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

Reserved on: 18.12.2019

Pronounced on: 06.01.2020

+ CRL.REV.P. 586/2019 & CrI.M.A.10541/2019

DR. RANJAN GUPTA

..... Petitioner

Through Ms. Geeta Luthra, Sr. Adv. with
Mr.Kumar Vaibhav and Mr. Altamish
Siddiqui, Advs.

versus

STATE OF NCT OF DELHI AND ANR.

..... Respondents

Through Mr.Panna Lal Sharma, APP for State.
SI Vishal Tiwari, PS Hauz Khas
ASI Ranjeet Singh
Mr. Sanjai Kumar Pathak, Mr. B. S.
Rajesh Pathak, Mr. Arvind Kumar
Tripathi, Ms. Dipti Singh &
Ms.Shuhali, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby to quash the orders dated 03.08.2018 passed by the learned Special Executive Magistrate (hereinafter referred to as 'SEM'), South District and the order dated 27.02.2019 passed by the learned Additional Sessions Judge (hereinafter referred to as 'ASJ'), Saket Courts, New Delhi.

2. The allegations against the petitioner in the complaint dated 29.03.2017 made by Dr. Uma Kumar/ respondent No. 2, Professor and Head, Department of Rheumatology, All India Institute of Medical Sciences (AIIMS), New Delhi pertain to the incident that occurred on 22.03.2017 at 4.30 PM in her office room no. 4076A & B. The whole episode started on the issue of date on minutes of faculty meeting which was mistakenly put as 16th March instead of 17th March, 2017 by the PA of respondent no. 2, who was having altercation with the office staff, when she entered the office. One Dr. Danveer Bhadu (Assistant Professor, Department of Rheumatology, AIIMS, New Delhi) was also there with the petitioner. When she inquired about the matter, the petitioner started shouting at her in front of the office chamber but she tried to pacify him but to no avail. The petitioner kept on shouting, yelling and started levelling false accusations against the respondent No. 2 regarding her work ethics, behaviour and interpersonal relations. His demeanour and body language was threatening and alarming and his aggression crossed all the limits when the respondent No. 2 asked him to leave from her chamber, without indulging in any further conversation. The department of Rheumatology and laboratory staff was witness to this unfortunate incident. The said incident caused her

tremendous mental agony, pain and harassment.

3. It is further alleged that again on 28.03.2017 evening, her office staff received a confidential letter from Dr. Danveer. She opened the letter on 29.03.2017 after her OPD which contained two blank A-4 size papers. She understood that it is possibly done to intimidate and frighten her. It has further raised concerns regarding her safety and that they can resort to any unfair mean to harass or harm her.

4. Based upon the said complaint, a *kalandra* under Section 107/150 Cr.P.C. was prepared against the petitioner to be tried before the Special Executive Magistrate. The said Magistrate vide order dated 03.08.2018 held that it is established that the petitioner used to talk to the complainant/respondent No. 2, who is the Head of Department, in a loud voice and his behaviour was improbable, undesirable and uncalled for on two occasions i.e. at the OPD and the doctor's chamber.

5. The impugned order also proceeded to bound down the petitioner to maintain peace in jurisdiction of South District for a period of one year in sum of Rs. 10,000/-.

6. Ms. Geeta Luthra, learned Senior Advocate appearing on behalf of the petitioner submits that the above order has been passed whimsically without

assigning any reason and by closing the right of the Revisionist/ Petitioner to cross examine the Complainant/ Respondent no. 2 (when the Complainant was absent on 03.08.2018). Being aggrieved by the aforesaid order, the petitioner preferred an appeal before the learned ASJ, however, vide order dated 27.02.2019, despite specific pleading that the Petitioner/Revisionist was not properly advised on the issue of filing the appeal against the order passed by the Ld. SEM by his previous lawyers, proceeded to dismiss the Appeal only on the ground of limitation.

