



2024:DHC:9326



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IN THE HIGH COURT OF DELHI AT NEW DELHI***RESERVED ON – 25.09.2024***

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PRONOUNCED ON – 29.11.2024

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CRL.M.C. 355/2011**DEEPAK CHAUDHARY****.....Petitioner**

Through: Mr. Ravi Sikri, Sr. Adv., Mr. Harsh Prabhakar, Mr. Anirudh Tanwar, Ms. Eshita Pallavi, Mr. Adeeb Ahmad, Mr. Deepank Yadav, Mr. Kanak Grover, Advs.

versus

STATE & ANR**.....Respondents**

Through: Mr. Pradeep Gahalot, APP, Ms. Ridam Arora, Mr. Sunil Rana, Mr. Vikram Pratap Singh, Mr. Devvrat Sharma, Mr. Vipin Kumar, Advs. for the State with ACP Ranvir Singh and SI Vivek Singh, PS Sarojini Nagar

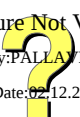
Dr.Yadu Lal/R-2 in person with Dr. T.R. Naval, Mr. Akash, Advs. for R-2

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CRL.M.C. 356/2011, CRL.M.A. 12270/2013**DR. MANOJ KUMAR****.....Petitioner**

Through: Mr. Ashok Arora (VC), Mr. Harsh Prabhakar, Ms. Anjana Prabhakar, Mr. Anirudh Tanwar, Ms. Eshita Pallavi, Mr. Adeeb Ahmed, Advs.

versus

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STATE NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP, Ms. Ridam Arora, Mr. Sunil Rana, Mr. Vikram Pratap Singh, Mr. Devvrat Sharma, Mr. Vipin Kumar, Advs. for the State with ACP Ranvir Singh and SI Vivek Singh, PS Sarojini Nagar Dr.Yadu Lal/R-2 in person with Dr. T.R. Naval, Mr. Akash, Advs. for R-2

+ CRL.M.C. 628/2011

DR. A.K. SINGH

.....Petitioner

Through: Mr. Ashok Arora (VC), Mr. Harsh Prabhakar, Ms. Anjana Prabhakar, Mr. Anirudh Tanwar, Ms. Eshita Pallavi, Mr. Adeeb Ahmed, Advs.

versus

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CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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JUDGEMENT

DINESH KUMAR SHARMA,J :

A. PREFACE

1. The present petitions have been filed under section 482 Cr.P.C. seeking to quash the FIR No. 04/2007, registered at PS Sarojini Nagar, under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and all the proceedings emanating therefrom including summoning order dated 08.12.2010 issued by the Court of learned MM-07 (South), Saket Courts, New Delhi and the bailable warrants issued against Dr. A.K. Singh on 05.02.2011.

B. FACTUAL MATRIX

2. Brief facts of the case are that an FIR bearing No. 04/2007, was registered at PS Sarojini Nagar, u/s 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the complaint of Dr Yadu Lal / Respondent no. 2/ (herein after referred to as ‘complainant’).

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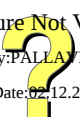
3. The allegations made out in the complaint dated 15.12.2006 are that the petitioners namely Dr. A.K. Singh, Dr. Manoj Kumar, and Dr. Deepak Chaudhary, engaged in a concerted effort rooted in caste-based bias and personal vendetta to harass, defame, humiliate, and obstruct the promotion of the complainant to the post of Director/ Head of the Institute of Orthopaedics.
4. In the complaint, it has been alleged that Dr. A.K. Singh, the former Director and Head of the Central Institute of Orthopaedics (CIO) at Safdarjung Hospital, issued an order on 31.12.2003 that authorised only Dr Deepak Chaudhary and Prof. Dr. V.K. Sharma, both junior to the complainant to handle arthroscopic instruments. It was stated that despite the complainant's extensive experience in arthroscopic surgery, he was deliberately excluded from this authorization, which allegedly undermined his professional status and expertise.
5. Further, it has been alleged that Dr. A.K. Singh sent defamatory letters to the Secretary of the Ministry of Health and Family Welfare on 14.10.2004 and 25.11.2004, without following the proscribed channel and falsely alleging the complainant's incompetence and attributing surgical errors of putting the hook/rods in a wrong manner during a procedure on a patient Ms. Manju. It has been stated in the complaint that these accusations were made without any factual basis, as the surgical technique used by the complainant was well-documented in medical literature. These actions, according to the complaint, were intended intentionally to defame and discredit him.



