

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.142 of 2017

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Dr. Girish Kumar Singh, S/o Prof. R.V. Singh, resident of 101, Eldeco Emperor, New Hyderabad, P.S. Mahanagar, Lucknow- 226007, Uttar Pradesh, formerly resident of Directors Bungalow, All India Institute of Medical Sciences, P.S. Khagaul, District Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, SC/ST Department, Patna.
2. Dr. Ajay Choudhary, Son of Shri Ram Swaroop Choudhary, R/o Village-Khankharapur, Panchu, Post & P.S.- Hisua, District-Nawada.

.... Respondents

with

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Criminal Writ Jurisdiction Case No. 228 of 2017

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1. Dr. Prem Prakash Gupta, S/o Late Ram Laxman Gupta Professor and Head of Department, Pharmacology, All India Institute of Medical Sciences, Patna resident of AIIMS residential Complex, Hydraulic Khagaul, P.S. Khagaul, District- Patna- 801503.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, SC/ST Department, Patna.

.... Respondents

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Appearance :

(In Cr. WJC No.142 of 2017)

For the Petitioner/s : Mr. Ramakant Sharma, Sr.Adv.
: Mr. Binay Kumar Pandey, Adv.
For the Respondent No.2: Mr. Mr. Uma Shankar, Adv.
: Mr.Vishal Kumar, Adv.
: Mr. Kamlesh Kumar Sharma, Adv.
For the State : Mr. G.P. Ojha, G.A.7.
: Dr. Priya Gupta, A.C. to G.A.7.

(In Cr. WJC No.228 of 2017)

For the Petitioner/s : Mr. Ramakant Sharma, Sr.Adv.
: Mr. Binay Kumar Pandey, Adv.
For the Respondent No.2: Mr. Mr. Uma Shankar, Adv.
: Mr.Vishal Kumar, Adv.
: Mr. Kamlesh Kumar Sharma, Adv.
For the State : Mr.Prashant Pratap, G.P.2.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT



Date: 15-11-2017

Heard Mr.Ramakant Sharma, learned senior counsel for the petitioners, Mr. Uma Shankar , learned counsel for the respondent No.2 and learned counsel for the State in both the applications.

2. The petitioners abovenamed are accused in connection with Patna SC/ST P.S.Case No. 21 of 2016 registered under Sections 314, 323, 504 and 506/34 of the Indian Penal Code as well as for offences under Sections 3(i) (r)(s)(p)(q), 3(2) (va) of SC/ST (Prevention of Atrocities) Act vide Annexure-1.

3. The present writ application has been filed for quashing the F.I.R. of the aforesaid case lodged by the respondent No.2 on the ground that a bare perusal of the F.I.R. does not disclose ingredient of any of the cognizable offences for which F.I.R. has been registered and the F.I.R. has been lodged with malafide intention of respondent No.2 to wreck vengeance when the respondent No.2 failed to take desired result on his application, by undue favour from the petitioners.

4. It is worth to mention that at the relevant time (the alleged date of occurrence) Dr. Girish Kumar Singh was posted as Director at All India Institute of Medical Sciences (in brief AIIMS) at Patna and petitioner Dr. Prem Prakash Gupta was working as Head of the Department of Pharmacology at



AIIMS , Patna, whereas the informant was working as a Senior Resident thereat appointed on direct job outsourcing on the consolidated amount of Rs. 55,000/- as per the memorandum of appointment at Annexure-2 series to the counter affidavit filed by the respondent No.2.

5. The informant has narrated in the FIR that initially he was appointed as Senior Resident on 06.03.2014 at AIIMS , Patna , his appointment was for maximum three years extendable after lapse of every 11 months on the basis of performance of the work. On 10.06.2016, the informant filed an application for grant of experience certificate to be used for extension of his joining period on some different posts of the State Govt., on which the informant was already selected. Some other Doctors were granted such certificate, however no certificate was granted to the informant. All of a sudden, the letter dated 30.07.2016 was served on the informant on 01.08.2016, stating therein that the informant has been relieved from the post of Senior Resident, as the authorities have not found him fit for grant of extension. Thereafter, the informant met the administrative officers of AIIMS, Patna to know the reason for his removal. Petitioner, Dr. Prem Prakash Gupta Head of the Department and was competent authority to grant extension to the informant, was contacted in his Chamber on



01.08.2016 itself by the informant. Dr. Gupta did not pay any heed to the request of the informant and threaten the informant, in loneliness, that the informant is a member of scheduled caste, AIIMS is not a place for the members of scheduled caste, therefore he should not come to his chamber in future. At one occasion, the informant was willing to lodge an FIR, however, considering the reputation of AIIMS as an Institution, he did not lodge any FIR and thereafter met the guardian of AIIMS i.e. the Director, Dr. Girish Kumar Singh. Petitioner , Dr.Girish Kumar Singh had advised him to file the application in his office and accordingly on 02.08.2016, the informant filed an application. On 24.09.2016, the informant again met the petitioner, Dr. Girish Kumar Singh as no action was taken till date on his petition dated 02.08.2016. This time the informant raised the discrimination meted to him on caste line. Again, no action was taken by the Director for 15 days. Thereafter, on 15.10.2016 at about 11.00 AM, the informant went to meet the Director in his chamber. The Director was alone in his chamber when the informant enquired about his application, the behaviour of the Director was very rough. He took the caste name of the informant and asked to not to see and spoke as follows:

“How the informant thought it to go to high post”

6. Further allegation is that the Director took the



caste name of the informant and asked him to leave the chamber. The informant did not disclose the aforesaid occurrence to anyone in the Institution. The informant was terrorized and conscious about his career. However, subsequently decided to lodge the present FIR.

