

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2021

**R**

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3683 OF 2017

**BETWEEN**

SRI. NARESH KUMAR R.P.,  
S/O SRI R.V. PANDU,  
AGED ABOUT 47 YEARS  
CEO, M/S EDURAYS INDIA  
NO.79, 2<sup>ND</sup> CROSS,  
24<sup>TH</sup> MAIN, J.P.NAGAR II PHASE  
BENGALURU - 560 078.

... PETITIONER

(BY SRI MURTHY D.NAIK, ADVOCATE (PHYSICAL HEARING))

**AND**

1. THE STATE OF KARNATAKA  
THE SUB- INSPECTOR OF POLICE  
AND STATION HOUSE OFFICER  
J.P.NAGAR POLICE STATION,  
BENGALURU - 560 078  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT COMPLEX,  
BENGALURU.
2. SRI ASHOK LENIN  
DEPUTY DIRECTOR,  
GOVERNMENT OF INDIA,  
MINISTRY OF ELECTRONICS AND  
INFORMATION TECHNOLOGY  
UNIQUE IDENTIFICATION AUTHORITY  
OF INDIA (UIDAI), REGIONAL OFFICE  
3<sup>RD</sup> FLOOR, SOUTH WING,  
KHANIJA BHAVAN, NO.49,

RACE COURSE ROAD  
BENGALURU – 560 001.

... RESPONDENTS

(BY SMT. NAMITHA MAHESH B.G., HCGP FOR R1  
(PHYSICAL HEARING)  
SRI H.SHANTHI BHUSHAN, ASG FOR R2 (PHYSICAL  
HEARING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE FIR NO.88/2017 DATED 06.04.2017 AT ANNEXURE-A REGISTERED BY THE J.P. NAGAR POLICE STATION, JAYANAGARA SUB-DIVISION, BANGALORE FOR THE OFFENCE P/U/S 465, 468, 469, 471, 420, 120(B) R/W 34 OF IPC WHICH IS PENDING ON THE FILE OF XLIV ADDL.C.M.M., NRUPATHUNGA ROAD, BANGALORE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.09.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

**ORDER**

The petitioner is before this Court seeking to quash the proceedings in FIR No.88/2017 registered on 6-04-2017 for offences punishable under Sections 465, 468, 469, 471, 420 120-B read with Section 34 of the IPC.

2. Brief facts leading to the filing of the present petition are as follows:

The petitioner is Chief Executive Officer of M/s Edurays India which is a company dealing with e-governance, skill development, finance, education consultancy, manpower consultancy, higher education and institutions and claims to have expertise in Aadhaar enrolment. The petitioner enters into a service provider agreement on 1<sup>st</sup> April 2015 with Utility Forms Private Limited, Mumbai (hereinafter referred to as 'Utility' for short) for providing services mentioned in the contract. On 30<sup>th</sup> March 2016, the contract between the petitioner and the Utility was extended for a further period of two years.

3. It is the claim of the petitioner that the 2<sup>nd</sup> respondent - Deputy Director, Unique Identification Authority of India (hereinafter referred to as the 'UIDAI' for short) in the Ministry of Electronics and Information Technology had addressed a permission letter for on boarding Utility as enrolment agency for UIDAI, particularly for the purpose of carrying out enrolments for Aadhaar in Karnataka. In terms of the agreement entered into between Utility and the petitioner, it is the claim of the petitioner that he was

providing manpower resources to Utility such as enrolment operators and supervisors. Certain guidelines are laid down by the Circulars issued as to how UIDAI and the persons who have entered into the contract with UIDAI should function.

4. Things standing thus, on 6-04-2017 an FIR came to be registered on information dated 6-04-2016 for the various offences mentioned (*supra*). Accused No.1 is the petitioner. Accused No.2 is the one who entered into agreement with UIDAI and accused No.3 is the representative of Utility. The moment FIR is registered, the petitioner is before this Court calling in question the registration of FIR.

5. Heard Sri Murthy.D.Naik, learned counsel appearing for petitioner, Smt.Namitha Mahesh B.G, learned High Court Government Pleader appearing for respondent No.1 and Sri H.Shanthi Bhushan, learned Assistant Solicitor General of India appearing for respondent No.2.

