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

Date of decision : 15.02.2021

+ W.P.(CRL) 321/2021

DR. MOHIT DHAWAN

..... Petitioner

Through Mr. Sushil K. Tekriwal, Adv.

versus

RAKESH ASTHANA & ORS.

.... Respondents

Through Mr. Mukul Rohatgi, Sr. Adv. with
Ms. Diksha Rai, Ms. Devanshi
Singh and Ms. Palak Mahajan,
Advs. for R-1
Ms. Tatini Basu, St. Counsel for R-
2/CVC
Mr. Chetan Sharma, ASG with Mr.
Ajay Digpaul, CGSC, Mr. Amit
Gupta, Mr. Vinay Yadav, Mr.
Akshay Gadeock, Mr. Sahaj Garg,
Mr. Kamal R. Digpaul and Mr. R.
Venkat Prabhat, Advs. for UOI
Mr. Anupam S. Sharma, SPP with
Mr. Prakarsh Airan and Ms.
Harpreet Kalsi, Advs. for CBI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

The hearing has been conducted through video conferencing.

1. The present writ petition has been filed by the petitioner criminal writ petition under article 226 of the Constitution of India with the following prayer:

“(a) Issue writ in the nature of Mandamus commanding/directing respondent Nos.2 & 4, jointly, collectively, individually and severally to, forthwith, adjudicate, enquire, investigate and to launch consequential criminal prosecution against respondent No.1, under Section 7 & 7A of the Prevention of Corruption Act emerging, ensuing and emanating from various criminal complaint(s) filed by petitioner, against respondent No.1, more particularly dated 18.9.2019 pending with respondent No.4 and 27.7.2020/17.8.2020 pending with respondent Nos.2 & 4 for more than sixteen months by now, who, in connivance with other police officers of Chandigarh, conspired to obtain undue advantage from the petitioner with the intention to cause performance of his public duty improperly and dishonestly by himself as well as conniving with other public servants firstly by falsely and illegally implicating and intimidating the petitioner by abusing his official position through corrupt means and corrupt activities and further attempting to extort money through the said police officers in connivance with them in the garb of settling the matter by exercising his personal influence in contravention of various provision of Prevention of Corruption Act in order to favour the complainant Gertrude D'Souza and her spouse Bryan D'Souza to dispense his proximate relations he enjoys even today with this couple since years.

(b) Command, by invoking writ of mandamus, to respondent Nos.2 & 4, jointly, collectively, individually and severally, subjecting them to judicial scrutiny and prosecuting erring officials therein for sitting over/inaction upon the criminal complaints of petitioner

in perpetuity and exhibiting absolute arbitrariness, mercurialness, unfairness prejudices, inaction & whimsical approach for extending their favor to respondent No.1 and thus causing gravest irreparable injury to the petitioner.

c) Command, by invoking writ of mandamus, to respondent Nos.2 and 4, jointly, collectively, individually and severally for providing adequate security to petitioner for having grave threats at the hands of respondent No.1 & his accomplices he is getting in recent times.”

2. The present case has long history which is evident from the complaint dated 29.10.2017 whereby one lady, namely, Gertrude D’Souza made complaint against the petitioner as under:

“I am US citizen and had been looking for an Affordable Dentist, specializing in Implants for a long time. I got to know of Avance Dental Care in Chandigarh. I called them up and was in touch with their Office Manager for a month, to understand the credentials of the Dentist Dr. Mohit Dhawan.

Mr. Anil his Office Manager, painted an extremely rosy picture of how easy and efficiently the entire procedure of two visits would be, (one in August 2017 for implant Surgery and temporary crowns and the other in February 2018 for placing the permanent crowns). Anil assured me the temporary crowns that they place in the first visit are so good, they are as good as permanent and some patients do not come back for the second visit, hence he said we must pay 100 % in advance. We wanted to pay 50 % on each visit but they did not agree.

