

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9652 OF 2018

ORDER:

The petitioner-Vijay Singh is the complainant in the private complaint covered by CC SR.No.512 of 2015, on the file of the learned X Metropolitan Magistrate, at Malkajgiri, Ranga Reddy District. The private complaint was maintained against three accused. The petitioner is working as Seed Officer at National Seeds Corporation Limited (for short, 'NSCL'), Secunderabad, by then. The 1st accused-Vinod Kumar Gaur was by then the Chairman and Managing Director of NSCL, New Delhi. The 2nd accused-B.B.Saw was the General Manager (HR) of NSCL, New Delhi and the 3rd accused-A.Sarkar was the Assistant Manager (HR), NSCL, New Delhi, by then. In the private complaint filed under Section 200 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), to take cognizance under Section 190 Cr.P.C. was for the offences punishable under Section 3 (1) (ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC & ST (POA) Act'), read with Section 120 (B) of Indian Penal Code (for short, 'IPC') with averments that he is a permanent resident of Bharathpur District of Rajasthan State and belong to Scheduled Caste Community by caste within the state of Rajasthan, by the time of complaint working as Seed Officer and in-charge of the Quality Control Laboratory (South) of NSCL, at Lallaguda, Secunderabad, and subordinate to the accused persons in the NSCL and the accused belongs to a Brahmin Caste and OBC; that the accused have been harassing him and their actions have been disheartening to him in spite of the maximum efforts put in by him; that the accused have been harassing him in a way out of the rules prescribed by the Corporation and in a way obstructing the growth and promotional avenues of him, for he belongs to Scheduled

Caste; that the accused being his bosses in the Hierarchy in the administration are acting against the rules of NSCL in an arbitrary manner intentionally to check the growth and betterment of the Corporation; that his Annual Confidential Report (for short, 'ACR') for the year 2011-2012 asked by accused to be written by a junior to him by name D.V.Singh, Seed Officer, junior to the complainant in the seniority list, which is against the rules and principles of natural justice; that ACR was accepted by the Head Office by Memorandum No.21(1)/2011/APAR/NSC, dated 03.10.2012; that the ACR for the year 2012-2013 written by one Bhagwati Prasad, another Seed Officer, in-charge of Quality Control Laboratory (South), who is senior to the complainant and sent to the General Manager (Production/Quality Control), NSCL, New Delhi, as per instructions of the Regional Manager, NSCL, Secunderabad, *vide* Letter No.ACRS/Admin/NSC-HYD/2012-2013/4736, dated 23.03.2013, directing that the ACRs of the staff of Quality Control Laboratory (South) had to be forwarded to General Manager (Production/Quality Control), NSCL, New Delhi, for action on the ACRs; that as per above instructions, Bhagwati Prasad, Seed Officer *supra* sent the ACRs of the complainant of the year 2012-2013 *vide* letter No.ACR/ACL(S)/NSC-HYD/2013-14/021, dated 04.04.2013, to General Manager (Production/Quality Control), NSCL, New Delhi, and the same was accepted by the Reviewing Authority and sent to Acceptance Authority and further accepted without any comments; that the Regional Manager, Regional Office, NSCL, Secunderabad, directed the in-charge, Quality Control Laboratory (South), Lallaguda, Secunderabad, *vide* Letter No.RM/PMS-2013/NSC-SEC/2013-2014/3747, dated 07.02.2014, that the Performance Appraisal and Development Report of the staff working under him be sent to the Deputy General Manager (Quality Control), NSCL, New Delhi, for further

action; that accordingly, the in-charge, Quality Control Laboratory (South) sent the ACRs of the complainant for the period of 01.04.2013 to 30.09.2013 (six months) to the Reviewing Authority i.e., Deputy General Manager (Quality Control), NSCL, New Delhi, for necessary action *vide* Letter No.ACR/QCL(S)/NSC-Hyde/2013-14/1808, dated 17.02.2014; that again the Regional Manager, Regional Office, NSCL, Secunderabad, directed the in-charge, Quality Control Laboratory (South), Lallaguda, Secunderabad, *vide* Letter No.RM/PMS-2013/NSC-SEC/2013-2014/252, dated 21.04.2014; that the Performance Appraisal and Development Report of the staff working under him be sent to the Deputy General Manager (Quality Control), NSCL, New Delhi, for further action; that accordingly, the complainant's ACR for the period of six months from 01.10.2013 to 31.03.2014 sent to Deputy General Manager (Quality Control), NSCL, New Delhi, for further action and the Reviewing Authority forwarded to the Acceptance Authority and it was accepted.

