

**IN THE HIGH COURT OF MADHYA PRADESH AT
INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

MISC. CRIMINAL CASE No. 47935 of 2022

BETWEEN:-

DR. PAWAN KUMAR S/O LATE SHRI MAHAVEER PRASAD, AGED ABOUT 63 YEARS, OCCUPATION: RETIRED DIRECTOR NARMADA CONTROL AUTHORITY R/O B.B. 97 SCHEME NO. 74 SECTOR C INDORE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI MANU MAHESHWARI, ADVOCATE)

AND

M.K. SINHA S/O LATE SHRI M.P. SINGH, AGED ABOUT 56 YEARS, OCCUPATION: FORMER POSTING DEPUTATION EXECUTIVE MEMBE
1. NARMADA CONTROL AUTHORITY R/O NARMADA SADAN SCHEMEM NO. 74 SECTOR B P.S. VIJAY NAGAR INDORE (MADHYA PRADESH)

HEMANT PANDEY S/O JANARDAN PRASAD PANDEY, AGED ABOUT 51 YEARS, OCCUPATION: POST EXECUTIVE ENGINEER, NARMADA
2. CONTROL AUTHORITY NARMADA SADAN, SCHEME NO. 74, SECTOR B, VIJAY NAGAR, INDORE (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENT NO.2 BY SHRI TOUSIF WARSI, ADVOCATE)

MISC. CRIMINAL CASE No. 51205 of 2022

BETWEEN:-

DR. M.K. SINHA S/O SHRI M.P. SINHA OCCUPATION: CHIEF ENGINEER, CENTRAL WATER COMMISSIONR (MINISTRY OF WATER RESOURCES, GOVT. OF INDIA) EX EXECUTIVE MEMBER NARMADA CONTROL

**AUTHORITY, DEPARTMENT OF WATER RESOURCES RD AND GR
SECTOR B SCHEME NO. 74 VIJAY NAGAR, INDORE AND PRESENTLY
CHAIRMAN GODAVAIR RIVER MANAGEMENT BOARD, DEPARTMENT
OF WATER RESOUR R/O 5TH FLOOR JALSAUDHA ERRUM MANZIL
(TELANGANA)**

.....APPLICANT

**(BY MS. SHOBHA MENON, SENIOR ADVOCATE ASSISTED BY SHRI TOUSIF
WARSI, ADVOCATE)**

AND

**1. DR. PAWAN KUMAR S/O LATE SHRI MAHABIR PRASAD R/O E-111
MASJID MOTH GREATER KAILASH PART 3 NEW DELHI (DELHI)**

**HEMANT PANDEY S/O JANARDAN PANDEY, AGED ABOUT 49 YEARS,
2. OCCUPATION: SERVICE SCHEME NO 74, SECTOR B, VIJAY NAGAR,
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI MANU MAHESHWARI, ADVOCATE)

MISC. CRIMINAL CASE No. 6699 of 2023

BETWEEN:-

**HEMANT PANDEY S/O JANARDAN PANDEY, AGED ABOUT 49 YEARS,
OCCUPATION: SERVICE R/O SCHEME NO. 74 SECTOR B VIJAY NAGAR
INDORE (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI TOUSIF WARSI, ADVOCATE)

AND

**DR. PAWAN KUMAR S/O LATE SHRI MAHABIR PRASAD R/O E-111
MASJID MOTH GREATER KAILASH PART 3 NEW DELHI (DELHI)**

.....RESPONDENTS

(BY SHRI MANU MAHESHWARI, ADVOCATE)

Reserved on : 8th August, 2023

Pronounced on : 24th August, 2023

These applications having been heard and reserved for order

coming on for pronouncement this day, the court pronounced the following:

O R D E R

Regard being had to the similitude in the controversy involved in the present cases, with the joint request of the parties, these M.Cr.Cs. are finally heard and being decided by this common order.

Complainant: DR. PAWAN KUMAR

Accused No.1 : DR. M.K. SINHA

Accused No.2 : HEMANT PANDEY

CAT : the Central Administrative Tribunal

NCA : the Narmada Control Authority

I.P.C. : Indian Penal Code

Cr.P.C. : the Code of Criminal Procedure

Hereinafter above shall be referred to by their name and abbreviations.