6. The learned counsel appearing for the petitioner contends that the petitioner functions strictly in terms of what was agreed between the Utility and himself. He would

contend that there is no substance in the allegations made particularly for the offence punishable under Section 420 of IPC and would further contend that the kits which have been alleged to have been supplied for free were never supplied for free and would submit that the entire proceedings initiated against the petitioner is opposed to process of law.

7. On the other hand, Sri.H.Shanthi Bhushan, learned Assistant Solicitor General would vehemently refute the submissions of the learned counsel for the petitioner and submit that there is no substance in the contention. The allegation against the petitioner is not only of cheating under Section 420 of IPC but also under Sections 465, 468, 469, 471 and 120B of IPC. In terms of the scheme for empanelment of enrolment of agency what was permitted to the enrolment agency was to enter into an agreement with the petitioner and the like, only for securing manpower and not to sublet the job of issuance of Aadhaar card.

8. The action of enrolment agency in entering into a sub-contract with the petitioner has led to grave threat to national security as Aadhaar cards are recklessly issued to

many who are also from neighboring countries. Such instance have emerged by the acts of the agencies like the petitioner. Therefore, the learned counsel would contend that it is for the petitioner to come out clean in the trial as the investigation itself is not yet commenced in the case on hand.

9. Learned High Court Government Pleader Smt. Namitha Mahesh B.G., appearing for the State, would also refute the submissions with equal vehemence and brings to light the illegal activities of the petitioner and contends that it is a matter of trial, as investigation is yet to commence in the case.

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

11. Before embarking upon the journey of consideration of the issue in the *lis*, I deem it appropriate to notice certain statutory provisions under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

**“2. Definitions.**—In this Act, unless the context otherwise requires,—

(e) **“Authority”** means the Unique Identification Authority of India established under sub-section (1) of Section 11;

(g) **“biometric information”** means photograph, finger print, Iris scan, or such other biological attributes of an individual as may be specified by regulations;

(k) **“demographic information”** includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history;

(l) **“enrolling agency”** means an agency appointed by the Authority or a Registrar, as the case may be, for collecting demographic and biometric information of individuals under this Act;

(m) **“enrolment”** means the process, as may be specified by regulations, to collect demographic and biometric information from individuals by

*the enrolling agencies for the purpose of issuing Aadhaar numbers to such individuals under this Act;*

*(q) **“prescribed”** means prescribed by rules made by the Central Government under this Act;*

Section 2(e) defines Authority to mean the Unique Identification Authority of India. Section 2(g) defines biometric information to be a photograph, a fingerprint, iris scan or such other biological attributes of an individual. Section 2(k) defines demographic information to be the date of birth, address and other relevant material of an individual. Enrolling Agency is defined under Section 2(l) to be the authority or a Registrar as the case would be, for collecting what is obtaining in Sub-section (g) and (k) of Section 2, biometric and demographic information. Enrolment is defined under Section 2(m) to be a process for collection of what is obtaining in Sections 2(g) and 2(k) for the purpose of issuance of Aadhaar numbers to individuals. Section 2(q) deals with prescription and would be as prescribed under the Rules made by the Central Government.



**“23. Powers and functions of Authority. -**

*(1) The Authority shall develop the policy, procedure and systems for issuing Aadhaar numbers to individuals and perform authentication thereof under this Act.*

xx xx xx xx

**3) The Authority may,—**

***(a) enter into Memorandum of Understanding or agreement, as the case may be, with the Central Government or State Governments or Union territories or other agencies for the purpose of performing any of the functions in relation to collecting, storing, securing or processing of information or delivery of Aadhaar numbers to individuals or performing authentication;***

***(b) by notification, appoint such number of Registrars, engage and authorise such agencies to collect, store, secure, process information or do authentication or perform such other functions in relation thereto, as may be necessary for the purposes of this Act.***

*(4) The Authority may engage such consultants, advisors and other persons as may be required for efficient discharge of its functions under this Act on such allowances or remuneration and terms and conditions as may be specified by contract.”*

**39. Penalty for tampering with data in Central Identities Data Repository.** - *Whoever, not being authorised by the Authority, uses or tampers with the data in the Central Identities Data Repository or in any removable storage medium with the intent of modifying information relating to Aadhaar number holder or discovering any information thereof, shall be punishable with imprisonment for a term which may extend to ten years and shall also be liable to a fine which may extend to ten thousand rupees.*

**40. Penalty for unauthorized use by requesting entity or offline verification seeking entity.** - *Whoever,-*

- (a) being a requesting entity, uses the identity information of an individual in contravention of sub-section (2) of section 8, or*

*(b) being an offline verification - seeking entity, information of an individual in contravention of sub-section (2) of Section 8-A shall be punishable with imprisonment which may extend to three years or with a fine which may extend to ten thousand rupees or, in the case of a company, with a fine which may extend to one lakh rupees or with both.”*

Section 23 of the Act deals with powers and functions of the Authority and the Authority is empowered to develop the policy, procedure and systems for issuing Aadhaar numbers. Sub- Section (3) of Section 23 of the Act, permits the Authority to enter into memorandum of understanding or agreement in furtherance of functions of delivery of Aadhaar numbers.