In 6 days, my entire crowns + abutments for the complete upper jaw came out, now I have no teeth in my upper jaw. I was cheated by the doctor who placed the upper crowns a day before departure from Chandigarh. When I

mentioned that they were not properly aligned with the Bottom teeth, he said, never mind, it's all ok. Normally, there is a fitting & trial, and many adjustments need to be done. ILL fitting crowns can result in pain and gum erosion. He did a Soddy & hurried job, no trial or adjustments whatsoever, and I had to return to the USA, as is.

Dr Dhawan also performed a sinus lift surgery on me, without my prior knowledge and me after it was done. I was very conductor and frightened, on finding out.

In an effort to rectify the rest, I met with a leading Dentist in the USA, who said putting back the crowns in my upper jaw is absolutely futile since they are totally out of alignment with the bottom teeth and will again come off, and two abutments are so loose that must be removed, and the implants could fail. He suggested dentures. Dr. Dhawan should have done this in the first place. All in all, I have paid \$ 1500/- for this after returning to the USA, and I require a whole bunch of corrective work, which is as good as starting all over again.

The package Avance offered was a Dental Tourism Package, which included the entire dental Implant procedure, 5 Star Hotel accommodations, return airfares for both trips and sightseeing trips to Taj, Agra and Shimla (all included for the amount quoted) with a detailed itinerary Before our arrival. However, the tourism part never happened. As per the contract, extractions are included (which I found out later), but he overcharged me for extractions too. He also overcharged me Sales Tay, which was supposed to be included in the total price.

Payment had to be 100% and in Advance prior to my surgery. The office Manager preferred payment in US Dollars, and cash. But I declined since, Indian & US laws do not permit carrying more than US \$5,000/- cash. I finally paid in Indian Rupees., by cheque.

We wanted to stay at The Taj, Chandigarh, which is one of their hotels we could choose from their Brochure. But

Anil insisted on the Park Plaza, which he assured was a 7star hotel and far better than Taj, where they put up most of their patients & has a contract. We reluctantly accepted. Upon arrival in Chandigarh, Dhawan's driver could not find the hotel, and turns out to be James Hotel (a 4 star), which according to them was the former Park Plaza. There was no booking in my name and a fresh one was made by Anil on arrival at the hotel.

From that moment on, the hotel nightmare began. Dr. Dhawan was booking hotels on a day to day basis thru some cheap third party online sites, apparently to save money. Every morning the hotel reception kept reminding us that we had to check out before noon that day, or be responsible for late checkout. This was very frightening & humiliating. I had to change 4 hotels in 6 days, because of this his frugal ways (2 of which were 3 & 4 star hotels and not as per the contract). This was both fraudulent and deceptive, contrary to the contractual obligation. When we confronted Dr. Dhawan, he told us that in Chandigarh, 5 star hotel rooms are "Black Marketed" and bookings cannot be made for more than a day or directly with the Hotel. (I do not know if this is true) Dr. Dhawan continuously made excuses and blatantly lied for everything that went wrong, including blaming me for changing hotels.

Then out of the blue, one of their staff called Amandeep, who never introduced himself in person, started recording false/distorted events, via e-mail to me. When confronted, Dr. Dhawan told us not to respond to them as the e-mails from Amandeep was to protect his job. I believe the intention of these e-mails was to record a distorted version of the facts, by

Avance, in the event of a lawsuit. Dhawan had also earlier mentioned that he did get a lawyer's notice from some past overseas patients.

I left Chandigarh on August 20, reaching the United States on August 22. On August 24, my complete upper crowns and abutments (attachments) fell off. We

contacted Dhawan immediately, and asked for help, with his emergency Dentist's contact in New York as he promised. He told us he is unable to help us as there is a curfew and no wi-fi from Aug 25-30 to retrieve his contacts in New York. Till date we have not received any contact whatsoever.