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6. Dr. A.K. Singh thereafter, allegedly got the contents of his letters published in the Asian Age newspaper on 5.12.2004 and 9.12.2004 and encouraged Ms Manju to file a legal case against the complainant, wherein the court did not construe any negligence on the part of the complainant. It has been alleged that in an attempt to further tarnish the complainant's image, and influence the proceedings, the petitioners herein arranged for an Aaj Tak media team to visit the Orthopaedics department on 13.03.2005, resulting in a televised segment on 14.03.2005 that defamed the complainant.
7. Thereafter, on 02.06.2005, Dr. A.K. Singh allegedly provided false testimony to a Broad-Based Committee, claiming that the complainant was the only senior faculty member involved in complications during surgeries. The complainant has stated that Dr. A.K. Singh failed to disclose his medical errors in prior surgeries in 2001 and 2003, including the negligent cutting of major blood vessels leading to limb loss for patients Amarjeet Kumar and Suruti Devi. It has been alleged on account of this false testimony, the complainant was transferred to Department of Rehabilitation against the Recruitment rules. It has been stated that the said transfer was quashed by the Ld. CAT.
8. As a result of the defamatory campaign and threats, the complainant alleged to have faced professional exclusion, including being transferred from Safdarjung Hospital to the Government of NCT without any requisition from the Government. The complainant alleges that he was left without salary or an official posting for over five months, causing





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significant financial and psychological distress. This situation is attributed to caste-based discrimination and a personal vendetta which amounts to a violation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. The complainant alleges that, throughout the ordeal, petitioners subjected him to continuous threats, both professional and physical, for challenging their discriminatory actions. These threats were allegedly intended to intimidate the complainant and suppress his efforts to seek justice.
10. Upon the complaint being made, FIR no. 4/2007 dated 02.01.2007 was registered at PS Sarojini Nagar u/s 3 the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and an investigation was carried out. ACP Kumar Gyanesh filed a cancellation report. The complainant filed the protest petition. Learned Metropolitan Magistrate (MM)-03 (South), vide an order dated 31.05.2005, directed the police to re-investigate the matter and to appoint an appropriate official, in compliance with Rule 7 of the SC and ST (Prevention of Atrocities) Rules, 1995 to conduct the investigation.
11. Pursuant to the court's directive, ACP Mohinder Singh re-investigated the matter and submitted a supplementary cancellation report under Section 173 Cr.P.C. on 07.07.2010, *inter alia* stating that the complainant's allegations did not satisfy the essential ingredients required to constitute an offence under Section 3 of the SC/ST (Prevention of Atrocities) Act, 1989.



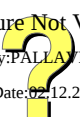
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12. The complainant again filed the protest petition challenging the supplementary cancellation report. Learned Metropolitan Magistrate (MM)-07 (South), Saket, vide order dated 08.12.2010 *inter alia* held that a prima facie case was established and directed that summons be issued to the petitioners herein Dr. A.K. Singh, Dr. Manoj Kumar, and Dr. Deepak Chaudhary under Section 3(1)(ix) of the SC/ST Act.

C. SUBMISSIONS ON BEHALF OF PETITIONERS

13. Sh. Ravi Sikri, learned Senior Counsel along Mr. Ashok Arora, Advocate submitted that bare perusal of the complaint by Respondent No. 2 demonstrates that it is ex-facie frivolous and vindictive. It has been submitted that the present case is an upshot of bitter professional rivalry, wherein Respondent No. 2 is attempting to tarnish the stellar reputation of the petitioners herein. It has been submitted that the impugned order dated 08.12.2010 is liable to be set aside as it fails to appreciate the procedural safeguards and legal thresholds for taking cognizance under Section 3(1)(ix) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The complaint merely highlights professional disputes and grievances related to service conditions, a dispute which is predominately civil in nature and therefore cannot be criminalised.
14. It has been submitted that even if the allegations are taken to be true, they can't fasten culpability. It has been submitted that the allegation of the complainant regarding his prospects of promotion being defeated on account of communications of Dr. A. K. Singh in view of the specific



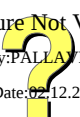


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reply of the Ministry obtained during the investigation, wherein it has been stated that the complainant could not have been promoted to the post of director due to not belonging to the Teaching Sub-Cadre of C.H.S. Further, the allegation of favouritism by Dr. A.K. Singh towards Dr. Deepak Chaudhary and Dr. Manoj Jain and allowing media access do not fall within the ambit of Section (3)(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