12. The Government has notified regulations namely, Aadhaar (Enrolment and Update) Regulations, 2016. Chapter V deals with appointment of Registrars, Enrolling agencies and other service providers. Regulation 21 deals with appointment of Registrars. 21(7) mandates that the Registrars shall not permit

subcontracting of enrolment functions by enrolling agencies to third parties. The Registrars are only permitted field level man power to be hired through third parties, provided the Enrolling agencies would furnish all details. Section 21(7), (8) and (9) read as follows:

**“21. Appointment of Registrars. - (1)**  
*Registrars shall be appointed by the Authority, through MOUs or agreements, [or terms of appointment/engagement] for enrolment and update of residents across the country, and could include entities which interact with residents in the usual course of implementation of their programmes. The eligible entities for appointment as registrars are State/ UT Governments, Central ministries and departments / agencies under them, Public Sector companies of Central / State Governments, [Scheduled banks] and regulated entities including National Securities Depository Limited, UTI Infrastructure Technology and Services Ltd, Special Purpose Vehicles (SPV) created by Central or State Government including CSC e-Governance services India Ltd.*

*Upon appointment, a Registrar code shall be assigned to each Registrar.*

*xx xx xx*  
(7) Registrars shall not permit subcontracting of enrolment functions by enrolling agencies to third parties. Registrars may permit field level manpower to be hired through third parties provided the enrolling agencies furnishes details of the entities from which such manpower is sought to be hired.

(8) Registrars shall at all times abide by the Code of Conduct as specified in Schedule V of these regulations.

(9) Registrars shall adhere to the processes, policies and guidelines, checklists, forms and templates issued by the Authority from time to time and shall also ensure compliance by the enrolling agencies of such procedures, etc.”

In furtherance of the aforesaid Act and the Regulations, the Government of India introduced a Scheme for empanelment of enrolment agencies and in furtherance of undertaking demographic and biometric data collection for

UID enrolment. The scheme was notified by the Unique Identification Authority (UIDAI). Applications were called from eligible and interested candidates for empanelment. For this purpose, one Utility Forms Private Limited was empanelled as an enrolment agency in terms of the Scheme. The enrolment agency for the purpose for which it is empanelled was entitled to procure field level manpower. The scheme for empanelment of enrolment agencies reads as follows:

*“Though this scheme, UIDAI intends to empanel a mix of organizations to enroll residents from the entire spectrum of the Indian population and to ensure that the enrolment activities are rolled out in the remotest villages of India and to the marginalized section of society. This RFE invites applications from organizations for empanelment to undertake enrolment work.*

*The RFE is open to all eligible organizations (including Govt./Semi-Govt/Private/NGOs/Not-Profit/Microfinance Institutions), which are (1) registered and operating in India for the last three years and (ii) having an average annual turnover/grants-in-aid of at least INR 50 lac in case of NGOs/Not-for-Profit OR a Net Worth of at least INR 50 lac in case of Commercial*

*Organizations/PSUs/Govt. companies/Autonomous bodies, in each of the last three (3) financial years (2013-14, 2014-15 and 2015-16).*

***Sub-Contracting of Enrolment Work is not allowed for private/commercial Organizations/ PSUs/Govt. Companies/Autonomous bodies. However, field level manpower such as enrolment operators and supervisors can be hired through third parties. E.As will be required to provide details of the companies from which they are going to hire this manpower to their Registrars before commencing enrolment operations. Government Organizations may choose to franchise enrolment work to CSCs/Local Government bodies.”***

*(Emphasis added)*

In terms of what was permitted under the Scheme was the manpower such as enrolment operator and supervisor could be hired by the third parties by the enrolment agency. What enrolment agency did was to the contrary, sub-contract was entered into with the petitioner for functions beyond what was statutorily permitted and the scheme contemplated.

