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2015(1)

This is a major contradiction. The recovery therefore becomes doubtful. No scientific investigation was carried out. The prosecution was unable to prove that there was any blood stains in the trolley. There was no circumstance, which could connect the accused to the crime. The police was unable to find any crucial circumstance to establish the guilt of the appellant.

(27) Sometimes the police is unable to find direct evidence but they can bring indirect circumstances, which may vary from suspicion to certitude but the Court has to bear in mind a caution that there can always be a danger and suspicion alone cannot take place of proof.

(28) Giving our thoughtful consideration to the circumstances, we find that the prosecution had failed to bring crucial circumstances and there is no link in the circumstances set up by them and they had failed to establish the guilt of the accused beyond reasonable doubt. We are conscious that a grave and heinous crime was committed but there is no satisfactory proof of the guilt. We have no option but to give the benefit of doubt to the accused and we are constrained to do so in this case. Accordingly, the appeal is allowed. The conviction and sentence of the accused is set aside and he shall be set at liberty forthwith if not required in any other case.

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*J.S. Mehndiratta*

*Before Sanjay Kishan Kaul, Chief Justice &  
Augustine George Masih, J.*

**ABHEYJIT SINGH AND ANOTHER—Petitioners**

*versus*

**CHANDIGARH ADMINISTRATION, CHANDIGARH AND  
OTHERS—Respondents**

**CWP No. 20636 of 2013**

September 18, 2013

*Constitution of India, 1950 - Arts. 14 and 226 - Education  
Laws - Centralized Admission Brochure Session 2013 - Clause B(I)(2)  
- Medical admission under State Quota seats - Petitioners had  
undertaken their 10+2 educational qualifications at Patiala, which*

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***is in State of Punjab; Chandigarh being capital - They sought admission to Government Medical College and Hospital at Chandigarh challenging condition that candidate should pass 10+2 examination from a school/college recognized by Chandigarh Administration and situated in Union Territory of Chandigarh - Held, that NEET-UG 2013 empowers State/Union Territory to prescribe eligibility criteria - Therefore, specific condition for eligibility of candidate regarding passing/clearing examination from specific place without any exemption or exception to same could not be challenged - Petitioners who were not fulfilling examination qualification as prescribed, are not eligible for admission.***

*Held*, that the Government Medical College and Hospital, Sector 32, Chandigarh, is not established, owned or administered and run by the State of Punjab but is under the Union Territory of Chandigarh and the Chandigarh Administration controls and runs the same. Merely because Chandigarh is the capital of State of Punjab does not *ispo facto* make eligible a candidate who has passed his 10+2 examination from the State of Punjab.

(Para 11)

*Further held*, that NEET-UG2013 itself prescribes and provided the power to the State/Union Territory by notification to lay down the eligibility criteria. If the reasoning as has been sought to be projected by the petitioners is accepted, there would virtually be no quota left for students of Union Territory of Chandigarh as Chandigarh is also the capital of the State of Haryana and the students who passed their 10+2 from the State of Haryana for the same reason and logic would also be eligible for admission to Medical College at Chandigarh. The judgments relied upon by the petitioners were based upon the prospectus as was prevalent for admission to the students for admission in M.B.B.S. seats of the State of Punjab and it is in those circumstances and in that context the judgments were rendered by the Courts. Here there being a specific condition for eligibility of the candidates, which specifies the place from which the candidate should have cleared his/her qualifying examination without any exemption or exception to the same, the judgments would not be applicable to the present case. The petitioners,

failing to fulfil the said condition, cannot be held eligible for admission to the M.B.B.S. Course in the Government Medical College and Hospital, Sector 32, Chandigarh. The pleas and the grounds as raised and pressed by the petitioners cannot, thus, sustain, resulting in rejection of the same.

