

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. Nos. 7834-35/2006, 8473/2006, 8474/2006 &7836-37/2006

Reserved on: January 28, 2009

Date of decision: March 20, 2009

CRL.M.C. Nos. 7834-35/2006

M.K. SHARMA & ANR. Petitioners
Through:Mr. Rajat Aneja, Advocate

versus

SANGEETA GUPTA & ORS. Respondents
Through:Mr. Rajeev Goyal, Advocate

WITH

CRL.M.C. No.8473/2006 & Crl. M.A. No.14324/2006

NAVNEET KAUR Petitioner
Through:Ms. Asha Jain Madan, Advocate

versus

SANGEETA GUPTA Respondent
Through: Mr. Rajeev Goyal, Advocate

WITH

CRL.M.C. No.8474/2006 & Crl.M.A. No.14326/2006

NAVNEET KAUR Petitioner
Through:Ms. Asha Jain Madan, Advocate

versus

RACHITA SHARMA Respondent
Through: Mr. Rajeev Goyal, Advocate

AND

CRL.M.C. Nos. 7836-37/2006 & Crl. M.A. 13386/2006

M.K. SHARMA & ANR. Petitioners
Through: Mr. Rajat Aneja, Advocate

versus

RACHITA SHARMA & ORS. Respondents
Through: Mr. Rajeev Goyal, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
20.03.2009

1. These four petitions under Section 482 of the Code of Criminal Procedure (Cr.PC) arise out of same set of facts and are accordingly being disposed of by this common judgment. The prayer in Crl M.C. Nos.7834-35/2006 and Crl M.C. No. 8473/2006 is for the quashing of Criminal Complaint No.946/1/06 titled “*Smt. Sangeeta Gupta v. Ms. Navneet Kaur & Ors.*” under Sections 500 and 501 read with Sections 34/120-B IPC pending in the Court of Mr. Ravinder Singh, learned Metropolitan Magistrate (MM), Patiala House Courts, New Delhi insofar as the petitioners are concerned. The prayer in Crl.M.C. Nos. 7836-37/2006 and 8474/2006 is for the quashing of Criminal Complaint No.281/1/06 titled “*Smt. Rachita Sharma v. Ms. Navneet Kaur & Ors.*” under Sections 500 and 501 read with Sections 34/120-B IPC pending in the Court of Mr. Ravinder Singh, learned Metropolitan Magistrate (MM), Patiala House, New Delhi

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insofar as the petitioners are concerned.

2. The background to the filing of the above complaints is that the parties, i.e., the complainants Sangeeta Gupta and Rachita Sharma and the accused M.K. Sharma, Anupama Sharma and Navneet Kaur (Petitioners herein) were at the relevant time, employees of the Electronics and Computer Software, Export Promotion Council (ESC) an autonomous organization under the Department of Information Technology, Ministry of Communications and Information Technology, Government of India. The complainants Sangeeta Gupta and Rachita Sharma joined ESC initially on daily wage basis and were thereafter regularised on the post of Junior Technical Assistant in September, 1994. Each of them was subsequently promoted to the post of Assistant in January, 2003. M.K. Sharma, petitioner No.1, in Crl. M.C. No.7834-35 and 7836-37/2006 was at the relevant time working as Deputy Director and Head of Finance and Administration ESC till 30th December, 1997 when he was reverted to the parent department, i.e., Department of Information Technology as Deputy Finance Advisor. He thereafter took voluntary retirement in January, 2001 and with effect from 30th January, 2001 he joined ESC as Head Finance and Administration the rank of Director. He eventually retired on 31st August, 2006. Petitioner No.2 Anupama Sharma joined ESC in July, 1997 as Senior Clerk and left the services in July, 1998. Navneet Kaur (the petitioner in Crl.M.C. No.8473/06 and 8474/06) was working as Assistant Director in ESC since 1993. She initially joined Crl. MC Nos.7834-35/2006, 8473/2006, 8474/2006 &7836-37/2006

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the said organization as a Consultant.