13. Utility Forms Private Limited was the one that was empanelled as the enrolment agency. Utility Forms enters into an agreement with the petitioner. The petitioner after entering into an agreement opens up 'Namma Kendra' for the purpose of enrolment of Aadhaar and issues a notice of option titled as 'Namma Kendra' options. The options notified on 01.10.2016, by the petitioner reads as follows:

**“Option 1**

*All online services like Domestic Money Transfer, Bill Payments, Recharge, Train, Flight and Bus tickets booking. Aadhaar card Printing, PAN Card, Passport, credit card, personal loan, home loan, insurance, online courses, Saralrozgar job cards, all deposits and withdrawals from Yes Bank login, fone paisa app, Online shopping, N Point services, credit card and home loan payments, visa services, Western Union Money Transfer.*

**Set Up:** *Minimum 10 X 15 ft place, laptop, internet, normal printer with scanner.*

*Plastic card printer optional (we will print and deliver with nominal extra cost), thumb device POS Device.*



(provided by us Rs.300 monthly rental ( 6 months rental in advance to be paid before installation separately).

**Franchise fee:** Rs.30,000/ Kendra fees plus Rs.5000/- deposit for Wallet. 10 Saral rozgar job cards worth Rs.1000 along with banner, posters, pamphlets, bill book, rubber stamps will be provided **Free.**

### **Option 2**

Option 1 plus Aadhaar enrollments

**Set up:** as per option 1 plus Aadhaar Kit (Five finger Bio metric device, Iris and Webcam).

**Franchise fee:** Rs.40,000/- Kendra fees plus Rs.5000/- deposit for Wallet.

### **Option 3**

Option 1 plus nationalized Bank Kiosk like SBI/SBM/BOB.

**Set Up:** as per option 1

**Franchise fee:** Rs.50,000/- Kendra fees plus Rs.5000/- deposit for Wallet.

**Option 4**

Option 2 plus nationalized Bank Kiosk like  
SBI/SBM/BOB.

**Set Up:** as per option 2

**Franchise fee:** Rs.60,000/- Kendra fees plus  
Rs.5000/- deposit for Wallet.

**Option 5**

Option 4 with plastic card printer, 1000 Aadhaar  
preprinted plastic cards and complete Aadhaar kit  
(Five finger Biometric device, Iris and Webcam).

**Set Up:** Minimum 10 X 15 ft place, laptop, internet,  
normal printer with scanner.

**Franchise fee:** Rs.1,85,000/- Kendra fees plus  
Rs.5000/- deposit for Wallet.

**ADDITIONAL SERVICES IF REQUIRED WITH ADD ON****FEES:****RATION CARD COUPON CENTER ENABLEMENT &  
ATM**

The salient features for ATM set up installation are:

- For sourcing the locations for ATM, we need only a space of 4 X 4ft or any other combination in the existing Shop, Store, Mall, cooperative bank, Society, Housing boards, Group Flats, Nammakendra outlet etc.,

- *The photograph of the location along with the details of the geography is to be given for approval. The detail should mention the approx. population of the area, population of ATMs in that geography and our estimate of daily transactions from that space. (format will be provided once you accept the offer)*
- *The electricity point you have to define in the shop but all the wiring and fitting will be done by us.*
- *The responsibility of managing the ATM, branding, security, cash management etc. will be done by us.*
- *Locations responsibility will be to ensure proper electricity at the location and the electricity bill will be borne by the location only. In case, the are is prone to power cuts, the UPS for the ATM will also be installed by The Reserve Bank of India.*
- *The approval will be purely on discretion of authorized company.*

**One time installation fees Rs.20,000/-**

You can earn the following Commission:

Rs.2.50 commission for every banking transaction

Rs.1.00 for every non banking transaction

Regards,

Sd/-  
Namma Kendra Division  
Edurays India,  
Bangalore  
[www.nammakedra.in](http://www.nammakedra.in)  
[www.eduraysindia.com](http://www.eduraysindia.com).”

In the light of the afore-extracted options given by the petitioner, what becomes unmistakably clear is that, the petitioner indulged in trade of free kits, which undoubtedly would become an offence punishable under Section 420 of IPC, as if it is seen that these options were given, it would be only with an intention to cheat. Therefore, it is a matter of trial that the petitioner should come out clean on justification of the afore- extracted notice that was issued and the collection of money that he has made under 5 options of selling the Aadhaar kit to be sold ranging from 40,000 onwards to 1,85,000 and every Aadhaar card that was being issued by *Namma Kendra*, a particular fee ranging from Rs.100/- to Rs.200/- was collected.