7. Learned senior counsel for the petitioners submits that no part of the occurrence allegedly took place within the public view, as such the offences under the provisions of SC/ST Act is not attracted. Ingredients of other offences are not disclosed in the first informant report. He further submits that when the informant failed to get the desired result from the petitioners who were in administrative control, the present FIR was lodged. Reliance has been placed on case of *Gorige Pentaiah Vs.State of Andhra Pradesh & Ors* reported in *(2009) 1 SCC (Cri) 446*.

8. Respondent No.2 has filed detailed counter affidavit disclosing the narration of the background of the allegation which is stated in brief in the FIR also. However, admitted that the belated experience certificate was granted by the administration, not adding the period when the services of the informant was taken as tutor and also stating that the said certificate was granted after lapse of the period for prayer to the State Govt. to extend the period of joining on the State post.



9. Submission of learned counsel for respondent No.2 is that the offences are prima facie disclosed in the FIR , hence the FIR cannot be scuttled at the threshold. Further contention is that the FIR need not be an encyclopedia of the occurrence and the informant as well as one more witness have supported the allegation in their statement recorded under Section 164 Cr.P.C.

10. In paragraph-6 of the judgment in ***Gorige Pentaiah*** case , the Hon'ble Apex Court in almost identical facts observed as follows:-

“6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27-5-2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated



with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

11. The offences of the SC/ST Act for which FIR has been registered are being reproduced below:

“3(i)(r) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe , intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Schedule Tribe in any place within public view;
(s) abuses any member of Scheduled Caste or a Scheduled Tribe by caste in any place within public view;”

12. In the present case, the FIR does not disclose that the occurrence took at a place within public view. Chamber of any officer is not a public place as no one is authorizing to enter without permission. The FIR does not disclose that there was any one else in the chamber, save and except, the single



accused and the informant. Therefore, an important ingredient of aforesaid offences is missing. Moreover, there is no averment that the accused persons were not member of a scheduled caste or scheduled tribe.

13. The case of *Swaran Singh & Ors Vs. The State & Anr* reported in (2008) 8 SCC 435 does not support the case of respondent No.2, as in *Swaran Singh* case, the occurrence allegedly took place near the car parking place which was a place in a lawn outside a house and the lawn was visible by some one from the road or outside the boundary wall.

14. The FIR has further been instituted for offence under Section 3(i) (p)(q) of the SC/ST Act, the said provisions are reproduced below :

“p. institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

“q. gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of the Scheduled Caste or Scheduled Tribe;”

15. There is no averment in the FIR regarding the institution of any false or malicious or vexatious case civil or



criminal or giving of any false or frivolous information, against the informant, by the petitioners. Therefore the aforesaid offences apparently are not attracted .

16. The FIR has further been registered under Section 3(2) (va) of SC/ST Act which reads as follows:

“3(2) Whoever not being a member of the Scheduled Caste or Scheduled Tribe,---

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of scheduled caste or scheduled tribe or such property belongs to such member, shall be punishable with such imprisonment as specified under the Indian Penal Code for such offences and shall also be liable to fine.”

17. Again, the ratio had decided in ***Gorige Pentaiah*** Case is applicable as there is no averment that the petitioners not being the member of scheduled caste or scheduled tribe have committed offences of the Indian Penal Code as alleged.

18. There is no allegation of commission of any offence of hurt or wrongful restraint, hence offences under



Sections 323 and 341 of the Indian Penal Code is apparently not applicable. There is no allegation of commission of any act in furtherance of common intention of the accused persons, hence offence under Section 34 of the Indian Penal Code is also not attracted. A bare perusal of the FIR would reveal that there is complete lack of requirement of intentional insult giving provocation to the informant with intent or knowledge that provocation will cause the person, provoked to breach the peace hence, offence under Section 504 of the Indian Penal Code is also not attracted in the facts and circumstances of this case.

19. The statement of witness Karan Anand recorded under Section 164 CR.P.C. would reveal that he is not an eye witness of the occurrence rather is a hearsay witness. Similarly, statement of the informant recorded under Section 164 Cr.P.C. (enclosed as Annexure-20 series of the counter affidavit) would reveal that he has not alleged that at the time of any of the alleged occurrence, anyone else was present or the occurrence allegedly took place in the public view.

20. Though there is bald allegation of commission of criminal intimidation by the petitioners in the first information report. However, in the case of *State of Haryana & Ors Vs. Bhajan Lal & Ors* reported in *1992 Supp (1) SCC 335*, the Hon'ble Apex Court considered that where the allegations in the



FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code of Criminal Procedure. The same would be a ground to exercise power under Article 226 of the Constitution of India or inherent power under Section 482 Cr.P.C. to quash the FIR. The offence under Section 506 of the Indian Penal Code is a non-cognizable offence, hence the petitioners cannot be prosecuted for that offence only, considering the background of the allegation as discussed above, in the ends of justice. Moreover, the law should not be allowed to be used as a weapon of attack by a vindictive person to take revenge after having failed to achieve the desired results at the hands of their administrative Boss who are accused in the case. The entire background of this case as discussed above, it is evident that at the time of initial selection of the informant, one of the petitioner was a Member of the Selection Board which selected the informant. Thereafter, extension of engagement of the informant was allowed by the same Committee. The whole FIR is the result of non-grant of experience certificate by the petitioners within time to the informant. The petitioners have got no criminal antecedent. They were holding high offices since long. In the circumstances, allowing the petitioners to be prosecuted for



offence under Section 506 of the Indian Penal Code would certainly amount to abuse of the process of the court.

21. In result, the entire FIR of Patna SC/ST P.S.Case No. 21 of 2016 is hereby stand quashed and both the writ applications are stand allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	13.11.2017
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