2(i) Dr. M.K. Sinha and Hemant Pandey have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) challenging the order dated 26.07.2022 passed by the Additional Sessions Judge, whereby Criminal Revision No.131/2021 has been dismissed and the order dated 17.03.2021 passed by the Judicial Magistrate First Class has been confirmed, wherein cognizance under section 499/500 I.P.C. on a private complaint filed by Dr. Pawan Kumar has been taken.

(ii) Dr Pawan Kumar has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) challenging the order dated 26.07.2022 passed by the Additional Sessions Judge, whereby Criminal Revision No.131/2021 has been dismissed and the

order dated 17.03.2021 passed by the Judicial Magistrate First Class has been confirmed, wherein cognizance under Section 496 of the I.P.C. has not been taken against Dr. M.K. Sinha and Hemant Pandey .

3. Dr Pawan Kumar was appointed on 19.11.1990 in the grade of Director in the Narmada Control Authority (NCA). A vacancy of Member, (E&R) arose in Narmada Control Authority for which the person having three years' service in the grade of Director was eligible. Dr. Pawan Kumar was an aspirant for the said post, but he was not selected and Mr. Afroz Ahmed was selected. He approached the Central Administrative Tribunal, Jabalpur under Section 19 of the Administrative Tribunal Act, 1985 vide O.A. No.163/2017 challenging the appointment of Mr. Afroz Ahmed, Member, (E&R) and his non-selection. The learned CAT dismissed OA as being not maintainable with a cost of Rs.10,000/- for concealment of material fact from the Tribunal about the dismissal of two earlier OAs filed for similar relief. Being aggrieved by the aforesaid order, Dr Pawan Kumar approached the High Court vide M.P. No.1646 of 2017 which was dismissed with a cost of Rs.50,000/-. Thereafter, he approached the Apex Court, where the SLP was dismissed but the cost was reduced to Rs.25,000/-.

4. The Chairman of the NCA issued a show-cause notice to Dr. Pawan Kumar and he submitted a representation, thereafter, vide order dated 04.12.2017, Shri S.K. Haldar, Chief Engineer, Inquiry Officer was appointed. Dr. Pawan Kumar again approached the CAT: Jabalpur by way of O.A. No.3335/2019 challenging the charge-sheet dated 24.08.2017 and 04.12.2017, in which Union of India through the Secretary of Ministry of Water Resources was impleaded as respondent

No.1, NCA through its Chairman was pleaded as respondent No.2 and S.K. Haldar, Chief Engineer, Central Water Commission was impleaded as respondent No.3. During pendency of O.A. No.3335/2019, the respondent / complainant retired and the said OA was transferred to Principal Bench, Delhi. In this OA, the NCA filed the reply through OIC Shri Hemant Pandey. Vide order dated 28.11.2019, the Tribunal dismissed the OA as no merit was found in it. Dr. Pawan Kumar did not challenge the dismissal of OA by way of the Writ Petition. Therefore, it is clear from the aforesaid that the complainant lost before the Tribunal, High Court and Apex Court in respect of claim to the post of Member, (E&R).

5. Dr Pawan Kumar approached the Judicial Magistrate First Class, Indore by way of a complaint under Section 200 of the Cr.P.C. for initiation of criminal proceedings under Section 469, 499, 500 and 120-B of the IPC against Dr. M.K. Sinha and Hemant Pandey, Executive Engineer, CVC. According to the complainant, Dr. Sinha and others created a forged document i.e. charge-sheet in order to damage his case before the CAT as well as to defame him in public.

6. In O.A. No.1059/2017, a reply was filed by the NCA through Hemant Pandey in which in paragraph – 4, it was stated that the Central Vigilance Commission vide office memorandum dated 09.01.2018 called an explanation and directed initiation of major penalty proceeding against Dr. Pawan Kumar, Director, Environment. According to the complainant, in paragraphs – 5, 6 and 17, of the reply baseless allegations were levelled against him to damage his image and were defamatory in nature. In support of the complaint, respondent No.1

recorded his statement as well as statements of Heeralal Patidar & Ravi Kumar Poddar, Journalists.