7. Learned Senior Advocate further submits that the matter was listed before the learned SEM on 11 dates including the date of passing the order dated 03.08.2018. However, out of 11 dates, the respondent No. 2 was absent on 10 days including on 03.08.2018 despite having prior specific knowledge of the fact that the matter was listed for her cross-examination.

8. It is further submitted that on 03.07.2018, when the respondent No. 2 was present before the learned SEM and her examination-in-chief was recorded, a request was made on behalf of the counsel for the petitioner to cross-examine the respondent No. 2 on the next date of hearing. On such request, no objection was raised by the respondent No. 2 and the same was recorded in order dated 03.07.2018 and the matter was adjourned for cross-

examination of the respondent No. 2 on 03.08.2018. However, on the said date, the respondent No. 2 did not appear in the Court and the Ld. SEM without assigning any reason passed the impugned order dated 03.08.2018 merely on the basis of the statement of the Investigating Officer and the cross examination conducted by the petitioner. Thus, right of the petitioner to cross examine respondent no.2 has been closed.

9. Learned Senior Advocate submits that the closure of right to cross-examine the respondent No. 2 has caused miscarriage of justice and has prejudiced the Petitioner as the true and correct factual narrative has not come on record. The difference of opinion between the respondent No. 2 and the petitioner is personal in nature and is primarily based on the conflict in working of Rheumatology Department at AIIMS where the petitioner and the respondent No. 2 are working. The complaint filed against the Petitioner is not only incorrect, motivated and *malafide* but has come as a counter blast to the petitioner's complaint to the Director, AIIMS against the arbitrariness and hostile working of the respondent No.2. Even on merits there is nothing on record to show that the petitioner has ever indulged in commission of any act which would be construed as breach of peace or to disturb the public tranquillity in any manner.

10. While concluding her arguments, learned Senior Advocate submitted that the petitioner is a well-qualified Doctor, who after completing his MBBS in the year 2006 from the JIPMER, Pondicherry joined the same institute to pursue MD (General Medicine). After completion of MD degree, the petitioner joined Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow to do DM specialisation in Clinical Immunology. In the year 2016, he was selected and appointed as Assistant Professor in the Department of Rheumatology, Department, AIIMS, New Delhi. Whereas, respondent No. 2 is less qualified in comparison to the petitioner, who is the Head of the Department of Rheumatology. This has given rise to perceive professional insecurity and jealousy, so much so the respondent No. 2 has been using occasion to deride the petitioner who had newly joined as faculty in the same department. Accordingly, by creating false and fabricated story about her physical insecurity, tried to distract everybody's attention from this actual reason behind the whole conflict, she made complaint against the petitioner.

11. The case of the petitioner is that the order dated 03.08.2018 passed by the learned SEM was challenged before the learned Additional Sessions Judge-03(South), Saket Courts, New Delhi vide CA No. 439/2018 with an

application seeking condonation of delay of more than two and a half months. In the application, it is stated that the petitioner received the copy of impugned order only on 30.08.2018 and discussed the matter with his counsel, who did not advice him for filing any appeal, therefore, the petitioner did not take any further action. Thereafter, in the month of October, 2018, the petitioner again discussed the matter with two more advocates, who are known to him and they advised to file an appeal against the impugned order otherwise same could be detrimental to his career and service record. Thus, the delay in filing of appeal was neither intentional nor deliberate on the part of the petitioner.

12. Undisputedly, the provision of Section 5 of the Limitation Act, 1963 is adequately elastic to give liberal interpretation to advance the substantial justice but, said provision does not come to rescue of negligent litigants who with *malafide* intentions deliberately cause delay in the matter, as has been decided on 09.04.2012 in ***Civil Appeal Nos. 2970-2971/2012*** by the Hon'ble Supreme Court in ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai.***

13. It is settled law that procedural law is handmade of justice and substantial cause of justice should not be allowed to be defeated by mere

technicalities of law and whenever, substantial justice and technical consideration are pitted against each other, the cause of substantial justice has to be preferred. But, in the present case, the petitioner has failed to satisfy the conscience of the learned ASJ to seek the discretion rested in it by virtue of Section 5 of Limitation Act, 1963 as there is no explanation furnished by the petitioner for the delay in getting the copy of the impugned order passed by the learned SEM and even the grounds mentioned for the delay caused in the matter after 30.08.2018 when he allegedly received the copy of impugned order.

