added)

The complaint narrates that in the normal circumstance if an Advocate has to appear for the University, it has to be with due authorization. The petitioner has appeared without the authorization of the University and holds that the petitioner has

colluded or connived with the petitioners in those petitions and has co-operated in allowing all the petitions. It is also noted that Dr. Premkumar who is arrayed as respondent No.2 in the said petitions is deliberately shown as Vice-Chancellor though he is not the Vice-Chancellor and, therefore, the petitioner has colluded. It is further alleged that the petitioner had made false submission before the Court and, therefore, has become open for punishment for the offences punishable under Sections 417, 420, 196, 199, 201 and 205 of the IPC. What pervades through the entire complaint is preposterity and absolute recklessness of the complainant/University, which is represented by the Registrar.

12. It now becomes necessary to notice the offences alleged against the petitioner, with reference to the sections of the IPC. Section 417 IPC. Section 417 reads as follows:

> *"**417. Punishment for cheating**.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."*

Section 417 deals with punishment for cheating. Cheating finds its ingredients in Section 415 of the IPC and 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 whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person becomes open for such punishment under Section 417. Who has deceived whom in the case at hand is not even known and likewise who has induced whom is not even alleged. Section 417 of the IPC is alleged in thin air.

Section 420 of the IPC deals with cheating and dishonestly inducing delivery of property and has its roots in Section 415 *(supra)* and would also get subsumed for the reasons rendered in Section 417.

The other offence alleged is Section 196 of the IPC. Section 196 of the IPC deals with using evidence known to be false and directs whoever corruptly uses or attempts to use as true or

genuine evidence which he known to be false or fabricated. What the petitioner has done in the case at hand is accepting or appearing in cases where the issue in those cases stood covered by a judgment rendered by this Court which had become final. Therefore, Section 196 of the IPC cannot even be seen to be alleged against the petitioner.

Section 199 of the IPC is also alleged which reads as follows:

> *"**199. False statement made in declaration which is by law receivable as evidence**.—Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence."*

Section 199 deals with false statement made in declaration which is by law receivable as evidence. There is no false declaration made before any Court of justice by the petitioner. In a covered matter there need not be even any statement made. The University was served and unrepresented in most of the cases. In such a case, it was open to this Court to even dispose of the petition without notifying any counsel.

Section 201 of the IPC is also alleged which reads as follows:

> *"**201. Causing disappearance of evidence of offence, or giving false information to screen offender**.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,*
>
> ***if a capital offence**.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*
>
> ***if punishable with imprisonment for life**.—and if the offence is punishable with [237][imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;*
>
> ***if punishable with less than ten years' imprisonment**.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."*

Section 201 of the IPC deals with causing disappearance of evidence of offence or giving false information to screen the offender. It is beyond comprehension as to how this offence is alleged against the petitioner who has appeared before Court of law and the Court recorded his name in a matter that stood covered by

the earlier judgment. It cannot be even seen in what way disappearance of evidence is caused by the petitioner.

Section 205 of the IPC reads as follows:

> *"**205. False personation for purpose of act or proceeding in suit or prosecution**.—Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

This section deals with false personation for purpose of act or proceeding in suit or prosecution. The Section directs that whoever falsely personates another. The petitioner has not impersonated anybody. His name does figure as appearing for the 2nd respondent on it being recorded by the Court. Therefore, all these offences that are alleged are alleged without any basis and it is on the face of it mischievous and preposterous act of the University to say the least.

13. The complaint is registered before the jurisdictional Police on 27-07-2022. 48 hours later, the FIR is registered in Crime No.163 of 2022. The Police ought to have enquired with the

veracity of allegation before registering a crime against an Advocate without there being any substance in the allegation. It is for this reason of registration of reckless complaint by the machinery of the State the Apex Court in the case of ***ARNESH KUMAR V. STATE OF BIHAR*** or in the case of ***LALITA KUMARI V. STATE OF U.P.*** has warned the Police machinery with caution not to indulge in registering the complaint or arresting the accused in the complaint. Therefore, the complaint on the face of it is tainted with *mala fides*, allegations are inherently improbable and even if the facts *qua* the allegations are noticed, they would not make out a crime against the petitioner. Therefore, such frivolous complaint, if permitted to continue, would be putting a premium on the mischief generated by the University, to settle its scores on a panel counsel who has represented the University before a Court of law and who has been representing the University for ages. It is, therefore, the FIR requires to be obliterated.