7. Vide order dated 27.09.2019, learned Judicial Magistrate First Class rejected the complaint case filed by Dr. Pawan Kumar as no offence under Sections 469, 499, 500 and 120-B r/w 34 of the IPC is made out against Dr M.K. Sinha and Hemant Pandey. Thereafter, Dr Pawan Kumar approached the Sessions Court by way of Criminal Revision No.611/2019, whereby the complaint case was remitted back to the learned Magistrate for deciding afresh. Vide order dated 17.03.2021, the learned Magistrate took cognizance under Sections 499, 500 and 120-B of the IPC and issued summon for appearance only on the ground that Dr. M.K. Sinha was posted as Executive Member of CVC and Hemant Pandey was posted as Junior Engineer who filed a reply on 23.01.2018 before the Tribunal in order to damage the image of the complainant. However, the learned Magistrate did not find that an offence under section 469 I.P.C. was committed by both the accused and discharged them.

8. Being aggrieved by the aforesaid order, Dr. M.K. Sinha filed Cr.R. No.131/2021, Hemant Pandey filed Cr.R. No.134/2021 and Dr Pawan Kumar filed Cr.R. No.143/2021. All three revisions were heard and dismissed vide common order dated 26.07.2022 by learned Additional Sessions Judge. The learned Sessions Judge has found no material for prosecution under Section 469 of the IPC as Dr. M.K. Sinha did not execute the said document in the capacity of Chairman, NCA.

Being aggrieved by the aforesaid order, Dr. M.K. Sinha has filed M.Cr.C. No.51205 of 2022, Shri Hemant Pandey has filed M.Cr.C.

No.6699 of 2023 and Dr Pawan Kumar has filed M.Cr.C. No.47935 of 2022.

9. Ms. Shobha Menon, learned Senior Counsel appearing on behalf of Dr.M.K.Sinha submitted that the applicant is Central Government Officer belonging to organized group A service and Mr. Pandey is also a Central Government Employee, therefore, without previous sanction under Section 197 of the Cr.P.C., they could not have been prosecuted in this case by taking cognizance. It is further submitted that vide order dated 24.01.2017, the President of India pleased to appoint Dr. M.K. Sinha as Executive Member of NCA on deputation, therefore, he was a public servant within the meaning of Section 21 of the IPC and no cognizance could have been taken. It is further submitted that CVC advised for initiation of penalty proceeding against Dr. Pawan Kumar in the year 2014 before joining of Dr. M.K. Sinha in the NCA and accordingly, the memorandum of charge-sheet was served upon him on 24.08.2017 with due approval of Chairman / Disciplinary Authority. Dr Pawan Kumar challenged the same before the Tribunal by way of O.A. No.1059/2017 and learned CAT declined to interfere with the charge-sheet. After 1 ½ years, as a counterblast, this complaint has been filed to take revenge. It is further submitted by the learned Senior Counsel that no offence is said to have been committed under Sections 499 & 500 of the IPC by Dr. M.K. Sinha as he was not party or Officer Incharge in the OA as well as he did not file any reply. So far as Mr. Hemant Pandey is concerned, Mr. Warsi learned counsel submitted that he filled the reply on behalf of the NCA before the Tribunal and he cannot be prosecuted as he never created any forged document. It is further submitted that all

these grounds could have been raised before the Tribunal in the OA, where these so-called forged documents were there. The Tribunal was competent enough to initiate proceedings under Section 340 of the Cr.P.C. if any fraud was committed or a wrong affidavit was filed. After the dismissal of OA, the complaint case is nothing but a misuse of the process of law, hence, the same is liable to be set aside.

10. Shri Manu Maheshwari, learned counsel appearing for Dr Pawan Kumar contended that the learned Judicial Magistrate First Class and Revisional Court both have rightly held that it is a matter of evidence and trial and at this state, the accused cannot be discharged in this case. It is also a matter of evidence that the provision of Section 197 of the Cr.P.C. attracts or not. This Court under Section 482 of the Cr.P.C. cannot conduct a mini trial to give clean chit to Dr. M.K. Sinha and Hemant Pandey when the allegations made in the complaint and supported by evidence, *prima facie* constitute an offence punishable under Sections 499 & 500 of the IPC. It is further submitted that Dr. M.K. Sinha was not a public servant as CWC is not a Central Government Organization. The persons serving on deputation to such entity even if Central Government Servant ordinarily are not covered under Section 197 of the Cr.P.C. The employee deputed to a body corporate having an independent status drawing a salary from its fund not from the Central Government Fund removal without prior consent from the Central or State Government cannot claim the protection under Section 197 of the Cr.P.C. as they do not fall under the definition of a public servant as per Section 12 of the IPC. It is further submitted that for taking cognizance only, the allegations in the complaints are to be

seen and if there is evidence to support, then it is a matter of trial. Hence, no interference is called for.