2. It is further averred, in addition to the above facts upto para 13 of the complaint, from para 14 to para 24 of the complaint that accused supra in connivance with each other directed the Administrative Section to send the complainant's ACR for the period of six months supra to Regional Manager, NSCL, Secunderabad, for re-writing against the laid rules and instructions and degraded the marks awarded to him in an arbitrary manner; that the accused acted in a manner against the rules and instructions *vide* Letter No.RM/PMS-2013/NSC-SEC/2013-2014/252, dated 21.04.2014, which shows that the Regional Manager is not empowered to check the ACRs of the staff of Quality Control Laboratory (South), NSCL, the accused intentionally re-written and degraded the ACR of the complainant already checked and reviewed by the Deputy General Manager (Quality Control), NSCL, New Delhi, over-

writing and tampering with a *mala fide* intention and to spoil the career of him; that the accused issued a letter under File No.2(11)/06-HR/NSC/211, dated 29.12.2014, though conveyed that the ACR of the complainant for the period from 01.04.2013 to 30.09.2013 for the year 2013-2014, was not acceptable, as it was written by Bhagwati Prasad, Seed Officer, In-charge, Quality Control Laboratory (South), NSCL, Secunderabad, as he was of the same cadre officer; that Bhagwati Prasad, Seed Officer supra, written the ACRs of the complainant pertaining to the year 2012-2013 *vide* Letter No.ACR/QCL(S)/NSC-HYD/2013-14/021, dated 04.04.2013, supra sent to the General Manager (QC), NSCL, New Delhi, was accepted, the accused are intentionally calling for the re-writing of ACR of the complainant *vide* Letter No.RM/PMS-2013/NSC-SEC/14-15/3391, dated 13.01.2015, on the base of accused Letter *vide* Letter No.2(!1)/06-HR/NSC/211, dated 29.12.2014, which is illegal and arbitrary; accused are acting in an illegal manner in order to spoil the career of the complainant, accused are trying to re-write the ACR of complainant, which laid out rules barring the Regional Manager to check the ACRs of the staff of the Quality Control Laboratory (South) and the Deputy General Manager (Quality Control), NSCL, New Delhi, is only eligible to do the said work that was illegal and contrary to law; that the accused are intentionally harassing and re-writing the ACR of the complainant, who belongs to Scheduled Caste Community and action of the accused would mar the interests of the complainant and would finish the chances of promotion to the next promotional avenues and thereby spoiling the career of the complainant; that A-1 to A-3 have given false and frivolous information to the higher officials in the institution and damaged the chances of promotion of the complainant; that the accused supra misused their lawful power for causing injury to complainant; that they have done the

acts attracting the provisions of the offences punishable under Section 3 (1) (ix) of SC & ST (POA) Act read with Section 120 (B) IPC; and that the accused are thereby liable for penal consequences and also for the costs of several lakhs amount (not legible) and as the offences they committed is within the jurisdiction of Malkajgiri Police Station, at Lallaguda, Secunderabad, the learned Magistrate got jurisdiction and the complainant enclosed nine documents with the complaint, dated 18.02.2015, *vis.*, (1) Copy of seniority list; (2) Copy of ACR for the period from 01.01.2011 to 31.03.2012; (3) Copy of letter, dated 03.10.2012; (4) Copy of ACR for the year 2012-2013 (01.04.012 to 31.03.2013); (5) Copy of Letter of the Regional Manager, Secunderabad, dated 21.04.2014, (6) Copy of ACR for the year 2013-2014 (01.04.2013 to 30.09.2013) six months; (7) Copy of ACR for the period 2013-2014 (01.10.2013 to 31.03.2014); (8) Copy of Letter, dated 13.01.2015 (calling for rewriting); and (9) Copy of Caste Certificate of the complainant.