14. It is when the official of UIDAI went as a civilian and sought an aadhaar card from Namma Kendra, he gets to

know the nefarious activities of the petitioner in connivance with the enrolment agency in selling aadhaar kits and aadhaar cards. It is thereafter, a complaint was registered against the enrolment agency and the petitioner on 6-04-2017 the complaint reads as follows:

*“Sub: Filing of Criminal Complaint against  
M/s Edurays India.*

*Based on inputs available on their official website [http://www.eduraysindia.com/government\\_projects.html](http://www.eduraysindia.com/government_projects.html) the undersigned in the guise of a commoner visited their office situated at #79, 2<sup>nd</sup> Cross, 24<sup>th</sup> Main, JP Nagar 2<sup>nd</sup> Phase, Bangalore-560078, during December, 2016 and made enquiries about their business model for starting an Aadhaar Kendra. The support staff at the office had furnished different rates for different models where an entrepreneur was required to purchase an enrolment kits at costs ranking from Rs.70,000 to Rs.1,90,000/-. The details of the same was also procured from them through e-mail dated January 28<sup>th</sup>, 2017. The copies of the same is attached herewith. When enquired further the support staff also informed that as an entrepreneur we are free to collect money from public during Aadhaar enrolment.*

*A second visit to M/s Edurays India was made on 14-03-2017 and the Head of Operations, Shri V.A.Sadiq Ahamed, was asked to submit their empanelment credentials with UIDAI as "Enrolment Agency" as it was established that they were selling enrolment kits and operating Aadhaar enrolment centers with the brand name "Namma Kendra". Shri Sadiq informed that "Edurays India" was not a UIDAI empanelled agency and that they were functioning with a tie-up with M/s Utility Forms Private Limited an enrolment agency under Registrar CSC e-Governance Limited.*

*When UIDAI team asked for the copies of the agreement between M/s Edurays and M/s Utility Forms, the same was supplied through e-mails dated 15<sup>th</sup> and 16<sup>th</sup> March 2017. From the documents supplied it could be ascertained that the contract entered is only for Man Power and resource supply, however M/s Edurays in connivance with M/s Utility Forms Private Limited were involved in selling the kits and in the process subletting which is not allowed as per UIDAI norms. It is seen that Sri V.A.Sadiq Ahamed, along with his CEO Shri Naresh Kumar in connivance with M/s Utility forms private limited are involved in the above act. (Mr. Ajay Chaturvedi, Head UIDAI Services) Mumbai.*

*It is also found from their website that they have been working on project for issuing Aadhaar Card for all districts of South India, UP, HP, Punjab, Rajasthan, Uttarkand and B:har.*

*The above facts clearly show that M/s Edurays India are misleading the public that they are authorized to sublet the enrolment process to individuals for a cost and collect money from the public, thereby causing immense harm to the public image of UIDAI and to the public at large. We bring it to your kind knowledge that such deliberate misdeeds of the Accused impedes the progress of Government of India schemes meant for the benefit of individuals. This act has not only violated various penal provisions of the IPC but has also belittled the mandate of the Aadhaar scheme, thereby maligning the Aadhaar scheme.*

*Hence, we request you to kindly register a criminal case based on the above facts and take necessary action invoking the provisions of Section 34, 120B, 420, 465, 466, 469, 47 of Indian Penal Code amended from time to time or any other sections as may be deemed fit upon further investigation.”*

This becomes an FIR against the petitioner for offences punishable under Section 465 of IPC which is for of forgery,

Section 468 of IPC for forgery for the purpose of cheating, Section 469 of IPC for forgery for the purpose of harming reputation, Section 471 using as genuine, a forged document, Section 420 of IPC for cheating and Section 120B of IPC for criminal conspiracy read with Section 34 of the IPC.

15. The act of collection of amount by the petitioner is defended on the ground that there is no evidence to show that the Aadhaar kits were delivered free to either enrolment agency or to the petitioner. It is the justification that the petitioner cannot work in vacuum. Therefore, it is a matter where the trial has to be conducted for the petitioner or his enrolment agency to come out clean in the issue.