(Para 12)

Mohit Garg, Advocate, *for the petitioners.*

**AUGUSTINE GEORGE MASIH, J.**

(1) Prayer in this writ petition is for quashing Clause B(I)(2) of Centralised Admission Brochure Session, 2013 for admission to Government Medical College and Hospital, Sector 32, Chandigarh, issued by the Chandigarh Administration for the Session 2013 and the reservation policy issued vide letter dated 18.3.1999 laying down a condition that the candidate to be eligible for admission under the State quota seats should pass 10+2 or its equivalent examination from a school/College recognized by the Chandigarh Administration and situated in Union Territory, Chandigarh, as a regular student. Petitioners have passed their 10+2 examination from the schools situated in Patiala, State of Punjab. Their fathers are regular employees of the Government of Punjab and posted at Patiala. They appeared in the National Eligibility-cum-Entrance Test (Under Graduate) of 2013 (for short, “NEET-UG2013”) and cleared the same. They are, thus, eligible for consideration for admission in the Medical Colleges. As per the prospectus issued by the Central Board of Secondary Education (CBSE), which held the NEET-UG2013, 15% of the total seats in the Medical Colleges are to be filled on All India basis, which shall be termed as ‘All India Quota’. Admission to the remaining 85% seats would be based upon the reservation of seats in the Medical Colleges under the State quota and the Private Medical Colleges. The reservation for admission under the 85% State quota seats shall be subject to the reservation policy and eligibility criteria prevailing in the State/Union Territory as notified by the respective State/Union Territory from time to time.

(2) Petitioners, through the present writ petition, are assailing the eligibility criteria as laid down for admission by the Chandigarh

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Administration, according to which the MBBS, U.T. Pool (Indian Nationals) belonging to General, scheduled caste, physically disabled categories are mandated to have passed +2 examination from the schools/colleges recognized by the Chandigarh Administration and situated in Union Territory of Chandigarh as regular students of the said School/College, apart from other conditions which the petitioners fulfil. This condition stands challenged by the petitioners on the ground that the same is violative of Article 14 of the Constitution of India.

(3) It is the contention of counsel for the petitioners that because of the posting of fathers of the petitioners in Patiala, being Government employees of the State of Punjab, they had undertaken their educational qualifications at Patiala, which is in the State of Punjab. Chandigarh being the capital of Punjab, merely because it is a Union Territory, the wards of Punjab Government employees cannot be excluded from consideration for admission to the seats of M.B.B.S./B.D.S. Course under the 85% quota on the ground that they have not passed their 10+2 qualifying examination from a school/College on regular basis situated at Chandigarh. It has been contended that the judgment of the Supreme Court in the case of *Raminder Singh Nagra v. Jagjit Singh Puri and others(1)*, covers the claim of the petitioners in their favour as in the said judgment a student whose educational institution was in the Union Territory of Chandigarh while his father being posted in the office of Accountant General, Punjab, at Chandigarh, was not being treated as eligible for admission to the seats in the medical colleges in the State of Punjab on the ground that he had not passed the qualifying examination from the State of Punjab, has been held eligible for admission under the Punjab quota seats for the reason that Chandigarh, being the capital city of State of Punjab, cannot be excluded or treated as outside the State of Punjab. On this parity, the claim has been made that students who had passed their qualifying examination from the State of Punjab, would be eligible for admission to the M.B.B.S. Course in the Medical College, Sector-32, Chandigarh against 85% seats of U.T. Pool.

(4) Submission is that the petitioners have better merit than the students who have been granted admission on U.T. Pool seats have a

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better right and are being only ousted on the ground that they have not passed their qualifying examination from a school situated in Chandigarh. Contention is that the merit has been sacrificed. Reliance has also been placed upon the judgment passed by this Court in **Civil Writ Petition No.24747 of 2012 (*Harleen Cheema v. State of Punjab and others*)**, decided on 27.8.2013 (Annexure P-3), where while relying upon the judgment of the Supreme Court in ***Raminder Singh Nagra's case*** (supra), the petitioners, who had passed 10+2 examination from a recognized school in Chandigarh, were directed to be treated as candidates who had cleared 10+2 examination from the State of Punjab, being the capital of Punjab. Counsel for the petitioners has made his submissions on the above basis and has prayed for quashing of Clause B(I)(2) of the eligibility criteria as laid down in the Centralized Admission Brochure Session, 2013 issued by the Chandigarh Administration, Annexure P-2.

