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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 353/2017 & CM Nos.17683-84/2017

% Date of decision : 9th May, 2017

SURESH KUMAR VERMA Appellant

**Through : Mr. Arvind Tiwary and
Mr. Sanjay Singh, Advs.**

versus

JAMIA MILLIA ISLAMIA

UNIVERSITY & ANR ... Respondents

**Through : Dr. Amit George and
Mr. Swaroop George, Advs.**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.17684/2017

Allowed, subject to just exceptions.

The application is disposed of.

LPA No.353/2017

1. This appeal has been filed by the appellant aggrieved by the order dated 15th of March 2017 passed by the Id. Single Judge rejecting a review petition being Rev.P.No.96/2017 which had been

filed by the appellant herein. The appellant had sought review of an order dated 20th February, 2017 disposing his W.P.(C)No.1502/2017 as not pressed.

2. The facts giving rise to the present appeal are thus in narrow compass. For the reasons of expediency, we refer to the facts as noted in the impugned order.

3. So far as the factual matrix relating to the circumstances in which the review petition had been filed by the appellant is concerned, the same are noted in paras 2 and 3 of the impugned order dated 15th March, 2017 which read as follows :

“2. The writ petition was filed challenging the orders of the disciplinary authority dated 15.3.2016/2.5.2016, confirmed by the appellate authority dated 16.9.2016, whereby petitioner was imposed the penalty of withholding of two increments with cumulative effect and scrutiny of his conduct during the next five years.

3. Petitioner is working as an Assistant Professor (Radio) in the respondent no. 1/Jamia Millia Islamia University. Against the petitioner a complaint of sexual harassment was made by a student Ms. N.S. that on 21.9.2011 on Ms. N.S. approaching the petitioner in his office room on 1:40 pm to get advice on voice modulation, the petitioner sat on the other side of the desk and in the process of ‘teaching’ her and identifying the place from which the vibrations should originate, the complainant was asked to sit on a chair next to the petitioner and thereafter the petitioner suggestively and for quite a number of times touched and pressed the complainant’s ribs, neck and the collar bone area. Inquiry was conducted by the Sexual Harassment Committee under the Sexual Harassment of Women at

Workplace (Prevention, Prohibition and Redressal) Act, 2013 and which committee gave its report dated 8.5.2014 indicting the petitioner. It is noted that petitioner resorted to non-cooperation in the inquiry proceedings and this is noted by the Sexual Harassment Committee in terms of the following observations in its report:-

“Process of Charged Officer/Respondent’s Evidence:

The proceedings were now fixed for his evidence. The UCC sent separate to the three witnesses, whose names were given by the Charged Officer/Respondent – Mr. S.K. Verma in his defence, viz Dr. Pradeep Nair, Research Scientist, AJK MCRC, JMI, Dr. Mohammad Tariq, Centre for Coaching and Career, JMI and Ms. Anjum Iqbal, Incharge, Jamia Girls Secondary School, (Urdu medium). The two defence witnesses, whose names were given by the Charged Officer – Respondent – Mr. S.K. Verma in his defense ie – Ms. Anjum Iqbal, and Dr. Mohammad Tariq, arrived as per schedule. The third witness of the Respondent, Dr. Pradeep Nair, (Research Scientist, AJK MCRC, JMI) – was away from the country for a long duration and hence was not available for the meeting. The UCC met with Ms. Anjum Iqbal, and Dr. Mohammad Tariq and got their signatures to verify their presence annexed as A-17 (Colly). However on that day the Respondent avoided attending the UCC proceedings and had instead sent a new Representation (written both in Hindi and in English) repeating the earlier representations asking for more information/Documents beyond the purview of the UCC.