11. Shri Maheshwari learned counsel submitted that Dr Pawan Kumar filed a petition under Section 482 of the Cr.P.C. i.e. M.Cr.C. No.47935 of 2022 challenging the impugned orders, by which the cognizance has not been taken under Section 469 of the IPC. The learned Courts have travelled beyond its jurisdiction while giving clean chit to the accused under Section 469 of the IPC when there are specific allegations that the documents were forged in order to defame the applicant or to damage him. As of today, there is an allegation that the document relied on in the return filed before the Tribunal are false documents and Dr Pawan Kumar would establish these charges by leading evidence. Learned counsel has placed reliance upon judgments passed by the Apex Court in the cases of *Sheila Sebastian v/s R. Jawaharaj & Another* reported in *AIR 2018 SC 2434* and *Mohammad Ibrahim v/s The State of Bihar* reported in *(2009) 8 SCC 751*, in which the Apex Court has held that a person is said to have made a false document if he made or executing a document claiming to be someone else or authorized by someone else. Hence, Dr. M.K. Sinha and Hemant Pandey are liable to be trialed under Section 469 also along with 499 & 500 of the IPC. It is further submitted by the learned counsel that all the proposed charges are interlinked and acquittal or discharge from one charge will prejudice the trial for the remaining two sections. Unless it is held that this document is forged, it cannot be held that it was created in order to defame or damage them for punishment under Sections 499 & 500 of the IPC. Hence, M.Cr.Cs. filed by Dr. M.K. Sinha and Hemant

Pandey are liable to be dismissed and M.Cr.C. filed by Pawan Kumar be allowed.

Appreciations & Conclusion

12. Dr Pawan Kumar was an aspirant rather desperate to get the post of Member (E&R) in NCA. He participated in the selection process, but Mr. Afroz Ahmed was selected as Member, (E & R). Dr Pawan Kumar challenged his non-selection and selection of Mr. Afroz Ahmed by way of **O.A. No.1013/2013** which was dismissed by Tribunal vide order dated 05.05.2015. Thereafter, he filed a review application i.e. **R.P. 14/2015** which was also dismissed vide order dated 09.07.2015 against which, he preferred **W.P. No.17948 of 2015** before Principal Seat at Jabalpur. Thereafter, he again approached the Tribunal by way of **O.A. No.350/2015** on the same issue challenging the appointment of Mr. Afroz Ahmed, which was dismissed by the Tribunal on 20.08.2015. The complainant challenged the said order by way of **W.P. No.2992 of 2016** before this Bench. Both the writ petitions are pending before this Court. For the third time he approached the Tribunal by way of **O.A. No.163/2017** challenging the appointment of respondent Mr. Afroz Ahmed. He suppressed the filing and dismissal of the earlier two OAs, therefore, the learned Tribunal vide order dated 01.12.2017 dismissed the OA with a cost of Rs.10,000/-. Dr Pawan Kumar approached this Court by way of **M.P. No.1647 of 2017** challenging the order passed by the Tribunal. This Court dismissed the M.P. vide order dated 20.03.2018 with a cost of 50,000/-, however, in **SLP (C) 17560/2018** filed by Dr Pawan Kumar has been dismissed by reducing the cost from Rs.50,000/- to Rs.25,000/-. Therefore, the complainant was so much desperate to

become a Member, (E & R) therefore repeatedly approached the Tribunal and High Court by filing three consecutive OAs and got dismissed all three with cost. He has wasted the valuable time of the Tribunal, Court etc. just to get the post of Member, (E & R).