3. Navneet Kaur filed a complaint of sexual harassment on 3rd September, 2004 alleging that D.K. Sareen and D.P. Gupta who were working as Chief (Marketing and Export Promotion) and Chief (Coordinator) respectively on deputation with ESC had demanded sexual favours from her. When she refused such indecent proposals, both officers started misusing their official positions to create a hostile working environment. This included influencing and delaying the confirmation of the petitioner's appointment in the ESC. She alleged that as a part of the harassment the two officers endorsed an adverse entry of 'average' in her Annual Confidential Rolls (ACR). This ultimately was made the basis for denying promotion to her.

4. According to Navneet Kaur no action was taken by the Chairman ESC on the representation made to him by her on 3rd September, 2004. Consequently, she filed a complaint on 14th September, 2004 before the Secretary, DIT invoking the jurisdiction of the Committee constituted pursuant to the guidelines issued by the Supreme Court of India in *Vishaka v. State of Rajasthan 1997(6) SCC 241*. On this representation the Secretary, DIT directed Ms. Madhu Mahajan, DIT, Government of India to enquire into the matter.

5. Navneet Kaur made a statement on 30th September, 2004 before the Sexual Harassment Complaints Committee ('Complaints Committee')
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to the effect that the above mentioned two officers had become even more vindictive after getting to know of her filing a complaint and they had threatened Navneet Kaur in the office verbally that her services would soon be terminated. Navneet Kaur stated that she had complained to the Chairman of the Complaints Committee about such threats on 1st October, 2004. On that date itself Ms. Madhu Mahajan, Chairperson of the Complaints Committee directed D.K. Sharma not to take any coercive action against Navneet Kaur till the completion of the enquiry. On 21st October, 2004 Navneet Kaur gave a statement to the Complaints Committee. What she stated thereafter before the Complaints Committee will be discussed hereinafter since that has formed the basis for the present criminal complaints by Sangeeta Gupta and Rachita Sharma.

6. On 13th January, 2005, the Complaints Committee was re-constituted with Ms. Aruna Nayar, Director DIT, as a Chairperson and Smt. Renu Budhiraja, Scientist 'F', Smt. Sunita Verma, Scientist 'D' and Shri G. Bhattacharya, Jt. Director, all of them working with the DIT. Navneet Kaur also filed a criminal complaint against the two officers on 18th January, 2005 for the offence of criminal intimidation. FIR No.51/2005 under Section 509 IPC was registered at her instance against the other two officers.

7. It is alleged that since M.K. Sharma, the then Director (Administration and Finance) had confirmed the veracity of the

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complaint by Navneet Kaur to the police as well as the Complaints Committee, the DIT withdrew from M.K. Sharma the charge of Administration and gave it to D.P. Gupta.

8. On 1st February, 2005 the Complaints Committee decided to include a member from the NGO as per the directions of the Supreme Court in *Vishaka v. State of Rajasthan*. Consequently, Dr. Jyotsana Chatterjee, Director, Joint Women's Programme became a member of the Complaints Committee. Navneet Kaur was summoned by the newly constituted Complaints Committee before whom she gave a second statement on 18th February, 2005. The two officers against whom she had made the complaint were summoned by the Complaints Committee by notice dated 11th March, 2005 which was received by the ESC on 16th March, 2005. The employees were summoned for 17th March, 2005.

9. It is alleged that on 16th March, 2005, one day prior to the date on which the two summoned employees were to appear before the Complaints Committee, the said two officers through their counsel and one Santa Sirohi coerced and tutored the lady staff to give statements in their favour before the Complaints Committee. Navneet Kaur brought this fact to the attention of the Complaints Committee.

10. It is stated that the Complaints Committee wrote to the ESC on 10th May, 2005 requesting the ESC to ensure that during the pendency of Crl. MC Nos.7834-35/2006, 8473/2006, 8474/2006 &7836-37/2006 Page 6 of 23

the proceedings before the Complaints Committee the working environment should be congenial. The Complaints Committee was given an assurance in this regard by the ESC by the letter dated 16th March 2005 of its Chairman.