The UCC discussed the case, and took cognizance of the fact that the Respondent in the Case No. 1 of

2011, Mr. Verma had been offered innumerable opportunities to cross examine the Complainant and Complainant's Witnesses and lead evidence as per directions/Orders of the Hon'ble High Court of Delhi in W.P. (Civil) No. 4472 of 2012 with the "applicably rules with respect to conducting such enquiry" being duly adhered to. It was collectively agreed that the Respondent, Mr. Verma was endeavouring to delay the outcome of the enquiry being conducted against him with misconceived petitions and raising absolutely irrelevant ground.

The UCC thereafter, decided to proceed further with the Enquiry and the Respondent, Mr. Verma was given FINAL opportunity (on April 7th 2014) to make his statement in defence and to examine his defence witnesses if he so desired. On the 7th April 2014, the Charged Officer/Respondent, Mr. Verma arrived as per schedule but refused to make any statement in his defence or to examine his witnesses. He was given yet another opportunity to say or submit anything in his defence. Instead of making use of this chance, the Charged Officer/Respondent, Mr. Verma it was absolutely clear that unlike the above stated case (which has any way been set aside by the Hon'ble Supreme Court) the JMI, UCC has given innumerable opportunities to the charged officer, Mr. SK Verma to:

I. Cross Examine the Complainant

II. Cross Examine the Complainant's witness

III. Lead defence evidence

IV. Examine his own witnesses

But the charged officer/respondent, Mr. S.K. Verma miserable failed to avail of even one of the above opportunities provided to him by the JMI UCC. On the contrary he kept on avoiding making use of the Enquiry

proceedings to prove his innocence, rather repeatedly raising the same frivolous objection and asking for irrelevant documents beyond the purview of the UCC and was able to delay the JMI UCC proceedings for nearly 9 months. It is proved beyond doubt that the charged officer was not at all interested in participating in the enquiry process to his benefit for reasons best known to him. Thus the UCC has no option but to close the proceedings as it could not continue the proceedings endlessly.”

(Emphasis by us)

4. W.P.(C)No.1502/2017, filed by the appellant herein, came up for hearing before the Id. Single Judge on 20th February, 2017. On this date, the following order came to be recorded :

“1. After arguments, counsel for the petitioner, on instructions from the petitioner, states that in view of the fact that there is now a long delay the petitioner does not wish to press the present writ petition.

2. The writ petition is accordingly disposed of as not pressed.”

5. The appellant thereafter filed Rev.P.No.96/2017 seeking review of the above order dated 20th February, 2017 alleging that he had not given instructions to his advocate of not pressing the petition.

6. The review petition came up for hearing on 15th March, 2017 when it was rejected by the Id. Single Judge. We note that the review petition was filed by the petitioner in person. It was also argued by him in person.

7. So far as the proceedings which took place before the writ court

on 20th February, 2017 are concerned, we may usefully extract what transpired in the court, as noted by the Id. Single Judge in the impugned order dated 15th March, 2017 which is to the following effect :

“4. Before this Court, counsel for the petitioner on 20.2.2017 had argued the case exhaustively and after hearing arguments this Court dismissed the petition stating that the order would be dictated in Chamber during the course of the day. At that stage, however, counsel for the petitioner on instructions from the petitioner did not invite the judgment, and observations in which may/could cause prejudice to the petitioner in future, and therefore the writ petition was prayed for being disposed of as not pressed. The writ petition was, accordingly, disposed of as not pressed by the impugned order dated 20.2.2017. However, in order to create some ground with respect to petitioner not pressing the petition it was noted in the order dated 20.2.2017 that since now there was considerable lapse of time/delay, with the complaint being of the year 2011, the writ petition was disposed of as not pressed.

5. Now the present review petition is filed by the petitioner in person alleging that he did not give instructions to his Advocate to not press the petition. Petitioner who has argued the review petition in person however agrees that he was present in the Court on 20.2.2017 and after arguments in the case he had talked to his Advocate who had addressed the arguments.

