

**THE HIGH COURT OF MADHYA PRADESH****W.P. No. 20419/2013*****[Dr. Sanjay Maheshwari vs. State of M.P. and others)*****Jabalpur, Dated: 20-09-2021**

Smt. Janhavi Pandit, Advocate for the petitioner.

Shri Bramhadatt Singh, Government Advocate for the respondents-  
State.

This writ petition has been registered as Public Interest Litigation on the basis of a letter dated 18.11.2013 sent by Dr. Sanjay Maheshwari, Head of M.P. Birla Hospital & Priyamvada Birla Cancer Research Institute, Satna (M.P.), addressed to the Chief Justice of this Court.

2. In the letter, the petitioner has contended that he is a Surgeon by profession for past 26 years and attached to M.P. Birla Hospital, Satna for last 21 years. In the midnight of 11.11.2013, an accident patient arrived in Emergency in their hospital. Out of five people, one of the victims died on the spot of the accident and the person driving the car had sustained serious injuries to his face, head, chest, fracture ribs, ruptured lung, multiple facial fractures, and skull base fracture injury etc. It is contended that even after their best efforts to save him, he succumbed to the injuries in 3.5 hours. Whereupon, the relatives of the deceased started agitating and in no time a large crowd gathered and started all kinds of violence against the staff in hospital and in residential campus as well. The petitioner and other paramedical staff were beaten, abused and threatened not only in their working place but also in their residential campuses and

in some cases, in front of their family members too. Apart from this, the family members of the deceased patient also pressurised the police, as a result of which the police have lodged an FIR against the petitioner and other staff members of the hospital for an offence punishable under Section 304 of the IPC. Even though the hospital management lodged cross FIR and the petitioner offered to provide all the necessary evidences supporting their case such as citations, police diary, postmortem report, video footage of the entire incident and photos of the act but the petitioner failed to get justice. Not only the petitioner and other staff members of the hospital were mercilessly beaten but they had to remain confined in jail for quite some time.

3. The State has filed reply to the writ petition, *inter-alia* contending that on 12.11.2013 at 9 a.m., a written complaint was received from one Shri Subhash Sharma against the petitioner alleging that an accident took place wherein his relative, namely, Abhishek Sharma alias Anshu, had sustained injuries. He was admitted to Birla Hospital being referred from District Hospital, Satna. The petitioner had immediately examined him and assured that his condition is within control and suggested for Oxygen Cylinder to be provided to the patient but for about two hours, no Oxygen Cylinder was made available to the patient. After much delay, one Oxygen Cylinder was provided to the deceased but his condition still did not improve. When the victim was being shifted from Birla Hospital, it was discovered that Oxygen Cylinder was empty. The relatives of the deceased objected to such conduct of the hospital and this led to a dispute between the parties. It is contended that the statements of the witnesses, namely,

Shri Jitendra Sharma, Shri Sudhir Sharma and Shri Prateek Dwivedi were recorded. The petitioner had applied for bail before the learned Fourth Additional Sessions Judge, Satna, which was rejected by order dated 16.11.2013 but finally, the bail was granted to him. Learned Government Advocate further contended that a cross-FIR (Annexure R-1/2) for the offence punishable under Sections 147, 149, 323, 294, 506, 427, 452 of IPC and under Section 3/4 of the M.P. Chikitsa Evam Chikitsa Seva Se Sambandh Vyaktiyon Ki Suraksha Adhiniyam, 2008 (hereinafter referred to as “2008 Adhiniyam”) was also lodged at the instance of one Vinod Singh Baghel, Administrator of M.P. Birla Hospital, Satna against the relatives of the deceased, who had assaulted the doctors and other paramedical staff of M.P. Birla Hospital, Satna. This is an intra party dispute leading to lodgement of cross FIRs and therefore the present petition cannot be entertained as a public interest litigation.

4. Even though the matter has been registered as a public interest litigation on the letter of the petitioner, who himself was allegedly beaten and was eventually lodged in jail and later, granted bail, thus showing his personal involvement, but, this Court cannot lose sight of the fact that misbehaviour, abuse, manhandling and many times beating of the doctors and other paramedical staff in the hospitals by the attendants of the patients has these days rather become a very regular feature. This tendency was witnessed even during the second wave of Covid-19. During that period, the Government had to amend the Epidemic Diseases Act, 1897 by way of Epidemic Diseases (Amendment) Act, 2020 (No.34 of 2020) published in the Gazette of India (Extraordinary) Part-II dated

29.09.2020, wherein, the “act of violence”, was defined comprehensively as under:-

“THE EPIDEMIC DISEASES (AMENDMENT) ACT, 2020

No.34 of 2020

[28<sup>th</sup> September, 2020]

3. After section 1 of the principal Act, the following section shall be inserted, namely:-

'1A. In this Act, unless the context otherwise requires, -

(a) “act of violence” includes any of the following acts committed by any person against a healthcare service personnel serving during an epidemic, which causes or may cause-

(i) harassment impacting the living or working conditions of such healthcare service personnel and preventing him from discharging his duties;

(ii) harm, injury, hurt, intimidation or danger to the life of such healthcare service personnel, either within the premises of a clinical establishment or otherwise;

(iii) obstruction or hindrance to such healthcare service personnel in the discharge of his duties, either within the premises of a clinical establishment or otherwise; or

(iv) loss or damage to any property or documents in the custody of, or in relation to, such healthcare service personnel;

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5. On the other hand, Section 3 of the 2008 Adhinyam *inter alia* provides that “Any act of assault, criminal force, intimidation and threat to medical and health service person during or incidental to discharge of his lawful duties pertinent to medical and health care delivery within medical and service institutions or in a mobile clinic or in an ambulance shall be prohibited”. However, this Court can take judicial cognizance of the fact that despite the enactment of the 2008 Adhinyam, referred to above, which under Section 4 thereof has made such an offence punishable with imprisonment of either description for term which may extend to three months or with fine, which may extend to ten thousand rupees or both and under Section 5, has made the offence a cognizable and non-bailable offence, the 2008 Adhinyam, as aforesaid, has failed to

achieve the intended object. This Court therefore directs the respondents-State Government to revisit the provisions of the 2008 Adhiniyam by inviting suggestions from all the stakeholders as to how it can be made more effective so as to provide deterrence to the perpetrators of such crime with the doctors and paramedical staff. The State Government, in doing so, may consider incorporating some parts of the amendments, introduced in the Epidemic Diseases Act, 1897, in the 2008 Adhiniyam to provide more teeth to this enactment and make it really effective with the purpose of containing recurrence of such unsavoury incidents with the doctors and paramedical staff whose services to the society deserve special recognition.

6. With the aforesaid directions, the present writ petition stands **disposed of.**

**(MOHAMMAD RAFIQ)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

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