14. The University does not stop at the registration of the complaint. It removed the petitioner from the panel of the University which power the University does have and always had.

But, the order of removal again shocks the conscience of the Court. The order of removal reads as follows:

"ಕಛೇರಿ ಆದೇಶ

ವಿಷಯ: ಶ್ರೀ ಶಿವಕುಮಾರ್ ಬಾದವಾಡಗಿ, ವಿಶ್ವವಿದ್ಯಾಲಯದ Panel Advocate ವತಿಯಿಂದ ವಜಾಗೊಳಿಸಿ ಸದರಿಯವರ ವಿರುಧ್ಧ ತುರ್ತಾಗಿ I.P.C. ಅಡಿಯಲ್ಲಿ ಮತ್ತು Advocate Act ಅಡಿಯಲ್ಲಿ ಕ್ರಮಕೈಗೊಳ್ಳುವ ಕುರಿತು.

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ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, Criminal Petition No.101638/2021 Order dated. 07.04.2022 High Court of Karnataka, Dharwad bench ಪ್ರಕರಣದಲ್ಲಿ ಶ್ರೀ ಕಾಂತೇಶ್ ಯಲ್ಲಾಪುರ್ V/S ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಮತ್ತು ಡಾ. ಪ್ರೇಮ್‌ಕುಮಾರ್ ಮತ್ತು ರಾಜೀವ್ ಗಾಂಧಿ ಆರೋಗ್ಯ ವಿಜ್ಞಾನಗಳ ವಿಶ್ವವಿದ್ಯಾಲಯ ವಾದಿ ಪ್ರತಿವಾದಿಗಳಾಗಿರುತ್ತಾರೆ.

*ಈ ಪ್ರಕರಣದಲ್ಲಿ ಶ್ರೀ ಶಿವಕುಮಾರ್ ಬಾದವಾಡಗಿ ಇವರು **Panel Advocate from RGUHS.** ಆಗಿ ಮತ್ತು **100998/2022, 101172/2022, 101228/2022, 101258/2022** ಪ್ರಕರಣಗಳಲ್ಲಿಯೂ ಸಹ ರಾ.ಗಾ.ಆ.ವಿ.ವಿ ವತಿಯಿಂದ **Panel Advocate** ಆಗಿರುತ್ತಾರೆ.*

*ಈ ಪ್ರಕರಣದಲ್ಲಿ ಡಾ. ಪ್ರೇಮ್‌ಕುಮಾರ್ ರವರು **OCC Vice-Chancellor, RGUHS** ಎಂದು ನಮೂದಿಸಿದ್ದರೂ ಸಹ ನಮ್ಮ ವಿಶ್ವವಿದ್ಯಾಲಯದ ವಕೀಲರಾಗಿದ್ದ ಇವರು ವಿಶ್ವವಿದ್ಯಾಲಯದ ವತಿಯಿಂದ ಸೂಚಿತ ಪಡೆಯದೇ, ಅನುಮತಿಯಿಲ್ಲದೇ ಮತ್ತು ಡಾ. ಪ್ರೇಮ್‌ಕುಮಾರ್ ರವರು **OCC Vice-Chancellor, RGUHS** ಎಂಬುದನ್ನು **(16-04-2022** ರಿಂದ **20.04.2022**ರಲ್ಲಿ ಇದ್ದರೇ? ಇಲ್ಲವೇ?**)** ಖಚಿತಪಡಿಸಿಕೊಳ್ಳದೇ ಅವರು ವಿಶ್ವವಿದ್ಯಾಲಯದ ಅನುಮತಿಯಿಲ್ಲದೇ ವೈಯಕ್ತಿಕ ಸ್ವಾರ್ಥ ಮತ್ತು ದುರುದ್ದೇಶದಿಂದ ವಕಾಲತ್ತು ಸಲ್ಲಿಸಿ ಆರೋಪಿಗಳ ಜೊತೆ ಶಾಮೀಲಾಗಿ ಅವರಿಗೆ ಸಹಕರಿಸಿ, ವಿಶ್ವವಿದ್ಯಾಲಯಕ್ಕೆ ಮೋಸಮಾಡಿ ವಂಚಿಸಿರುತ್ತಾರೆ.*

ಆದ್ದರಿಂದ ಸದರಿಯವರನ್ನು ಈ ಕೂಡಲೇ Panel Advocate ವತಿಯಿಂದ ವಜಾಗೊಳಿಸಿದೆ.