3. In the entire complaint, it is not even stated pursuant to the Document No.9, Caste Certificate of the petitioner/complainant of Scheduled Caste in Rajasthan, of he is also Scheduled Caste in State of Telangana as on the date of filing of the complaint to invoke the jurisdiction of the Court within the State with the claim as Scheduled Caste, which is pre-requisite even to apply Section 3 (1) (ix) of SC & ST (POA) Act. Even taken for arguments sake that he is Scheduled Caste within the State of Telangana also from that certificate without any further clarification, sofar as the application of Section 3 (1) (ix) of SC & ST (POA) Act concerned, what it reads is that whoever not being a member of Scheduled Caste or Scheduled Tribe, 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 a Scheduled Caste or a Scheduled Tribe shall be punishable with imprisonment for a term, which shall not be less than six (06) months, but may extend to five (05) years and with fine. Intention is the pre-requisite to annoy or injure the complainant. Even from the very complaint, sofar as the accusation against A-1 to A-3, who are in New Delhi and working there concerned, it is not they that have written the ACR of the complainant in any of the respective years even from his very say. According to him, those were written either by D.V.Singh, Seed Officer, or Bhagwati Prasad, Seed Officer, as the case may be. What all it says is the ACRs are forwarded and those were considered. It is not even his case that these three Officers, who are Chairman and Managing Director of NSCL, General Manager (HR) of NSCL and Assistant Manager (HR) of NSCL, at New Delhi, particularly by advising by any specific letter to mar his career, specifically directed any of the persons, who have written the ACR supra to write any remarks adversely against his career to mar his promotional chances even to sustain any accusation of taking recourse under Section 3 (1) (ix) of SC & ST (POA) Act. That is totally silent even from the face value of very reading of the complaint without any further reference to other material. Leave about that fact is not even in dispute. What is his sworn statement in the private complaint procedure to take cognizance under Sections 200 to 204 Cr.P.C. that was recorded by the learned X Metropolitan Magistrate, Cyberabad, at Malkajgiri, dated 12.03.2015, is nothing new than repetition of the averments in the complaint and the order of the learned Magistrate, dated 15.04.2015, from the complaint averments with the enclosures of the documents 1 to 9 and the sworn statement of the *de facto* complainant-Vijay Singh supra, dated 12.03.2015, read that A-1 to A-3 furnished allegedly false information to the higher authorities and damaged the chances of promotion to the

next higher post of the complainant and his Annual Confidential Reports for the years 2011-2012 and 2012-2013 were prepared by junior or equal cadre officers, he was harassed in the hands of accused pertaining to preparation of ACRs, which exclusively a departmental procedure and based on the performance of individual employee, the same is being prepared and offence under Section 3(1)(ix) of SC & ST (POA) Act requires intentionally giving any false or frivolous information to any public servant and causing such public servant to use his lawful power to injury or annoyance of the member of Scheduled Caste and Scheduled Tribe and in the present case on hand, it is not even brought on record that complainant initiated any complaint before the superior officers against A-1 to A-3 and whether any enquiry conducted pertaining to giving of any false information and once it is not established, much less brought into light how complainant suffered and damaged in their hands and basis for giving promotion for the employees in the department not even mentioned in his coming to the conclusion that he is really deprived of his legitimate right to promotion to next higher level, the complaint filed by the complainant is only pertaining to a departmental issue and the allegations mentioned are not making out any offence under Section 3(1)(ix) of SC & ST (POA) Act and the averments in the complaint no way reveal any *prima facie* case against any of the accused to proceed further in the present case for the offence and thereby the complaint proceedings are liable to be dismissed in passing the order under Section 203 Cr.P.C.

4. Now coming to the revision maintained by the complainant against the impugned order of the learned Magistrate referred supra before the Special Sessions Judge for Cases under SC & ST's (POA) Act, 1989-cum-VII Additional District & Sessions Judge, Ranga Reddy District, at L.B. Nagar, the order, dated 15.02.2018, in Crl.R.P.No.1 of

2016, which is the subject matter of present impugment, reads as follows from the operative portion at para 7 onwards:

“The main contention of complainant is that there is basic principle in the Administrative Law that any candidate who is working hard in any institution should be encouraged with incentives and promotions, though he is working hard as a Seed officer in NSCL from the date of his appointment, but his superior officers A1 to A3 are harassing him intentionally by frequent transfers from one place to another and obstructed his promotion chances to the higher post by furnishing false information to the higher authorities in respect of his work, thus the acts of accused clearly attracts the provisions of Sec.3(1)(ix) of SC ST (POA) Act, 1989 r/w.120 (B) of IPC and it is prayed to allow the revision petition by receiving his complaint, seeking directing to the police Malkajgiri to investigate and to file a report.