15. Learned Senior Counsel further submitted that the SC/ST Act is being misused by the complainant to settle professional disputes. The complainant has a history of filing frivolous complaints against senior officials, seemingly as a retaliatory measure against legitimate complaints of negligence and procedural inadequacies raised in good faith and the public interest. This pattern has been evident throughout his professional career, where serious concerns about his conduct and competence have been raised by various authorities and committees.
16. Learned Senior Counsel submitted that in 1990, the then Director, Dr. V.P. Bansal, reported significant professional shortcomings in the complainant's conduct to the Ministry of Health. Later, in 1998, the complainant was transferred under the supervision of another Director, Dr. K.S. Rao, following an incident of negligence that resulted in a patient's death. The complainant upon this filed complaints alleging caste-based harassment against Dr. K.S. Rao. These allegations were later dismissed by the National Commission for Scheduled Castes as baseless. In 2004, a Two-Member Committee was constituted to



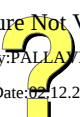


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evaluate the complainant's surgical procedures, which revealed significant technical flaws in his operations. In 2005, these findings were reviewed by a Five-Member Committee, which confirmed his professional incompetence and recommended his removal from clinical duties. Respondent No. 2 filed a complaint with the National Commission for Scheduled Castes, alleging caste-based atrocities and harassment. However, the Commission dismissed his claims again on 24.05.2006, stating that the allegations were unfounded and unsubstantiated. The complainant's negligence also became the subject of legal proceedings, where the coordinate bench of this Court awarded compensation to a patient who suffered due to his actions. It has been submitted that even after multiple dismissals of his complaints, on 15.12.2006 the complainant filed another complaint, leading to the registration of FIR No. 4/2007 under Section 3(1)(ix) of the SC/ST Act. This indicates that the proceedings are being used by the complainant as a tool to deflect accountability for his professional shortcomings. It has been submitted that proceedings initiated with oblique motives are liable to be quashed.

17. Learned Senior Counsel submitted that two comprehensive closure reports, dated 05.08.2009 and 07.07.2010, were subsequently filed by the Investigating Officer after recording witness statements and analyzing evidence. Both reports concluded that no offence was made out against the petitioners. It has been submitted that the learned Magistrate failed to provide reasons for not accepting the cancellation report and for summoning the accused. The impugned order summoning





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the Petitioners suffers from non-application of mind and fails to specify the penal provisions allegedly violated. Learned senior counsel submitted that the impugned order is liable to be set aside. Reliance has been placed on *Pepsi Foods Ltd. v. Special Judicial Magistrate* 1992 Supl. (1) SCC 335 to buttress the contention that summoning orders are not to be issued mechanically.

18. Learned Senior Counsel further submitted that since the petitioners were public servants they were entitled to prior sanction under Section 197 of the Cr.P.C. for prosecution. The failure to obtain sanction under Section 197 Cr.P.C is a jurisdictional defect, vitiating the proceedings and cognizance of the alleged offense as invalid. Reliance has been placed on *Anjani Kumar v. State of Bihar* (2008) 5 SCC 248. It has also been submitted that this protection extends even after demitting office, as held in the cases titled *R. Balakrishna Pillai v. State of Kerala* (1996) 1 SCC 478 and *Rakesh Kumar Mishra v. State of Bihar* (2006) 1 SCC 557.
19. Learned Counsel also submitted that the summoning order has been issued mechanically, without judicial application of mind, and in disregard of the closure reports filed by the investigating officers. Learned Counsel emphasized that the SC/ST Act is being misused to settle professional disputes. It has been submitted that the petitioners are highly reputed orthopedic surgeon and the Director of the Central Institute of Orthopedics, Safdarjung Hospital, has been maliciously implicated by Respondent No. 2. Respondent No. 2 has a history of



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filing frivolous complaints against senior officials, including the petitioner. It is submitted that the complaint is motivated by malice and professional rivalry, and the petitioner's reputation has been repeatedly tarnished by baseless allegations and thus, the FIR and all the proceedings emanating therefrom are liable to be quashed.

D. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2/COMPLAINANT

20. Sh. T. R. Naval, learned counsel for respondent no. 2 submitted that the petitioners belong to a caste other than scheduled caste and have strong caste-based biases against the complainant, who was under the zone of consideration to become HOD of CIO. It has been submitted that the petitioners did not want a member of the Schedule Caste Community to occupy the said position and, therefore have acted with deliberate malice to harm the reputation, professional standing, and integrity of Respondent No. 2.
21. Learned counsel for respondent no. 2 has submitted that the present petition under Section 482 of the Cr.P.C. is not maintainable as the petitioners had an alternative and appropriate remedy by filing a revision petition before the Court of Sessions. It has been submitted that the petitioners have wrongly invoked the inherent jurisdiction of the High Court, which is to be exercised sparingly and in cases where extraordinary circumstances demand intervention. Reliance has been placed on *Fakhruddin Ahmad vs. State of Uttarakhand and Others* (2008) 17 SCC 157. Furthermore, reliance has also been placed on

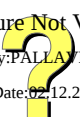


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Popular Muthiah vs. State Represented by the Inspector of Police
(2006) 7 SCC 296 to buttress the contention that the inherent powers of the High Court should not be invoked when the challenged order is interlocutory and can be corrected by revisional or appellate jurisdiction.

22. Learned counsel for Respondent no. 2 submitted that there is substantial material evidence to justify the impugned summoning order dated 08.12.2010 passed by the Learned Metropolitan Magistrate. This summoning order pertains to the allegations under Section 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which prescribes punishment for individuals who provide false or frivolous information to public servants, resulting in injury or annoyance to members of the Scheduled Caste or Scheduled Tribe communities.
23. In this regard, it is submitted that the letters written by Dr. A.K. Singh dated 14.10.2004 and 25.11.2004 were false and baseless, containing frivolous allegations against Respondent No. 2. These letters prompted the Secretary, Ministry of Health and Family Welfare, to constitute four committees, causing immense harassment and injury to Respondent No. 2. Learned counsel submitted that the letter dated 25.11.2004 contained false allegations regarding a surgical procedure performed by Respondent No. 2 on Ms. Manju. Dr. A.K. Singh alleged that the Harrington Rods were fixed upside down in a manner that violated established surgical principles. However, it has been submitted that the said information was entirely false and contradicted by authoritative



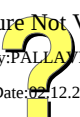


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medical literature. The book "The Pediatric Spine" by David S. Bradford and Robert M. Hensinger, which is an authoritative text for medical professionals, expressly prescribes the use of inverted Harrington Rods in specific cases. Furthermore, it has been submitted that the expert opinions from spine surgeons, such as Dr. Shekhar Y. Bhojraj of P.D. Hinduja National Hospital and Dr. H.S. Chhabra, Chief of Spine Service at the Indian Spinal Injuries Centre, confirm that the technique used by Respondent No. 2 was medically valid and appropriate, especially in cases involving cost constraints.

24. Learned counsel submitted that the petitioners conspired to defame Respondent No. 2 by facilitating a televised interview on 13.03.2005, which was aired on Aaj Tak on 14.03.2005. During the interview, defamatory statements were made against Respondent No. 2 regarding the surgery, causing further injury to his reputation. The involvement of petitioners in this conspiracy is stated to have been corroborated by the statement of Shri Bijender Kumar, a plaster cutter technician, whose testimony confirms the presence of all accused during the interview.
25. Learned counsel for the respondent submitted that in letter dated 14.10.2004 Dr. A.K. Singh made unwarranted and frivolous allegations against Respondent No. 2, suggesting misuse of socio-political status and administrative clout. These allegations were not only baseless but also unnecessary, as they had no relevance to the matter being addressed. This letter led to the formation of additional committees, further causing harassment to Respondent No. 2.