(5) We have considered the submissions made by counsel for the petitioners and have gone through the records of the case.

(6) Clause 9.3 of the NEET-UG2013 lays down the criteria for eligibility for the State quota seats, which reads as follows:-

**“9.3. Eligibility for State Quota Seats**

- (i) *He/She has completed age of 17 years at the time of admission or will complete the age on or before 31<sup>st</sup> December of the year of his/her admission to the 1<sup>st</sup> year MBBS/BDS Course and is an INDIAN NATIONAL.*
- (ii) *Overseas Citizens of India (OIC) are eligible for admission in Medical/Dental Colleges subject to rules and regulations framed by the respective State Governments and the Government of India.”*

(7) Thereafter in Clause 11.3(a), reservation for seats in Medical Colleges under State quota and private medical colleges has been provided, which reads as follow:-

- “(a) Admission under 85% State quota seats in Government Medical Colleges shall be subject to reservation policy and Eligibility Criteria prevailing in the State/Union*

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*Territory as notified by the respective State/Union Territory from time to time.*

*(b) The reservation of seats in Medical Colleges for respective categories shall be as per applicable laws prevailing in State/Union Territory concerned.*

*(c) Admission to MBBS/BDS courses in Private Medical Colleges shall be subject to Policies of the State/Union Territory.”*

(8) A perusal of the above would show that even under the NEET-UG2013, Information Bulletin, each candidate has to clear this test for being eligible to admission to the M.B.B.S. Course in various Colleges. It clearly prescribes that the admission to the 85% State quota seats would be as per the reservation policy and the eligibility criteria prevailing in the State/Union Territory as notified. This shows that it is open to the State/Union Territory to lay down its own eligibility criteria by a notification to that effect.

(9) Union Territory of Chandigarh accordingly laid down the eligibility criteria for admission for the U.T. Pool Seats under Clause B(I), which reads as follow:-

**“B. ELIGIBILITY CRITERIA:**

***I. MBBS U.T. Pool (Indian Nationals) General, SC, Physical disability***

*The applicant must fulfil the following conditions:-*

*1. Attained the age of 17 years on or before 31<sup>st</sup> December, 2013.*

*2. Passed +2 (12<sup>th</sup> Class) examination from Schools/Colleges recognized by the Chandigarh Administration and situated in the UT of Chandigarh, as regular student of the said Schools/Colleges (This condition does not apply for wards of serving defence personnel/ex-servicemen for which see Point No.4 below). He/She should have passed in the subjects of Physics, Chemistry, Biology/Biotechnology & English individually, and must also have obtained a minimum of 50% marks in the*

*aggregate of Physics, Chemistry and Biology/Biotechnology at +2 level in the first attempt. However, in the case of members of the Scheduled Castes, relaxation in marks not exceeding 10% shall be allowed i.e. Minimum 40%; for physical disability candidates the minimum percentage shall be 45%.*

*3. As per the amended Regulation of Medical Council of India, the eligibility criteria for admission to MBBS course is 50% for general category; 40% for SC and 45% for candidate with physical disability separately in qualifying examination (+2 or equivalent) and competitive entrance examination (i.e. NEET) in the subjects of Physics, Chemistry, Biology/Biotechnology.*

*4. The condition of passing +2 from U.T.Chandigarh is waived off in respect of wards of serving defence personal/ex-servicemen vide letter no.19/1/3-IH(3)-2007/18322 dated 14.09.2007.*

*5. Qualified in NEET 2013 conducted by CBSE, New Delhi and meets the minimum percentage criteria of the MCI regulations. The admission will be based on merit in NEET 2013.*

*6. For NRI (Foreign Indian student admission) please see Page no.7-9”.*

It is, thus, apparent that in exercise of the powers available to the Union Territory of Chandigarh, the eligibility criteria has been prescribed.