8. The learned counsel for Respondents has contended that there is no truth in the allegations of complainant against the Respondents and he is trying to falsely implicate them in criminal cases by taking advantage of his caste, the complainant also filed a writ petition (WP No.32299 of 2016) before the Hon'ble High Court of AP seeking direction to the police authorities under Article 226 of Constitution of India for speedy disposal of crime No.0613/2013 on the file of SHO, PS Malkajgiri against accused Nos.1 to 3 and not to transfer the crime from PS Malkajgiri to PS Telibanda, Chatthisghar State.

9. Perused the material papers submitted by the complainant in regard to his appointment and transfer orders and promotion lists and copy of Judgment in WP No.32299 of 2016 dt.01-11-2016 submitted by the Counsel for Respondents. It is an admitted fact that the petitioner is an employee of NSCL corporation and he lodged a criminal complaint against the Respondents in Cr.No.0613/2013 on the file of SHO, PS Malkajgiri, Cyberabad as well as a private complaint before X Metropolitan Magistrate on 18-02-2015 in CC SR No.512/2015 on the same facts and grounds as mentioned above. The Hon'ble High Court of AP in WP No.32299/2016 by order Dt.01-11-2016 held that the grievances of the petitioner against his superior officers/A1 to A3 that transferring him without any reason and withholding increments and not properly writing his ACRs can not fall within the ambit of atrocity defined in Sec.2(1)(a) of SC ST (POA) Act. The remedy of the petitioner for such actions of his employer by way of review under Article 226 of Constitution of India in the jurisdiction of High Court and not by way of filing a complaint under the provisions of the act. Therefore, the grievance of petitioner in relation to his service is normally adjudicated before the Administrative Tribunal, can not be given the colour of atrocity under the act and opining so, the Writ Petition is dismissed by the Hon'ble High Court granting liberty to the

petitioner to agitate his grievances in judicial review in regard to imposition of penalty, ACRs or any other service disputes. In view of the findings of the Hon'ble Apex Court, I am of the considered opinion that the grievances of the complainant against his superior officers does not attract the provisions of Sec.3(1)(ix) of SC ST (POA) Act, 1989 r/w.120 (B) of IPC and the said complaint cannot be entertained as there are no merits in the revision petition filed by the complainant.

10. In the result, the Revision Petition is dismissed and the orders passed by the X Metropolitan Magistrate in CC SR No.512/2016, Dt. 15-04-2015 is hereby upheld.”

5. From the order, particularly at para 8, what is submitted is already he filed a writ petition in WP.No.32299 of 2016 before this Court seeking direction to the police authorities under Article 226 of Constitution of India for speedy disposal of Crime No.613 of 2013 on the file of Station House Officer, Malkajgiri Police Station, against A-1 to A-3 and not to transfer the crime from Malkajgiri Police Station to Telibanda of Chatthisghar State and a copy of the judgment of the writ petition, dated 01.11.2016, submitted shows the petitioner is undisputedly employee of NSCL. He lodged a complaint against A-1 to A-3 (respondents herein) in Crime No.613 of 2013 to Station House Officer, Malkajgiri Police Station, and also filed the private complaint supra before the learned X Metropolitan Magistrate, Malkajgiri, Cyberabad, on 18.02.2015 in CC SR.No.512 of 2015 on the same facts and on the same grounds and the High Court in the writ petition order supra held that grievances of the petitioner against the superior officers transferring him without reason and withholding increments and not properly writing ACRs cannot fall within the ambit of the atrocity defined in Section 2(1)(a) of the SC & ST (POA) Act and remedy of him is by way of review under Article 226 of the Constitution of India in the jurisdiction of the High Court and not by way of filing a complaint. Therefore, the grievance of him in relation to his service is normally adjudicated before the Administrative Tribunal concerned and cannot

be given a colour of atrocity under the SC & ST (POA) Act and opining so, the writ petition was ended in dismissal giving liberty to him to agitate his grievance before appropriate forum and in view of the findings, the grievance of the petitioner against the respondents superior officers no way attracts the provisions of Section 3(1)(ix) of SC & ST (POA) Act read with Section 120 (B) of IPC and the complaint cannot be entertained and there are no merits in the revision and thereby dismissed.