16. The fact that the Project Director of UDI for the Karnataka Region had indicated the name of the petitioner to be the contact person or the State, in turn, will not lend any support to the petitioner, as the name of the agency indicated in the said document is Utility Forms Private Limited and not Edurays which belongs to the petitioner. Mere mentioning the name of the petitioner would not clothe him with the right to do as he has done.



17. It is also germane to notice that by Office Memorandum, Government of India, drawing attention towards comprehensive guidelines issued by UIDAI, communicated that it has come to its notice that surprise visits of permanent enrolment centres have revealed that many operators are charging money for Aadhaar enrolment which is free of cost and some such violators had been blacklisted under UIDAI are also indicated that in the wake of rising cases of charging money for Aadhaar enrolment, zero tolerance should be taken by the Government. The communications read as follows :

*“In the wake of rising cases of charging money for Aadhaar enrolment, it is hereby informed that for all such corruption cases, strict action with zero tolerance needs to be taken. As such, I am directed to highlight that if at any point of time, any operator or supervisor is found indulged in corrupt practices, an FIR should be immediately filed by the EA against such operator. If it is found that EA has not filed an FIR against such operator, this office shall file an FIR against CEO of the EA for abetting such corrupt practices. The Registrar will also be made a party in such FIR for improper monitoring.*

2. *In connection with a Court case, Hon’ble High Court of Rajasthan, Jaipur Bench in its Order dated 19.06.2015 in the*

*case of S.B. Criminal Misc. Bail Application No.14980/2014 has directed UIDAI to issue Aadhaar Cards in single name and not in two or three names by putting 'urf' or 'alias' in between. In view of this operators may be suitably asked to avoid putting 'urf' or 'alias' in between the name at the time of enrolment and / or update.*

*3. Enrolment Operators also need to be asked to capture mobile number of the resident while enrolment. Strict action may be taken against the operators not capturing the mobile number in spite of resident giving his mobile number in the enrolment form.*

*4. During the data quality check of Aadhaar enrolment packets prior to Aadhaar generation, it has been noticed that many a times the photograph taken for enrolment is of poor quality which leads to rejection of such data packet and in this whole process, the resident is denied Aadhaar number. All the enrolment operators are therefore required to be properly trained.*

*5. Above instructions may be adhered to by all Operators, agencies and registrars."*

*"Attention is invited towards comprehensive guidelines issued vide UIDAI Ro Delhi Office memorandum no.A-22011/21/2015/UIDAI (RO Delhi) dated 1<sup>st</sup> December 2015. Surprise visits of Permanent Enrolment Centres have revealed that many operators / supervisors are charging money Rs.50-1000/- for Aadhaar enrolment, which is free of cost. These operators have already been blacklisted from UIDAI system. It is also noticed that many PECs are functioning*

*without uploading any details on QAMIS portal.*

*In this connection, I am directed to state that*

- All the Permanent Enrolment Centres running under your EA/Registrar should mandatorily have a display board (bilingual) which should clearly state that Aadhaar enrolment is free of cost. These boards should also bear the address and telephone number of grievance handling officials of your Enrolment Agency. A sample for such a board/display is enclosed. If any of the PEC is found operating without these boards after a period of seven days of issue of this OM, action against such EA will be initiated by UIDAI RO Delhi.*
- Consequent upon receiving of any complaint of charging money for Aadhaar enrolment, an FIR should immediately be filed by the Enrolment agency against such operator under intimation to UIDAI Regional Office Delhi. If it is found that the EA has not filed an FIR against such operator, this office shall file an FIR against the agency (EA) for abetting such corrupt practices. The Registrar will also be made a party for improper monitoring.*
- All the EAs/Registrars should ensure that the details of all the PECs running under them should be*

*uploaded on QAMIS portal (<http://qamis.uidai.gov.in/es/login.aspx>) without any further delay. After a grace period of seven days of issue of this OM, if any PEC is found operating in Delhi / MP / Rajasthan / Uttarakhan without uploading such details on QAMIS portal, the approval by UIDAI RO shall be reviewed.*

*Above instructions may be adhered to by all the EAs and Registrars.*

*Sd/-  
Deputy Director.”*

It is in terms of these complaints received by the Government a surprise check was made upon the petitioner's office M/s Edurays Private Limited at J.P.Nagar, where employees were engaged to do the business of Aadhaar enrolment against cash payment.

