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**(2009) 12 AHC CK 0388**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Writ Petition No. 23839 of 2009

Dr. Monica Kumar and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 05-12-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)  
Penal Code, 1860 (IPC) — Section 147, 323, 342, 352, 354

**Citation :** (2009) 12 AHC CK 0388

**Hon'ble Judges :** Yatindra Singh, J; Kant Tripathi, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

1. This writ petition arises out of a dispute between the petitioners and the Santosh Medical College, Sector 12, Pratap Vihar, Vijay Nagar, District Ghaziabad, U.P. (the College). While the petitioners were students in the college, their father gave a loan of 25 lac takes to the Chairman of the College. A dispute regarding re-payment of the same is pending. According to the petitioners, the College authorities started harassing them when their father requested to pay back the loan. There has been several cases between the parties: some have gone upto the highest court of the land.

### **RELIEFS CLAIMED IN THE WRIT PETITION**

2. This writ petition has been filed basically for the following reliefs (the other reliefs are incidental):

- (i) To conduct an enquiry regarding demand of capitation fees for admission in the College and grant of recognition to it by the Medical Council of India;
- (ii) To issue the correct character and attempt certificates;
- (iii) To provide protection to them;
- (iv) To direct CBI enquiry in the case crime no. 496 of 2005;

(v) To direct CBI enquiry in respect of the incident dated 28.5.2009.

3. We have heard Sri Prasant Bhushan the counsel for the petitioners; Sri Shail Kumar Dwivedi, Additional Advocate General, Sri D.R. Chaudhari, Government Advocate, Sri R.N. Singh, Sri Satish Trivedi and Sri C L Pandey Senior Advocates, Sri Anurag Khanna, Sri Manoj Kumar and Sri G.S. Hajela for the respondents.

#### First Relief

4. The first relief claimed by the petitioners is in the nature of public interest litigation. This jurisdiction is with another Bench. In view of the same, we do not consider this prayer of the petitioners. The petitioners may, if they are so advised, file public interest litigation.

#### Second Relief

5. The second relief is in respect of issuing correct character and attempt certificates of petitioner no.1. According to the petitioners, there are the following mistakes:

? In the attempt certificate, the name of the professional examination is mentioned but the month and the year is not mentioned;

? In the character certificate, it is wrongly mentioned that she was a student of the college upto Jan, 2003. It should be March, 2002.

6. This relief is of civil nature and should be claimed by a separate writ petition. However, Sri Anurag Khanna appearing on behalf of the College has made statement before the Court that:

? The College will correct these mistakes;

? It will issue another attempt and character certificates subject to return of the original certificates issued to the petitioners.

7. In view of this statement it will not be necessary for the petitioners to file another writ petition. This may be done by the parties.

#### Third Relief

8. It is not disputed that the petitioner had earlier filed a criminal misc. writ petition no. 1947 of 2006 for many reliefs including for granting security to the petitioners. This writ petition was dismissed for default on 17.8.2007.

9. The counsel for the respondents submitted that :

? It is second writ petition for the same relief;

? This relief cannot be considered in this petition.

10. We do not wish to say anything here, except that it is open to the petitioners to file application to recall the order dated 17.8.2007. In any case, the petitioners can always approach the District Magistrate for providing protection.

#### Fourth Relief

11. This relief is for holding CBI inquiry in case crime no. 496 of 2005. The necessary facts are as follows:

(i) There was an incident on 2.5.2004 and 2.6.2004. The petitioners tried to lodge an FIR in respect of these incidents. However, their FIR was not lodged. They filed an application u/s 156 (3) CrPC. It was dismissed on 10.5.2005. The petitioner filed a criminal revision against the same. It was allowed on 2.9.2005 and the matter was sent back to the Magistrate. The Magistrate passed an order on 30.10.2005 for lodging the FIR.

(ii) In pursuance of the aforesaid order, an FIR was lodged on 28.11.2005 and case crime no. 496 of 2005 was registered under sections 147, 323, 504, 506, 342, 352, 354, 427 I.P.C. at Police Station Vijay Nagar, District Ghaziabad.

(iii) In the aforesaid case, the police submitted a final report but the Magistrate did not accept the same and ordered for further investigation on 19.10.2006. The police again submitted a final report on 16.4.2007. This was accepted by the Magistrate on 25.8.2007. The petitioners have filed criminal revision no. 544 of 2007 against the same. It is pending before the Sessions Judge, Ghaziabad.

12. The counsel for the petitioners submitted that the order dated 25.8.2007 is illegal for the following reasons:

? There is no discrepancy in the medical report and the Magistrate has wrongly mentioned that there is discrepancy;

? The Magistrate has applied the principles of regular trial in deciding the application. In fact he was, inter alia, required to see whether the matter should be further investigated by the police or not. He was not holding trial of the case.

13. It is not necessary for us to go into the merit of the order. The criminal revision is pending before the Sessions Judge, Ghaziabad. It is open to the petitioners to point out the mistakes to the revisional court. The revision may be decided expeditiously.

14. In our opinion the question of referring the case to CBI or another independent agency does not arise at this stage as the question whether the case should be further investigated by the police or not is still subjudice in the revision before the Sessions Judge Ghaziabad. In case, no further investigation is ordered and the final report remains intact then a complaint can be filed by the petitioners.

#### Fifth Relief

15. This relief relates to the incident dated 28.5.2009 when the petitioners had gone to serve dasti summons, issued by the Supreme Court. They want CBI inquiry, should be ordered for this incident.

16. In this case, FIR has yet not been registered. There is no question of

considering any prayer for CBI inquiry at this stage.

17. According to the petitioners, they tried to lodge the FIR but it was not lodged however they have sent a letter to SSP, Ghaziabad yet no action has been taken. In these circumstances, the petitioners may file an application u/s 156 (3) CrPC. In case any such application is filed, the Magistrate may pass appropriate order thereon.

18. The petitioners claim that Ghaziabad police is biased against them. It is for this reason that they want CBI inquiry. We do not wish to say anything in this regard. In case any police investigation is ordered, it is open to the petitioners to take appropriate proceeding.

#### Conclusion

With the aforesaid observations, the writ petition is dismissed.