6. Now the same is impugment in the present quash petition grounds, particularly from grounds (a) to (f) of para 1, which, for more convenience, are reproduced herein:

“1. The learned Magistrate and the learned Sessions Judge ought to have seen that the respondents have intentionally transferred the petitioner to four places within two years. They have intentionally spoiled his annual confidential reports. They have maliciously and vindictively harassed the petitioner who belongs to Scheduled Caste as follows:

(a) While they have accepted the ACR written by Sri D.V.Singh who is junior to the petitioner for the year 2011-12 and also the ACR written by Mr.Bhagwati Prasad for the year 2013-14, they have not accepted the ACR written by Sri Bhagwati Prasad for the period from 01-04-2013 to 30-09-2013 and returned the same.

(b) When Sri S.V.N.Reddy wrote the ACR for the period 01-10-2013 to 31-03-2014 and gave 75.3 marks, respondents 2 and 3 (A1 and A2) returned the same to Regional Manager to degrade the ACR with a intention of denying promotion to the petitioner. The Regional Manager degraded the ACR and gave 60.1 marks.

(c) Respondents 2 to 4 posted the petitioner to Bargarh in Orissa State. The petitioner reached there and found that there is no office at all in Bargarh. When the petitioner informed the same to his superiors, they gave corrigendum after seven months attaching him to Sambalpur Area Office, but asked to stay in Bargarh only.

(d) The Respondents 2 to 4 stopped the salary of the petitioner from November 2015 onwards. The petitioner addressed letters to General Manager (HR) (A2) and Director (Commercial), but there is no reply.

(e) When the petitioner filed writ petition, the Hon'ble High Court of Orissa gave a direction to pay the salary within three months, but the salary is not paid. The petitioner filed contempt petition and the Hon'ble Court again gave a direction to pay within three months. Even then the salary is not paid.

(f) The respondents 2 to 4 sent letter to the petitioner, to appear for interview on 14-03-2017 to consider his promotion, but on 08-03-2017 itself A2 gave letter on the instructions of A1, compulsory retiring the petitioner from service. This order was passed to avoid payment of salary within three months. This order is in violation of rules framed by Corporation, as the petitioner has neither completed 10 years of service nor attained the age of 55 years."

7. It is therefrom contended after the grounds in paras 2 to 5 that learned Magistrate failed to see the scope of enquiry on filing a complaint and taking of cognizance, which is limited to work out *prima facie* case and cannot enter any other merits and learned Magistrate and Sessions Judge ought to have seen that exercising the rights of approaching the Administrative Tribunal or High Court in cases of *bona fide* orders passed by competent authorities, whereas the competent authorities herein acted maliciously and vindictively to spoil his career and they committed the crime. Thereby it comes under Section 3(1)(ix) of SC & ST (POA) Act and the orders are thereby liable to be set aside.

8. In the factual background from the contentions raised supra, heard Sri V.V.Raghavan, learned counsel for the petitioner and also the learned Public Prosecutor, representing the 1st respondent-State in opposing the same, before ordering notices to respondents 2 to 4 and before admission and perused the entire material on record including on the factual aspects referred supra.

9. As observed supra, immediately after reproducing the contents of the private complaint, once there is nothing to say that the accused persons have written the ACR of the complainant, much less with any

intention to cause injury or annoyance to him, that too the alleged acts are at Hyderabad by equal or junior officers to him by names D.V.Singh and Bhagwati Prasad and they are not even arrayed as accused by saying they intentionally with intent to annoy or injure and it is not even the case that any of the accused visited or influenced any of those two persons, who prepared the Annual Confidential Reports at Lallaguda, Secunderabad, either to create jurisdiction to implicate them including any part of cause of action under Sections 177 & 178 Cr.P.C. against them, for they are the sole accused arrayed, that too they are residents of New Delhi and working in New Delhi. Thereby there is nothing to interfere with the dismissal order of the learned Magistrate confirmed by the order of the learned Sessions Judge even including with reference to the order against the petitioner in dismissal of the writ petition saying the *lis* is only a departmental issue to be agitated before the department or any Administrative Tribunal or High Court concerned. Thereby, no offence under Section 3(1)(ix) of SC & ST (POA) Act made out against any of the petitioner.

10. Accordingly, the Criminal Petition is dismissed, for no merits to interfere.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 5th February, 2019

KL

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO



CRIMINAL PETITION No.9652 OF 2018

Date: 5th February, 2019

KL