On September 2, we rec'd an e-mail and phone call from Dhawan, informing that a set of temporary dentures had already been couriered. Every Dentist knows that Dentures sent by mail to a patient are useless as they are a customized fitting in his Clinic, never a remote job.

On Sep 4, I called Dhawan, he said it would reach in 4-5 days, latest on Sept 8. My repeated requests for a courier tracking number via phone and e-mails were completely ignored. Finally, on Sept 12, Anil emails me an airway bill, confirming courier dispatch.

The Airway bill is from Nitco Roadways. On checking with Nitco, they said it is handwritten and they do not accept such AWE. They also confirmed they have not couriered any shipment from Chandigarh to the USA. On further investigation it was revealed the airway bill was a fake and overwritten by Avance Dental Care.

A copy of the forged airway bill and confirmation of this fraud in writing from Nitco is attached.

I have since taken a second option with a Dentist in the United States and was told the implants were not placer with laser precision. One of the implants has a possibility of falling off, in which case more surgery would be required to correct and replace it. Everything that could go wrong has gone wrong. Since I do not have crowns nor dentures, I am unable to eat, speak clearly and cannot even meet people or socialize. He has just abandoned my case and my calls and e-mails go unanswered. Because he taken all the money in advance and recognizes his shoddy job.

Under the circumstances of deceit, fraud and unprofessional work by Dr. Mohit Dhawan and Avance Dental Care, I cannot trust Doctor Dhawan nor his work

anymore. I now have to look for another Dentist who can complete the implant process, which will be very difficult and extremely expensive.”

3. Whereas case of petitioner is that on 07.06.2017, Laura Glowacki, from USA, had approached petitioner for her dental ailments & decided to visit petitioner's clinic for her treatment. On 30.06.2017, on the recommendation of Laura, Gertrude D'Souza (herein after referred to as 'complainant') & Laura Glowacki both decided to visit the petitioner's clinic for their treatment together. The complainant initiated a conversation with the petitioner via e-mails regarding the queries of her ailment. Petitioner asked the complainant to send her medical/dental record, X-rays & CBCT records on 30.06.2017 wherein the complainant showed her inclination for getting the implant for her upper jaw. From 01 to 07.07.2017, complainant via email shared her CBCT Scan images and also the details of her lower jaw implants done in 2014/2015. The petitioner sent medical questionnaire to the complainant via email and the same was filled by the complainant. Complainant requested the petitioner to resend the list of blood tests required and complainant also sent the copies of her passport & OCI (Overseas Citizenship of India) to confirm her identity via email. On 19.07.2017, complainant requested the

petitioner to send a copy of contract wherein the petitioner along with sending the copy of the contract also sent dental implant consent form, implant restoration contract & implant treatment warranty contract. On 09.08.2017 the complainant & her referral friend, Laura reached Chandigarh and on 12.08.2017, finally the complainant was successfully operated for dental implants. It is the case of the petitioner that the complainant tendered a cheque No.861146 of HDFC Bank dated 13.08.2017, however, wrote an e-mail to the petitioner asking him not to encash the same.

4. Further case of petitioner is that the complainant refused to make payment as agreed on the pretext that she was having relations to high profile persons and named respondent No.1 herein in particular. When she refused to pay the amount, he insisted that the amount be paid. The complainant made a partial payment of INR 7,13,437 on 16.08.2018 via cheque no. 861147 of HDFC Bank, Bangalore Branch, Karnataka substituting the previous Cheque No. 861146. The Cheque got cleared on 19.08.2017. Thereafter, the complainant made a complaint against the petitioner and on receipt of the same as alleged, various officers from Sector 19 Police Station, Chandigarh approached the petitioner and he

was taken to the Office of DSP of the area. In the petition, there are allegations against the then DGP, DSP and other subordinate officers of Chandigarh Police apart from the allegations against the respondent No.1.