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26. Learned counsel submitted that the National Commission for Scheduled Castes (NCSC) recommended the registration of an FIR in this matter recognizing the gravity of the offence committed by the petitioners vide communicated dated 20.11.2006.
27. Learned Counsel for Respondent no. 2 submits that even though closure reports were filed by the investigating agency but Ld. Magistrate has the power to differ from the said conclusion and form an independent opinion. Reliance has been placed on *Fakhruddin Ahmad vs. State of Uttarakhand and Others* (2008) 17 SCC 157, to contend that the Magistrate is not bound by the investigating officer's view and can independently decide whether an offence has been made out. Similarly, it has been submitted that in *Popular Muthiah vs. State Represented by the Inspector of Police* [(2006) 7 SCC 296, *H.S. Bains vs. State (Union Territory of Chandigarh)* 1981 SCC (Cri) 93 and *Bhagwant Singh vs. Commissioner of Police* [(1985) 2 SCC 537] it was opined that the Magistrate can take cognizance of an offence even if the police filed the closure/cancellation report.
28. Learned counsel further submitted that Respondent No. 2's professional reputation has been vindicated in multiple instances. In fact, it has been submitted that during the proceedings before Central Administrative Tribunal Case No. 1830/2005, Respondent No. 2's efficiency and conduct were appreciated, and no fault was found with his professional work. Similarly, in Writ Petition No. 20085/2004 filed by Ms. Manju's father, the Hon'ble High Court clarified that compensation awarded to

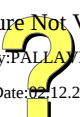


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the petitioner could not be construed as an admission of negligence on the part of Respondent No. 2.

29. Learned counsel further submitted that the alleged actions of the petitioners were not in the discharge of their official duties, nor there is any nexus between their official functions and the commission of the offence of atrocity. Thus, it has been submitted that the petitioners are not entitled to protection under Section 197 Cr.P.C., which mandates prior sanction for the prosecution of public servants. Reliance has been placed on *R. Balakrishna Pillai vs. State of Kerala and Another* (1996) 1 SCC 478, *Rakesh Kumar Mishra vs. State of Bihar and Others* (2006) 1 SCC 557, and *P.K. Pradhan vs. State of Sikkim* [MANU/SC/0380/2001] to contend that protection under Section 197 Cr.P.C. is only available when the alleged offence has a direct and reasonable nexus with official duty, and a mere opportunity arising from the official position does not require sanction for prosecution.
30. Learned counsel for Respondent No. 2 submitted that the impugned order is supported by sufficient material evidence, and the trial court has rightly summoned the accused persons to face trial. It has been submitted that the correctness or falseness of the allegations made by Respondent No. 2 can only be adjudicated at the stage of trial, and the respondent should not be deprived of an opportunity to prove his case before the court. The inherent powers of the High Court under Section 482 Cr.P.C. should not be exercised to stifle the legitimate proceedings, and thus, it has been submitted that the present petitions are liable to be





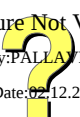
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dismissed.

E. FINDINGS AND ANALYSIS

31. It is well-settled that the inherent powers of the High Court under Section 482 Cr.P.C. are extraordinary and should be exercised sparingly and cautiously. The jurisdiction under Section 482 Cr.P.C. should be invoked with great circumspection, particularly when the proceedings are at a nascent stage. Such intervention is justified only if allowing the proceedings to continue would lead to a miscarriage of justice or amount to an abuse of the judicial process.
32. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been enacted with the purpose of safeguarding vulnerable sections of society from humiliation and harassment and ensuring that perpetrators of such offences are brought to book and subjected to harsh punishment. However, at the same time, the Courts have to be careful that such legislatures, which are enacted with social welfare in mind, should not be put to any misuse. Such legislation should be implemented with purity and for right purpose ruling out any misuse for ulterior motives. Thus, while the Courts has a pious duty to protect the rights of individuals belonging to Scheduled Castes and Scheduled Tribes, it is equally essential to ensure that false or frivolous complaints are not made and if made should not be allowed to perpetuate.
33. In the present case, it is very unfortunate that the senior doctors are engaged in a prolonged dispute spanning over two decades. The records reveal a pattern of allegations and counter-allegations between the





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complainant and the petitioners. It seems that the present controversy started with the order dated 31.12.2003 issued by the petitioner- Dr Singh, which is as under:

“

*Government of India
Office of the Director
Central Institute of Orthopaedics
Vardhman Mahavir Medical College & Safdarjang Hospital
New Delhi 110029*

CIO/213/03

Date: 31-12-2003

OFFICE ORDER

To ensure proper maintenance of Arthroscopy equipments it will be handled only by Dr. Deepak Chaudhary and Prof. V. K. Sharma. Any othe faculty member Interested is being associated with procedure must do so under the guidance of above two doctors.