(10) The grouse of the petitioners primarily relates to the condition (2) which is stated to be in violation of the law as laid down by the Supreme Court in the case of **Raminder Singh Nagra's case** (supra), where a student, who had passed 10+2 course from the Union Territory of Chandigarh, was directed to be treated as a candidate who had cleared 10+2 examination from the State of Punjab, being the capital of State of Punjab has, thus, to be treated as part of State of Punjab, although it was a Union Territory. The said principle would be applicable *vice versa* as well. The status of the Chandigarh as capital of State of Punjab does not vary and remains the same and, therefore, the fathers of the petitioners being employees and posted at Patiala, virtually forced the petitioners to study and qualify their 10+2

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examination from Patiala, cannot be a reason good enough to deprive them the benefit of the seats, which are available in the Medical College of the capital of the State of Punjab, when a student of 10+2, who had passed his examination from Chandigarh, has been treated as having passed from the State of Punjab. Similar benefit is required to be given to the students, who had passed their 10+2 examination from the State of Punjab for seeking admission under the U.T. Pool quota seats of Chandigarh.

(11) This plea of the petitioners cannot be accepted in the light of the fact that the Government Medical College and Hospital, Sector 32, Chandigarh, is not established, owned or administered and run by the State of Punjab but is under the Union Territory of Chandigarh and the Chandigarh Administration controls and runs the same. Merely because Chandigarh is the capital of State of Punjab does not *ipso facto* make eligible a candidate who has passed his 10+2 examination from the State of Punjab. The ratio culled out by the Supreme Court in ***Raminder Singh Nagra's case*** (supra) would not be applicable to the students who had passed their 10+2 examination from the State of Punjab, especially when the conditions, which were laid down in the prospectus issued by the State of Punjab, provided for other conditions also, which were required to be fulfilled by the candidates and there were certain exceptions also provided, which is not the case here.

(12) That apart, NEET-UG2013 itself prescribes and provided the power to the State/Union Territory by notification to lay down the eligibility criteria. If the reasoning as has been sought to be projected by the petitioners is accepted, there would virtually be no quota left for students of Union Territory of Chandigarh as Chandigarh is also the capital of the State of Haryana and the students who passed their 10+2 from the State of Haryana for the same reason and logic would also be eligible for admission to Medical College at Chandigarh. The judgments relied upon by the petitioners were based upon the prospectus as was prevalent for admission to the students for admission in M.B.B.S. seats of the State of Punjab and it is in those circumstances and in that context the judgments were rendered by the Courts. Here there being a specific condition for eligibility of the candidates, which specifies the place from which the candidate should have cleared his/her qualifying



examination without any exemption or exception to the same, the judgments would not be applicable to the present case. The petitioners, failing to fulfil the said condition, cannot be held eligible for admission to the M.B.B.S. Course in the Government Medical College and Hospital, Sector 32, Chandigarh. The pleas and the grounds as raised and pressed by the petitioners cannot, thus, sustain, resulting in rejection of the same.

(13) The writ petition, therefore, stands dismissed.

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*S.Gupta*

*Before Rakesh Kumar Garg, J.*

**MANMOHAN SINGH AND OTHERS—Appellants**

*versus*

**KEWAL KRISHAN AND OTHERS—Respondents**

**RSA No. 3283 of 2013**

November 14, 2013

*Specific Relief Act, 1963 - S. 20 - Indian Evidence Act 1872 - Ss. 91 and 92 - Discretion as to decreeing specific performance - Respondent filed suit for possession by way of specific performance of Agreement to Sell - Appellant contested suit on ground of fraud and misrepresentation - Agreement to Sell proved on record - Now by taking a contradictory plea of fraud, appellant pleaded that document in question was created as a security for repayment of loan and loan was repaid - This plea also had been found to be false - Held, that testimony of witnesses could not be discarded only on ground that they were uneducated or known to the Plaintiff-Respondent - Once execution of Agreement to Sell stands proved on record, inadequacy of consideration cannot be a ground to deny specific performance.*

*Held*, that the testimony of the witnesses cannot be discarded only on the ground that they were uneducated or known to the plaintiff-respondent. In fact, the appellants have taken two different stands to defend the suit which were contradictory to each other. In the first