13. In the year 2013, a decision had been taken to initiate disciplinary proceedings against Dr Pawan Kumar. The matter was referred to the Central Vigilance Commission also. Vide letter dated 11.04.2014, the CVC advised the Narmada Control Authority to initiate a disciplinary proceeding for a major penalty against Dr Pawan Kumar. Thereafter, a reminder came from CVC dated 05.04.2014 to know the further progress in the matter. Thereafter, a charge-sheet dated 24.08.2017 was issued to Dr Pawan Kumar. He approached the Tribunal, Jabalpur by way of **O.A. No.1059/2017** challenging the charge-sheet and appointment of an Inquiry Officer. Initially, the Tribunal stayed the further proceedings of Departmental Enquiry on 05.01.2018 but after the filing of the reply, the stay was vacated on 12.11.2018. The complainant retired from service in the year 2018, therefore, OA was transferred to Principal Bench at Delhi and re-registered as **O.A. No.3335/2019**. In the said OA, a reply was filed by the CVC through OIC Hemant Pandey on 19.01.2018. According to the complainant, in the said reply, certain allegations were made against him in paragraphs – 4, 5, 6 & 17, which are defamatory in nature. The said paragraphs are reproduced below:-

“Para No.4. the Central Vigilance Commission vide office memorandum number 010/IRR/019/367650 dated 09.01.2018 has called for explanation of non-compliance by the commissions advice and directed initiation of major penalty proceedings against Dr. Pawan Kumar director environment. The

copy of the office memorandum number 010/IRR/019/367650 dated 09.01.2018 is marked as annexure R/3.

Para No.5. The charge sheet is issued by competent authority and the allegation of applicant being indulged in unlawful activities and passing secret information to anti-dam and anti-development organizations are of serious nature and needs to be investigated.

Para No.6. Passed secret information of Narmada Dam Project (Sardar Sarover) to America and illegal activities...

Para No.17. A confidential letter dated 24/10/2013 was received as a complaint that the applicant is suspected of passing secret information of Narmada Dam Projects (Sardar Sarover) to America and illegal activities.....”

14. In the complaint, Dr Pawan Kumar made an allegation that the accused Hemant Pandey in conspiracy with Dr. M.K. Sinha in order to defame him produced a forged document i.e. document dated 02.04.2018 (Annexure-A/14). By letter dated 09.01.2018, the CVC called for an explanation in respect of non-compliance of the Commission's advice and directed initiation of penalty proceeding against Dr Pawan Kumar which was filed before the Tribunal as Annexure-A/3. So far as the contentions in paragraphs – 4, 5, 6 & 17 are concerned, these are the allegations in the charge-sheet and they were simply reproduced in the return, hence, nowhere constitute an offence of defamation. Before the Tribunal, Dr Pawan Kumar did not raise this objection that this letter dated 19.01.2018 is a forged document. Vide order dated 28.11.2019, the Tribunal dismissed the OA and upheld the action of NCA in respect of the initiation of disciplinary proceedings. Dr Pawan Kumar has not challenged the said order of the learned Tribunal before the High Court or the Supreme Court, therefore, the initiation of charge-sheet at the instance of CVC had been upheld by the Tribunal. The said office memorandum, which the complainant is alleging to be

forged is reproduced in paragraph – 14 of the order of the Tribunal and the same is not forged .

15. In support of the complaint, Dr Pawan Kumar examined himself as witness No.1 on 12.06.2019, he deposes that Dr. M.K. Sinha in conspiracy with another unknown accused prepared a forged document dated 23.07.2017 knowingly that no authority issued the said document. He further states that Dr. M.K. Sinha issued that letter on behalf of the Chairman, whereas Chairman never authorized him, therefore, the said letter is defamatory in nature. He further deposes that the document dated 23.07.2017 is a charge-sheet in which various false allegations are there and they were read before the Tribunal and the Tribunal stayed the Departmental Enquiry. The statement was made on 12.06.2019, whereas the Tribunal had already vacated the stay order on 12.11.2018. he made in correct statement before the Magistrate which is perjury on his part. Thereafter, the Tribunal dismissed the OA on 28.11.2019, therefore, it cannot be said that the allegations in the charge sheet are made in order to defame the complainant. Subsequent development was not brought before the Magistrate by Dr Pawan Kumar and still he pursued the complaint, however, vide order dated 07.09.2019, the complaint was dismissed by the Magistrate which he challenged by way of revision and got the matter remanded despite knowing that the OA has already been dismissed. After remand, the learned Magistrate as well as Sessions Court should have to consider that O.A. No.1059/2017 challenging the charge-sheet had already been dismissed. If any forged documents were filed before the Tribunal, the Tribunal itself was competent to initiate the action under Section 340 of

the Cr.P.C. and no separate proceedings are liable to be drawn.