*Sd/-
(Dr. A. K. Singh)
Director*

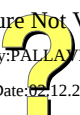
Copy to:

- 1. Prof. V. K. Sharma*
- 2. Dr. Deepak Chaudhary*
- 3. Sister I/c O.T. IIIrd Floor”*

34. The perusal of this order indicates that Dr. A.K. Singh issued the order in his capacity as Director to facilitate the efficient administration of the institute. Aggrieved by this, the complainant/respondent no. 2 filed a detailed complaint with the Secretary, Ministry of Health and Family Welfare, Government of India, on 07.07.2004, alleging serious grievances against the petitioners. The key allegations are summarized as follows:

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1. The complainant alleged that Dr. A.K. Singh has shown favoritism in the allocation of wards and beds, manipulating the system to favor Dr. Deepak Chaudhary, a junior in the hierarchy. Specifically, 12 beds were allotted to Dr. Deepak Chaudhary, while other senior members received fewer allocations.
- ii. Similarly favoritism is alleged in the allotment of Operation Theatre (OT) schedules. It was alleged that Dr. Deepak Chaudhary was exclusively allotted Arthroscopy Surgery and Joint Disorder procedures with OT slots on four days of the week—Monday, Tuesday, Thursday, and Friday. In contrast, the two Unit Incharges were given only two days each, with Saturday (a half-day) specifically assigned to the complainant/Respondent no.2.
- iii. Further, it was alleged that specialized imported machines, such as Arthroscopic Instruments, were reserved solely for Dr. Deepak Chaudhary and Dr. V.K. Sharma, to the exclusion of complainant.
- iv. The complainant also alleged that on 27.06.2004 (Sunday), the OT was reportedly opened for a private patient by an unauthorized private doctor under the pretext of demonstrating scientific methodology. However, the complainant alleges that this was a cover for corruption, as all Orthopaedics Department members were not invited to observe or learn from the demonstration.
- v. Dr. A.K. Singh, as HOD, was accused of mismanaging the department by opening a new OT for "Joint Disorder" surgeries but reserving its use exclusively for Dr. Deepak Chaudhary and his



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associate, Dr. Naval Bhatia and complainant was excluded and assigned only a half-day OT on Saturdays.

vi. The complainant further alleged that Dr. A.K. Singh makes all departmental decisions unilaterally, disregarding the opinions of senior and junior colleagues, which undermines public service and creates ongoing disputes and partisan behavior within the department.

35. Pursuant to this Dr. A.K. Singh, addressed a communication dated 14.10.2004 to the Secretary of the Ministry of Health and Family Welfare, Government of India. In this communication, he referenced his earlier letters dated 22.08.2004, 05.06.2004, 19.07.2004, 30.05.2004, and 30.06.2004, which had been forwarded by the Medical Superintendent, Safdarjung Hospital. Subsequently, Dr. A.K. Singh sent another communication on 25.11.2004.

36. Aggrieved by these two letters, the complainant approached the National Commission for Scheduled Castes. The Commission, vide its order dated 24.05.2006, *inter alia*, held as under:

“: 011-24625378
Telegram: CASTRICOM

सत्यमेयजगते
भारतसरकार
राष्ट्रीयअनुसूचितजातिआयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED CASTES

पाँचवींमंजिल, लोकनायकजयनखानमार्किट, नईदिल्ली 1100003
Vth Floor, Loknayak Bhawan No. Y-1/Health-8/05/SSW-II Khan Market, New
Delhi-110003

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Dated 24 May, 2006

To

Shri P.C. Hota
Secretary.
Ministry of Health,
Nirman Bhawan,
New Delhi

Sub: Alleged harassment of Dr. Yadu Lal, Consultant, Orthopedics, Safdarjung Hospital, New Delhi by Dr. A.K. Singh, HOD.

Dear Sir,

I am directed to refer to the subject mentioned above and subsequent communications in this regard, and the discussion held with you on 17.10.2005 where among others, the case of Dr. Yadu Lal was discussed. The Commission has accordingly considered the facts of the case keeping in view the judgement of the Hon'ble CAT regarding the OA filed by Dr. Yadu Lal and the judgement thereof. It has been found that the allegation of atrocities committed upon Dr. Yadu Lal by Dr. A.K. Singh could not be substantiated in the absence of verifiable evidence. Similarly, the allegation of harassment in service by Dr. Yadu Lal because of his caste origin also could not be substantiated.

In view of this the Commission has decided to treat the case as closed.

Yours faithfully.