5. This Court put a specific query to the learned counsel appearing on behalf of the petitioner whether respondent No.1 sent any communication to petitioner or asked regarding fee of the treatment not to be received from the complainant or money to be extorted from petitioner. The counsel replied in negative, however, submits that the complainant and the police officers of the Chandigarh police station disclosed the name of respondent No.1 and harassed the petitioner to extort the amount.

6. It is not in dispute that against the police officers of Chandigarh, the petitioner has filed petition under Section 156 (3) Cr.P.C. which is pending adjudication and in the said petition, there are specific allegations made against respondent No.1 herein but not made party therein.

7. Learned counsel for petitioner submits that since there are allegations of anti-corruption against the respondent no.1, therefore, he did not file the petition under Section 156 (3) Cr.P.C. for registration of FIR against the Respondent no. 1 as it is not maintainable. But the fact

remains that petitioner made allegations against other police officers of Chandigarh Police Station including DSP and Director General of Police regarding harassment, threat and demand of bribe but there is no explanation as to why he has not made respondent no.1 a party in the said petition filed under Section 156 (3) Cr.P.C.

8. It is also not in dispute that the complainant along with her friend came all the way from USA to get treatment from the petitioner and when complainant was not satisfied, she did not pay the full amount and thereafter, when she developed problems with her implants as mentioned in her complaint, she made a complaint asking for the refund of money paid by her.

9. Undisputedly, the respondent was not posted at Chandigarh at the relevant time, the said officers and the DSP were not under the control of CBI. Respondent No.1 was posted in Delhi and there is no documentary proof whereby it is established that respondent No.1 ever had contacted the petitioner or sent any communication to the officers at Chandigarh. Everything started when the complainant made a complaint against the petitioner which resulted in registration of FIR No.76/2018 against petitioner for the offences punishable under Sections 420,467, 468 & 471

IPC. Though, the petitioner has made a complaint dated 18.09.2019 to CVC against the respondent no. 1 which was referred to CBI vide its communication dated 18.03.2019 and counsel appearing on advance notice on behalf of CBI, on instructions, has stated at bar that CBI Office, Delhi has no pending complaint filed by the petitioner since the alleged incident has taken place in Chandigarh, therefore, the said complaint was sent to the Chandigarh Office. In that account, the present writ petition is not maintainable before this Court.

10. In addition to above, case of petitioner is that he made complaint to CVC and as per law, CVC is bound to take action and decide the complaint made by the petitioner against the respondent No.1.

11. On perusal of the petition and after hearing learned counsel for the petitioner, there is no iota of evidence which establishes that the respondent No.1 had ever influenced police officers at Chandigarh by any communication.

12. It is the presumption of the petitioner that since respondent no. 1 is known to the complainant, he might have influenced the police officers and authorities, due to which the petitioner was harassed and threatened. If it is presumed that the complainant is known to the respondent No.1

and if something wrong has happened with her and respondent No.1 had suggested her to take appropriate action in that eventuality, the respondent No.1 has not committed any offence. If the said respondent had misused his power being an officer of CBI, then certainly action is warranted against the said respondent. A complaint which has been filed before the Divisional CVC and thereafter, sent to CBI but has no relevant material on record, such authority would not be able to take any action against respondent No.1.

13. However, without commenting much on the fact that the petitioner filed petition after petition even up to the level of the Hon'ble Supreme Court of India and the same was dismissed as withdrawn, I am of the view as per the complaint no action is warranted upon respondent No.1 and the petition seems to be motivated due to some vindictive purpose.

14. Therefore, I hereby find no merit in the present petition and the same is, accordingly, dismissed with a cost of Rs.20,000/- to be paid by the petitioner in favor of Delhi High Court Legal Services Committee within two weeks from today failing which the Registrar General of this Court shall take steps to recover the said amount as per law.

15. The order be uploaded on the website of this Court forthwith.

(SURESH KUMAR KAIT)
JUDGE

FEBRUARY 15, 2021

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HIGH COURT OF DELHI



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