16. The High Court under Section 482 of Cr.P.C. or 227 of the Constitution of India can quash the proceedings when the complainant has filed a groundless complaint and Magistrate took cognizance of the said complaint. The Apex Court in the case of *Pepsi Foods Ltd. And others v/s Special Judicial Magistrate & Others* reported in (1998) 5 SCC 749. In the case of *Haji Iqbal v. State of U.P., 2023 SCC OnLine SC 948* the Apex Court has observed the scope of interference by the High Court in frivolous and vexatious FIR. The relevant portion is reproduced below:-

“14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a

period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

17. As per Section 500 of IPC whosoever defames another shall be punished with simple imprisonment for a term which may extend to 2 years or a fine or both. Defamation is defined in Section 499 of IPC according to this whosoever by word either spoken or intending to publish any imputation concerning any person intending to harm or having reason to believe that such reasons to harm the reputation of such person are liable to be punished under Section 500 of IPC. Filing the reply or return in a service matter by the OIC in which contents of the charge-sheet were reproduced cannot said to be a case of defamation of the applicant or petitioner in the said case. The respondent / non-applicant / the defendant is always permitted to take all plausible defence in the judicial proceedings. If the OIC or the head of the department are prosecuted like this, no return / reply would be filed in any matter before the Court by the Government Department.

18. Dr. Pawan Kumar even did stop here in harassing Dr. M.K. Sinha. He filed an application for initiation of proceeding under Section 82 of the Cr.P.C. for declaring him an absconder who is a Class – I Officer. Dr. M.K. Sinha was being represented through the counsel. Thrice Dr. Pawan Kumar approached the Tribunal by way of OA in order to get the appointment on the post of Member, E & R. Fourth time he approached the Tribunal to challenge the charge-sheet. Twice he approached the High Court by way of writ petitions, thereafter, now he approached the Magistrate by way of complaint, thereafter revision and

petition under Section 482 of the Cr.P.C. before this Court. Dr Pawan Kumar has wasted enough time of all the courts, hence he should be settled with a heavy cost of Rs. 1,00,000/-.

19. So far as the action to challenge the charge-sheet is concerned, that could be justified, but once Dr Pawan Kumar lost the first OA challenging appointment of Mr. Afroz Ahmed and thereafter he preferred a writ petition before the Principal Seat, then the subsequent OAs. are nothing but wastage of time. The complainant might have enough time and money to waste but he cannot be permitted to waste the valuable time of the Court / CAT where important matters of needy persons are pending for years together awaiting adjudication.

20. The learned Magistrate and Additional Session Judge have rightly found that offence under Section 469 of the IPC is not made out as Dr. M.K. Sinha never created such a document in order to defame the complainant. The complaint proceedings are nothing but the revenge attitude of the complainant as he could not secure the post of Member (E&R) in NCA and facing the charge-sheet, therefore, in order to harass Dr. M.K. Sinha who was not holding the post of Chairman has been dragged into this litigation. So far as Hemant Pandey is concerned, he was only an OIC for filing the reply. The allegation levelled in the written statement, return, reply etc. cannot be termed as defamatory and is not within the purview of the 499 of the IPC otherwise no officer will become the OIC to file a reply to defend the Government.

21. In view of the above, M.Cr.C. Nos.51205 of 2022 & 6699 of 2023 stand allowed. The impugned order dated 26.07.2022 by the Additional Sessions Judge and order dated 17.03.2021 passed by the

Judicial Magistrate First Class are hereby quashed. M.Cr.C. No.47935 of 2022 stands dismissed. The proceedings of the pending complaint case against Dr. M.K. Sinha and Hemant Pandey are hereby quashed. Since Dr Pawan Kumar is retired now, hence, the cost is not being imposed on him.

Let a copy of this order be kept in the connected M.Cr.Cs. also.

(VIVEK RUSIA)
J U D G E

Ravi