Sd/-

(K.D. Bhansor)
Deputy Director"

37. The bare perusal of this indicates that the National Commission for Scheduled caste did not find any substance in the complaints. While the matter rested thus, a two-member committee was constituted vide order dated 10.12.2004, to inquire into all the complaints against Respondent no. 2. In its report, the committee recommended that Respondent no. 2 should be removed as Head of the Union and all the cases with complications should be reexamined.

38. Thereafter, another "broad-based committee" was constituted vide order

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dated 09.03.2005. This new committee was formed on the grounds that the earlier committee had only examined the complaint of Dr. A.K. Singh's without addressing the complaints raised by Respondent no. 2 herein.

39. The respondent objected to the composition of this new committee, stating that its head did not belong to the same scale or stream (Orthopedics) and that the remaining two members were junior to the applicant, which could result in a conflict of interest or biased findings. In the meantime, vide order dated 02.06.2005, the complainant was transferred and posted as Consultant (Orthopedics) in the Department of Rehabilitation vide order dated 13.01.2006.
40. In O.A. No. 1830/2005, the CAT, Principal Bench, in its order dated 02.12.2005, while dealing with the challenge to the constitution of the broad-based committee observed that the issue of reconstitution of the committee was already under consideration. It directed the department to consider the complainant's objections before reconstituting the committee. The Tribunal further instructed that the committee be composed of appropriate individuals with expertise in the relevant field and seniority over the applicant. Regarding the complainant's transfer, the Tribunal noted the applicant's lack of eligibility and qualifications for the post in the Department of Rehabilitation and directed that Respondent No. 2 be posted elsewhere in the field of Orthopedics, the stream to which he belongs. The Secretary, the Ministry of Health and Family Welfare, on 29.09.2005, made a statement before the Chairman



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of the National Commission for Scheduled Castes, agreeing to reconstitute a fresh committee to address Respondent no. 2's grievances

41. Thereafter, vide order dated 13.01.2006, the complainant was transferred to Government of NCT of Delhi for posting in the Orthopedics Department at LNGP, GTB, or DDU Hospital. This was challenged by the complainant vide O.A. 2333/2006. The Central Administrative Tribunal Principle Bench Delhi vide order dated 16.11.2007 *inter alia* held that there was no apparent mala fide intent arbitrariness or illegality in the transfer order and the transfer order was passed in compliance with the directions of the tribunal in O.A. No. 1830/2005.
42. Bare perusal of both of these orders indicates the complainant did not raise any caste-based issues in these proceedings. The proceedings also indicate that the post of Director, CIO, belongs to the Teaching Specialist Sub-Cadre, whereas respondent no. 2 is part of the Non-Teaching Sub-Cadre and thus he has neither the right nor the eligibility to seek an appointment or posting as the Director, CIO, Safdarjung Hospital.
43. Respondent no. 2 after not being able to get the desired relief from the Central Administrative Tribunal and National commission for Schedule Caste, filed the present complaint dated 15.12.2006 based on which, the present FIR was lodged. Vide communication dated 20.12.2006, the National Commission for Scheduled caste simply forwarded the complaint dated 18.12.2006 received from the complainant and directed



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the Commissioner of Police that FIR be registered under SC and ST Act, (POA) Act. It is a matter of record that initially, the police filed the closure report dated 05.08.2009 which was challenged by the complainant through a Protest Petition. Learned MM vide order dated 31.05.2010 directed the police to reinvestigate the matter. The matter was reinvestigated and again, the cancellation report was filed on 07.07.2010. The complainant again filed the protest petition. The learned MM vide order dated 08.12.2010 after taking into account, the statement of Vijender Kumar and Dr. R. K. Sharma summoned the accused persons which is the subject matter before this Court.

44. The Court considers that the reasons given by the learned Trial Court for summoning the petitioners are not based on the reasoning. To attribute Section 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended Section 3(1)(q), there has to be false and frivolous information to any public servant which causes such public servant to use his lawful power to cause an injury or annoying to the member of Scheduled Caste. Thus, to invoke the said provision, the information provided must not only pertain to the member of Scheduled Caste and be false and frivolous but must also cause the public servant to use their lawful authority, causing injury or harm to a member of Scheduled Caste. All three elements must be satisfied collectively and cannot be read in isolation.