14. Learned ASJ further observed that an appeal under Section 373 Cr.P.C. for assailing the impugned order was filed before the Court on 24.11.2018. On 18.12.2018, while hearing the arguments of the petitioner, the petitioner was found to be apparently barred by limitation and thereafter, time was sought by the learned counsel for the petitioner for moving appropriate application for condonation of delay which came to be filed on record only on 29.01.2019 for seeking condonation of delay of 79 days.

15. Learned ASJ accordingly placed reliance on ***N. Balakrishnan vs. M. Krishnamurti: (1998) 7 SCC 123***, wherein it was held by Hon'ble Apex court that *“Condonation of Delay is a matter of discretion of the court.*

Section 5 of Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criteria. Sometimes, delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of very long range can be condoned as the explanation thereof is the satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as a part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing the suitor from putting his cause. There is no presumption that delay in approaching the court is always deliberate. The word 'sufficient cause' under section 5 of Limitation Act should receive a liberal construction so as to advance substantial Justice."

16. In the case in hand, the petitioner is a qualified MBBS Doctor and the plea taken by him that he was ill advised by his previous counsel not to

challenge the impugned order saying that the same is not of much consequence, does not stand to reason because, the impugned order is so clear to be understandable even by a lay man and hence, it does not lie in the mouth of the petitioner to say that he was not aware of the consequences of the impugned order on his career or service record. The petitioner is an educated person and it cannot be believed that he was not aware of the import of the impugned order or the repercussions of said order on his career or service record. Furthermore, he has not even mentioned the name of the counsel who allegedly gave him wrong advice and did not even mention the date when he approached another advocate who advised him to assail the impugned order in appeal.

17. It is pertinent to mention here that on 04.09.2017, a Kalandra was filed under section 107/150 Cr.P.C. During proceedings, on 27.11.2017, the petitioner was not present and accordingly bailable warrants were issued against him. On 20.03.2018, the Investigating Officer was present and his statement was recorded but counsel for the petitioner did not cross examine him and sought adjournment. However, same was completed on 16.04.2018. Thereafter, respondent no.2 was summoned for evidence on 03.07.2018. On the said date, statement of respondent no.2 was recorded

and opportunity for cross examination was given to the petitioner but his counsel denied for the same and instead requested for deferring the cross examination for the next date of hearing. Thus, intention of the petitioner was to compel respondent no.2 to appear again and again in the court and further humiliate and harass her.

18. The petitioner was selected and appointed as Assistant Professor in the year 2016 and claimed to be highly qualified. Whereas, respondent no.2 is HOD of Rheumatology. Thus, whatsoever academic qualification the petitioner has, he cannot compare with respondent no.2 who has very vast experience and presently HOD where the petitioner just started his career in AIIMS only in the year 2016 and present incident is dated 22.03.2017. Thus, it seems the petitioner has attitude because of his so-called educational qualification but forgetting that insubordination is misconduct. Senior is by virtue of his seniority, may be having less academic degrees than juniors, still he or she should be respected and maintained the subordination.

19. In the present case, respondent no.2 is woman and HOD, thus, petitioner was not supposed to create ruckus in her chamber and threaten her for dire consequences.

20. Be that as it may, vide order dated 03.08.2018, the learned SEM

bound down the petitioner to maintain peace in the jurisdiction of South District for a period of one year in a sum of Rs.10,000/-. As of now, more than one year has already been passed. Thus, nothing remains in the present petition to interfere with the orders passed by learned SEM and ASJ.

21. The petition is, accordingly, dismissed with no order as to costs.

CRL.M.A. 10541/2019

22. In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 06, 2020

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