ಪ್ರತಿಗಳು:

1) ಕಾನೂನು ಅಧಿಕಾರಿಗಳು, ಕಾನೂನು ವಿಭಾಗ, ರಾ.ಗಾ.ಆ.ವಿ.ವಿ

2) ಆಪ್ತ ಸಹಾಯಕರು – ಮಾನ್ಯ ಕುಲಪತಿಯವರು / ಕುಲಸಚಿವರು / ಕುಲಸಚಿವರು

(ಮೌ)/ಹಣಕಾಸು ಅಧಿಕಾರಿಗಳು
3) ಕಛೇರಿ ಪ್ರತಿ."

(Emphasis added)

The power of removal is not alien to the University, but the manner in which the petitioner has been removed is maligning him to the fullest. It is on such maligning, he has been removed. The cascading effect of registration of crime against the petitioner is that it is carried by majority of newspapers – that the University has filed a case against the lawyer as he had appeared before the High Court without permission and the news has now spread like the whirlwind. The reputation of the petitioner is thus maligned all for the reason that the crime is registered against the petitioner.

15. The crime is registered against the petitioner all for the reason that he has appeared before the Court in the capacity of him representing the University for long years as its panel Advocate. He is removed from the panel only on 08.07.2022. Thus he was in the panel and represented the University in all the cases before the Dharwad Bench. The petitioner for having acted as an officer of the Court is now sought to be hauled into these proceedings. The role

of the officer of the Court is recognized by the judgments rendered by the Apex Court in several cases. I deem it appropriate to notice and quote a few. The Apex Court in the case of ***R. MUTHUKRISHNAN v. REGISTRAR GENERAL, HIGH COURT OF JUDICATURE AT MADRAS***[1] has held as follows:

> *"**44.** The Bar Council has the power to discipline lawyers and maintain nobility of profession and that power imposes great responsibility. The court has the power of contempt and that lethal power too accompanies with greater responsibility. Contempt is a weapon like Brahmastra to be used sparingly to remain effective. At the same time, a Judge has to guard the dignity of the court and take action in contempt and in case of necessity to impose appropriate exemplary punishment too. A lawyer is supposed to be governed by professional ethics, professional etiquette and professional ethos which are a habitual mode of conduct. He has to perform himself with elegance, dignity, and decency. He has to bear himself at all times and observe himself in a manner befitting as an officer of the court. He is a privileged member of the community and a gentleman. He has to mainsail with honesty and sail with the oar of hard work, then his boat is bound to reach to the bank. He has to be honest, courageous, eloquent, industrious, witty and judgmental.*
>
> ***45.** In a keynote address to the 1992 Conference of the English, Scottish and Australian Bar Association held in London on 4-7-1992 on the "Independence of the Bench; the Independence of the Bar and the Bar's Role in the Judicial System" [**Ed.** : (1992) 10 Australian Bar Review 1-10 : (1993) 19 Commonwealth Law Bulletin 753-760] , Sir Anthony Mason, AC, KBE, Chief Justice of Australia has pointed out that for its independence the Court should be responsible for its own administration and the expenditure of funds appropriated to it by Parliament. He has also referred to one of the*

[1] ***(2019) 16 SCC 407***

recommendations made by an economist that financial incentives should be offered to Judges to expedite the disposition of cases, in that regard he has observed that incentive-based remuneration, no matter how well adapted it is to the football stadium and the production line has no place in the courtroom. Judicial independence is a privilege of and protection for the people. The appointment of the Judges should be from the dedicated advocates. With respect to the independence of the Bar, he has mentioned that lawyers stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak. It is necessary that while the Bar occupies an essential part in the administration of justice, the lawyer should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence. Next, he has referred to Sir Owen Dixon when he became the Chief Justice of Australia, said:

> *"Because it is the duty of the Barrister to stand between the subject and the Crown, and between the rich and the poor, the powerful and the weak, it is necessary that, while the Bar occupies an essential part in the administration of justice, the Barrister should be completely independent and work entirely as an individual, drawing on his own resources of learning, ability, and intelligence."*
>
> *(emphasis supplied)*

46. A lawyer has to balance between the duty to the court and interests of his clients. A lawyer has to be independent. He has observed thus:

> ***"An important element in the relationship between the court and the Barrister is the special duty which the Barrister owes to the court over and above the duty which the Barrister owes to the client. The performance of that duty contributes to the efficient disposition of litigation. In the performance of that duty the independence of the Barrister, allied to his familiarity with the judicial process, gives him a particular advantage.*** *In balancing his duty to the court and that owed to the client, the Barrister is free from the allegiances and*

interests and the closer and continuing association which the solicitor has with the client. The significance of the Barrister's special duty to the court and the expectation that it will be performed played a part in the recognition of the common law's immunity of the Barrister from in-court liability for negligence. That immunity is founded partly on the existence of the duty and its performance with beneficial consequences for the curial process. So much is clear from the speeches in the House of Lords in Rondel v. Worsley [Rondel v. Worsley, (1969) 1 AC 191 : (1967) 3 WLR 1666 (HL)] and Saif Ali v. Sydney Mitchell & Co. [Saif Ali v. Sydney Mitchell & Co., 1980 AC 198: (1978) 3 WLR 849 (HL)] and the majority judgments in the High Court of Australia in Giannarelli v. Wraith [Giannarelli v. Wraith, (1988) 165 CLR 543: (1988) 81 ALR 417] .

The Bar's best response to the new challenge which confronts it is to re-affirm its traditional professional ideals and aspire to excellence. The professional ideal is not the pursuit of wealth but public service. That is the vital difference between professionalism and commercialism.

It is timely to repeat what O'Connor, J. (with whom Rehnquist, C.J. and Scalia, J. agreed) said in Shapero v. Kentucky Bar Assn. [Shapero v. Kentucky Bar Assn., 1988 SCC OnLine US SC 112 : 100 L Ed 2d 475 : 486 US 466 (1988)] : (SCC OnLine US SC para 43)

'43. One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. There are sound reasons to continue pursuing the goal that is implicit in the traditional view of processional life. Both the special privileges incident to membership in the professional and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth.

Unless the Bar dedicates itself to the ideal of public service, it forfeits its claim to treatment as a profession in the true sense of the term. Dedication to public service demands not only attainment of a high standard of professional skill but also faithful performance of duty to client and court and a willingness to make the professional service available to the public.'"

(Emphasis supplied)

It is also apposite to refer to the judgment reported in ***RONDEL v. WORSLEY***[2] wherein the Court of Appeal has held as follows:

*"**Public policy***

There is, in my judgment, a sure ground on which to rest the immunity of a barrister. At any rate, so far as concerns his conduct of a case in court. It is so that he may do his duty fearlessly and independently as he ought: and to prevent him being harassed by vexatious actions such as this present one now before us. It is like the ground on which a judge cannot be sued for an act done in his judicial capacity, however corrupt: see Scott v. Stansfield; and on which a witness cannot be sued for what he says in giving evidence, however perjured: see Dawkins v. Lord Rokeby; Hargreaves v. Bretherton; and on which an advocate cannot be sued for slander for what he says in court, however malicious: see Munster v. Lamb.

All the reasons given in those cases apply as well to a suit against a barrister for negligence. As an advocate he is a minister of justice equally with the judge. He has a monopoly of audience in the higher courts. No one save he can address the judge, unless it be a litigant in person. This carries with it a corresponding responsibility. A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may

[2] ***(1967)1 Q.B 443***

be. No matter how given to complaining. No matter how undeserving or unpopular his cause. The barrister must defend him to the end. Provided only that he is paid a proper fee, or in the case of a dock brief, a nominal fee. He must accept the brief and do all he honourably can on behalf of his client. I say "all he honourably can" because his duty is not only to his client. He has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. ***He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline. But he cannot be sued in a court of law.***