45. In the complaint dated 15.12.2006 the complainant made various allegations against Dr. A.K. Singh including that Dr. A.K. Singh wrote



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certain communication dated 14.10.2004 and 25.11.2004 to the Secretary, Health and Family Welfare. Besides this it was alleged that Dr. A.K. Singh along with Dr. Manoj Kumar and Dr. Deepak Chaudhary moved the Aaj Tak team to the Department of Orthopedics on 13.03.2005 and got it telecasted on 14.03.2005. The Complainant also alleged that Dr. A.K. Singh submitted a wrong statement before Broad Base Committee on 02.06.2005 stating that no complications have been made by any senior faculty of the CIO, other than Dr. Yadu Lal in full knowledge of the fact that Dr. A.K. Singh had himself had committed many serious disasters while operating patients such as Amarjeet Kumar and Suruti Devi where negligent cut of major vessels i.e. femoral and popliteal arteries has led to loss of limbs. Thus the only allegation against Dr. Manoj Kumar and Dr. Deepak Chaudhary was that they moved Aaj Tak team to the department of Orthopedics on 13.03.2005 and got it telecasted on 14.03.2005 along with Dr. A.K. Singh. It is also necessary to refer to the report of the three committees, the first committee of Dr. Surya Bhan, HOD (Orthopaedics) Department, AIIMS, New Delhi and Dr. V.K. Arora, Additional DG in the report of the committee constituted on 10.12.2004 *inter alia* held that Dr. Yadu Lal i.e. the complainant should be immediately removed as head of the unit and should be asked to work under direct supervision till further orders. It was further *inter alia* directed that the HOD should examine all cases with complications and take corrective measures wherever possible.

46. Subsequently, in the enquiry report of Broad Base Committee it was

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mentioned that complainant - Dr. Yadu Lal did not appear despite opportunity being given. This committee also consisting of senior five doctors Dr. (Prof.) Surya Bhan, HOD (Orthopaedics), AIIMS, Dr. (Prof.) A.K. Khare HOD (Orthopaedics), Dr. R.M.L. Hospital, Dr. (Prof.) Sudhir Kapoor, HOD (Orthopaedics), LHMC and Dr. (Prof.) Balmiki Prasad, Deputy Director Admn., Directorate G.H.S. and Dr. (Prof.) V.K. Arora, Addl. D.G. Directorate G.H.S. recommended that Dr. Yadu Lal be removed from clinical duties, and he may be sent for basic training in the Trauma and Orthopaedics Institution for at least one year. In the third enquiry committee report dated 03.03.2006 it was mentioned that complainant Dr. Yadu Lal did not attend the meeting despite being personally informed and *inter alia* concluded that for many years from the time Prof. V.P. Bansal was director of CIO successive heads have brought to the notice of Medical Superintendent the deficiency in the behavior and treatment of patients by Dr. Yadu Lal. Thus, successive enquiry reports indicate that there was a deficiency in the services rendered by complainant Dr. Yadu Lal.

47. In the present case, the alleged communication was written by Dr. A.K. Singh. The allegations against Dr. Manoj Kumar and Dr. Deepak Chaudhary are based on their alleged conspiracy with Dr. A.K. Singh either by facilitating the entry of the AAJ Tak team into the Orthopedics Department or by spreading false information. In the Court's opinion, these allegations do not satisfy the requirements of Section 3(1)(ix) of the SC/ST (Prevention of Atrocities) Act. The transfer orders of Respondent no. 2 have already undergone judicial scrutiny.



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Furthermore, the concurrent findings of the three committees constituted to look into the complaints of the petitioner Dr. A.K. Singh and complainant/respondent no. 2 indicate that Dr. A.K. Singh's communications were neither false nor frivolous. Thus, it cannot be said that any harm or injury was caused to the complainant on account of the alleged communication of Dr. A.K. Singh.

F. CONCLUSION

48. In light of the foregoing, the Court is of the considered opinion that the complaint does not disclose the ingredients to constitute the offence under the provisions of the 3(1)(ix) of the SC/ST (Prevention of Atrocities) Act. Hence allowing the proceedings to continue would result in a gross miscarriage of justice and would be an abuse of the power of the court as they appear to be rooted in professional rivalry rather than caste-based victimisation.
49. Accordingly, the present petitions are allowed and FIR no. 4/2007 dated 02.01.2007 registered at PS Sarojini Nagar and all the proceedings emanating therefrom including the summoning order dated 08.12.2010 are hereby quashed.

DINESH KUMAR SHARMA, J

November 29, 2024

Pallavi/Rb/smg