18. Therefore, with the facts being so glaring and the offence alleged against the petitioner having such ramification, as issuance of Aadhaar card by such agencies who are not empowered can also lead to distribution of such cards against the interest of national security. It is prudent for the Government of India or the State Government to have a vigil on such instances of rising cases of frauds in Aadhaar

enrolment. Any further observation on the merit of the matter would be prejudicial to the interest of the petitioner in his defence before the trial Court. The petitioner, in my considered view has to face trial.

19. It is germane to notice the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**<sup>1</sup> wherein the Apex Court holds as follows:

***“10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/ allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e., a joint notarized affidavit of mamta Gupta – accused No.2 and Munni Devi under which according to Accused No.2 – Ms. Mamta Gupta, Rs.25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale***

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<sup>1</sup> **Criminal Appeal No.787 of 2021 dd. 13.08.2021**

*consideration is stated to be Rs.25 lakhs and with no reference to payment of Rs.25 lakhs to Ms. Munni Devi and no reference to handing over the possession. However, in the joint notarized affidavit of the same date i.e., 27-10-2010 sale consideration is stated to be Rs.35 lakhs out of which Rs.25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused No.2. Whether Rs.25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs.25 lakhs as mentioned in the joint notarized affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs.25 lakhs is stated to be sale consideration and there is reference to the payment of Rs.10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.*

... ..

*13. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court quashing the criminal proceedings in exercise of powers under Section*

482 Cr.P.C. is unsustainable and the same deserved to be quashed and set aside and is accordingly quashed and set aside. Now, the trial to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 Cr.P.C. only and the trial Court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed.”

*(emphasis supplied)*

In a judgment, a little earlier to the one that is rendered *supra*, the Apex Court in the case of **STATE OF MADHYA PRADESH v. KUNWAR SINGH**<sup>2</sup> has held as follows:

**“8. Having heard the submissions of the learned counsel appearing on behalf of the appellant and the respondent, we are of the view that the High Court has transgressed the limits of its jurisdiction under Section 482 of Cr.P.C. by enquiring into the merits of the**

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<sup>2</sup> Criminal Appeal No.709 of 2021 dd. 30.07.2021

**allegations at the present stage. The fact that the respondent was a signatory to the cheques is not in dispute This, in fact, has been adverted to in the judgment of the High Court. The High Court has also noted that a person who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been committed in the course of the work of the 'Janani Mobility Express' under the National Rural Health Mission. At this stage, the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced. In do so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of the Cr.P.C. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme. A final report has been submitted under Section 173 of CrPC. after investigation."**

*(emphasis supplied)*



Therefore, in the light of the facts obtaining in the case at hand and the judgments of the Apex Court, I do not find any merit to entertain the Criminal Petition, as in my considered view, it is a matter for trial.

20. Insofar as the judgments relied on by the learned counsel appearing for the petitioner in the case of **STATE OF ORISSA VS. DEBENDRA NATH PADHI** reported in **(2005)1 SCC 568**, the said judgment would be in inapplicable to the facts of the case at hand in view of the manifold circumstances narrated hereinabove. The Apex Court delineated the width of the powers of this Court under Section 482 of Cr.P.C. and under Article 226 of the Constitution of India and held it to be unlimited where the Court would step in to prevent abuse of the process or secure the ends of justice within the parameters laid down in the case of **BAJANLAL**. The case also lays down that this Court would quash the proceedings only when the accused would file an unimpeachable evidence of sterling quality and seek it to be the basis of quashing. In my considered view, no such document is placed, much less, an unimpeachable one, on

the other hand, there are plethora of circumstances for which the petitioner will have to undergo trial. The same reason of inapplicability goes with the judgment in the case of **LALITA KUMARI vs. GOVERNMENT OF UTTAR PRADESH** reported in **(2014) 2 SCC 1** as that is not the issue in the case at hand. Therefore, the judgments relied on by the learned counsel appearing for the Union of India would be applicable to the facts of the case at hand and not the ones relied on by the learned counsel appearing for the petitioner.

21. The Criminal Petition, accordingly, stands dismissed. It is made clear that any observations made during the course of the order are to be treated to be confined to the proceedings under Section 482 of Cr.P.C. only and the trial Court to decide the case in accordance with law, on its own merit, on the basis of evidence to be lead and without being influenced by any of the observations made in this order.

In view of dismissal of the petition, I.A.No.1/2021 does not survive for consideration. Accordingly, stands dismissed.

**Sd/-  
JUDGE**

bkp