Such being his duty to the court, the barrister must be able to do it fearlessly. He has time and time again to choose between his duty to his client and his duty to the court. *This is a conflict often difficult to resolve: and he should not be under pressure to decide it wrongly. Mr. Zander says that when a barrister puts first his duty to the court, he has nothing to fear. He has not been negligent and cannot be made liable. But that is too simple by far. It is a fearsome thing for a barrister to have an action brought against him. To have his reputation besmirched by a charge of negligence. To have the case tried all over again but this time with himself, the counsel, as the defendant. To be put to all the anxiety and, I would add, all the cost of defending himself. Even though in the end he should win. Faced with this prospect, a barrister would do all he could to avoid it. Rather than risk it, he would forever be looking*

over his shoulder to forestall it. He would be tempted to ask every question suggested by the client, however irrelevant; to call every witness desired by the client, however useless; to take every point, however bad; to prolong the trial inordinately: in case the client should be aggrieved and turn round on him and sue him for negligence. If a barrister is to be able to do his duty fearlessly and independently, he must not be subject to the threat of an action for negligence.

Another ground of public policy is this: If a barrister could be sued for negligence, it would mean a retrial of the original case. Damage is the gist of an action for negligence. In order to succeed the plaintiff would have to show that he was wrongly convicted. See what this means. Illustrate it by this very case of Rondel. He has already been tried by a jury and been convicted. He has already put his complaint against his counsel before the Court of Criminal Appeal. If there had been any miscarriage of justice, the court would have taken steps to correct it. They were satisfied there was none. They rejected his application. Is he to be allowed to canvass his guilt or innocence again in a civil court? And try the case afresh in an action against his own counsel? I cannot think this would be right. Once a man has been convicted by a jury of a crime and his appeal rejected, he should not be permitted to challenge it again in a civil court. He cannot sue the judge, saying that he misdirected the jury. He cannot sue a witness, saying that he committed wilful perjury. Nor should he be permitted to sue his own counsel, saying that he was negligent. Test it this way. Suppose he were to succeed, as between himself and his counsel. in showing that he was wrongly convicted. The Crown would not be bound by that decision. We should have a criminal court sentencing him to imprisonment on the footing that he was guilty, and a civil court awarding him damages on the footing that he was not guilty……."

(Emphasis supplied)

16. In the light of the judgments so rendered by the Apex Court and the Court of Appeal as afore-quoted, the role of an officer

of the Court and him being sued is what is deprecated. The petitioner being an officer of the Court had a duty towards the Court over and above the duty towards the client, more so being a panel counsel for long years, had a duty to balance the role of being an officer of the Court and the panel counsel. In the teeth of the aforesaid facts if further proceedings are permitted to be continued, it would, on the face of it, become an abuse of the process of law and result in grave miscarriage of justice. Therefore, further proceedings require to be obliterated.

17. It becomes germane to notice the action of the University, which is a State under Article 12 of the Constitution of India, in registering such complaint against its panel counsel without conduct of any preliminary enquiry to get to know the veracity of the truth in the allegations and make reckless allegations against the petitioner. The University cannot indulge in such acts of registering crime against the counsel who appears before the Court on its behalf and when the result in the suit or petition goes against the University. Merely because cases are lost,

the counsel cannot be alleged of fraud, cheating, impersonation or of other reckless allegations that are made.

18. As observed hereinabove, the allegations in the complaint *sans* complete substance. Therefore, the University is hereby cautioned not to indulge in such acts by registering complaints in a hottest haste and maligning the names of Advocates who appear for them, after appointing them to its panel to represent the Courts, unless the University has adequate information or substance which can *prima facie* demonstrate that there has been fraud played by its panel counsel or the University has been cheated by the panel counsel. The act of the petitioner in representing the University before the Court and the Court allowing the petitions following an earlier judgment holding it to be covered can never lead to registration of the crime for the aforesaid offences. The University or the Registrar who has now sought to explain out the circumstances, is admonished and is directed to exercise caution while registering such reckless complaints in hottest haste. Any such iteration of the kind of haste, as seen in the case at hand, would be viewed seriously.

19. For the aforesaid reasons, I pass the following:

O R D E R

(i) The Criminal Petition is allowed.

(ii) The FIR registered in Crime No.163 of 2022 dated 29.07.2022 before the Thilaknagar Police Station and all further proceedings arising thereto and pending before the XXXVII Additional Chief Metropolitan Magistrate, Bengaluru stands quashed.

Sd/-
JUDGE

bkp
CT:MJ