6. The present review petition is a gross abuse of process of law because such a review petition not only unfairly accuses Advocates by litigants by resorting to falsehood, but also that there is unnecessary wastage of precious

judicial time, inasmuch as, if the petition was pressed, then the judgment would have been dictated on 20.2.2017 itself for dismissing the writ petition. Today now the petitioner cannot by his self-serving averment claim that he did not instruct his Advocate for not pressing the petition on 20.2.2017, and such averment of the petitioner is not believed by this Court, inasmuch as, instructions were in fact given by the petitioner to his counsel in the presence of the Court.”

After so observing, the Id. Single Judge concluded that the review petition was not only *mala fide* but a blatant abuse of law and dismissed the same with costs of ₹25,000/- which was payable within a period of four weeks.

8. The appellant challenges the order dated 15th March, 2017 before us contending that the counsel who made the statement on 20th February, 2017 was not instructed in terms of what has been noted in the order of that day. This submission is factually incorrect in the light of what has been noted by the Id. Single Judge on the 15th of March 2017. It was an admitted position that the appellant was physically present in the court on 20th February, 2017 and that after arguments by his counsel, he had actually conversed with his advocate to give instructions. The Id. Single Judge has also noted that on the 20th of February 2017, the writ petition was being dismissed and the reasons were to be recorded in chambers, whence the request for withdrawal of the writ petition was made. The court has also observed with regard to the reason as to why the writ petition was not pressed.

It has also been noted that as the complaint, which has been the basis of the disciplinary action against the respondent, being of the year 2011 and that the considerable time had lapsed, the appellant had exercised the option of not pressing the writ petition.

9. Mr. Arvind Tiwary, Id. counsel for the appellant has placed the pronouncement of the Supreme Court dated 29th April, 2015 in ***Civil App.Nos.4360-61/2015, Himalayan Cooperative Group Housing Society v. Balwan Singh*** in support of his submission that the client is not bound by the statement made on his behalf by his lawyer if the lawyer is not authorized to make such statement.

10. We find that in the factual narration in para 8 of ***Himalayan Cooperative Group Housing Society***, the counsel for the society had agreed to the private respondents making construction of additional quarters/apartments and conceded there allotments to the respondents. This concession by the counsel for the society had been challenged before the Supreme Court whence, by the judgment dated 29th April, 2015, the Supreme Court had observed thus :

“33. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial

legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham:

“an advocate, in the discharge of his duty knows but one person in the world and that person is his client”.

11. The facts in the present case are diametrically opposite. In the present case, the appellant was present in the court on the 20th of February 2017 when, after arguments had been submitted, it appears that the court had clearly given its mind and the writ petition was about to be dismissed. At this stage, the appellant had given instructions to his counsel for not pressing the writ petition. There can be no manner of doubt that the submission of counsel that the writ petition was not pressed was based on the instructions given by the appellant herein.

12. So far as the present case is concerned, there is no manner of doubt with regard to the above facts noted by the court in the

impugned order dated 15th March, 2017.

13. A similar issue arose for consideration before the Supreme Court in **(1982) 2 SCC 463, State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.** wherein it was held as follows :

“4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation.” [Per Lord Atkinson in Somasundaram Chetty v. Subramanian Chetty, AIR 1926 PC 136 : 99 IC 742] We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent

upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. [Per Lord Buckmaster in Madhu Sudan Chowdhri v. Chandrabati Chowdhrair, AIR 1917 PC 30 : 42 IC 527] That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

14. We may also note that the review petition was filed and argued by the appellant herein in person. On the 15th of March 2017 when the appellant was making his submissions, he had admitted his presence before the Id. Single Judge on 20th of February 2017, as well as the fact that he had actually conversed with his counsel after conclusion of arguments in the writ petition.

15. It is also noteworthy that the Id. counsel who filed the writ petition is not the counsel who filed the review petition or either the present appeal.

16. In view of the above discussion, we find no merit in this appeal which is hereby dismissed.

CM No.17683/2017

In view of the orders passed in the main appeal, this application does not survive for adjudication which is hereby dismissed.

ACTING CHIEF JUSTICE

V. KAMESWAR RAO, J

MAY 09, 2017

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