11. Several sittings were held by the Complaints Committee from 11th February, 2005 to 11th July, 2005. The statements of 26 witnesses all of whom were working with the DIT in different capacities were examined. Among these were Sangeeta Gupta and Rachita Sharma. It is stated that two other employees Kanhaiya Prasad and Rajender K. Singh who had been summoned by the Complaints Committee had written a letter to the effect that D.P Gupta and D.K. Sareen had coerced both Kanhaiya Prasad and Rajender K. Singh into signing a statement in the presence of one Anil and sent it to the Complaints Committee. Both the employees informed the Complaints Committee in writing that they were called upon by D.P. Gupta and Anil and forced to sign a statement as prepared by the officer. As a result of this letter, the Complaints Committee called Kanhaiya Prasad and Rajender K. Singh for recording their statements. Nine other employees of the ESC were also examined by the said Committee. Among those deposing before the Committee were M.K. Sharma, Anupama Sharma and four others. The aforementioned persons and Navneet Kaur requested the Complaints Committee to keep the statements made before it confidential.

12. Thereafter, the Complaints Committee arrived at a following conclusion and gave the following directions:-

“4. Conclusion:

Some employees had come forward despite the fear of losing their jobs and indoctrination attempts and indicated that there has been interaction of Ms. Navneet Kaur with Shri D.K. Sareen & Shri D.P. Gupta and that these encounters left her disturbed and to utter remarks as indicated above. Moreover, whatever Ms. Kaur's work performance, constantly picking on her from 1999-2000 onwards, appears to be for other than work related considerations.

In the atmosphere which appears to have prevailed in ESC, any lady who is approached by one of the powerful men, would either leave her job, or succumb to the demands of her seniors or protest like Ms. Navneet Kaur which is very rare. Moreover, a divorced single lady, in the Indian context is likely to be more vulnerable. In such a situation the Committee feels that it would not be surprising that the men concerned tried to make unwelcome advances towards Ms. Navneet Kaur. The factors detailed in the matrix and the preceding paras point to sexual harassment by way of using suggestive language with sexual overtones by Shri D.K. Sareen & Shri D.P. Gupta with Ms. Navneet Kaur and also to their continuously pressurizing her by vitiating the work environment.’

“Recommendations:

1. The committee recommends that in view of the Committee’s conclusion that Sexual Harassment has been proven, action be taken in accordance with the Service Rules of the Council, failing which a wrong message will be communicated that one can get away with sexual harassment.

The action taken may also be apprised to the Committee at the earliest for inclusion in its Annual Report Statement etc.

2. The complainant and others who have given statements in her support before the Committee should in no way be harassed or intimidated and their rights as employees may be safeguarded.”

13. On 4th August, 2005 the Government of India issued an office memorandum to all the concerned departments of Government of India to treat the report of the Committee enquiring into complaints of sexual harassment as a final report in terms of the orders of the Supreme Court in *Medha Kotwal Lele vs. Union of India*. On 21st September, 2005 Navneet Kaur wrote to the Secretary, DIT as well as the Chairman, ESC for immediate action against the delinquent officers.

14. It is stated that faced with the prospect having to proceed against the two officials, the ESC appointed Ms. Dawra, IAS (retired) be assisted by Ms. Madhulika Tripathi for conducting a fresh enquiry against the officers. The aforesaid action of the Committee was
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challenged by Ms. Navneet Kaur by way of Writ Petition No.923/2006. In an order dated 17th November, 2006 in LPA No.1819/2006 the Division Bench of this Court directed the ESC not to give effect to the second report in any manner whatsoever. Alleging that the second enquiry was an illegal and malafide one Navneet Kaur and other employees declined to participate in the said enquiry.

15. It is stated that both D.P. Gupta and D.K. Sareen were peeved by the statements made by Navneet Kaur and other employees before the Complaints Committee. This led to the filing of the two criminal complaints in question. Summons were issued by the learned MM to the petitioners herein pursuant to the said complaints. The present petitioners state that the criminal complaints filed by Rachita Sharma and Sangeeta Gupta were false and malafide. It is submitted that FIR if read as a whole does not make out even a prima facie case of the offence under section 500 and 501 against any of the petitioners.

16. It is submitted by Mr. Rajat Aneja in both sets of petitions that a questionnaire had been devised by the Complaints Committee asking the concerned persons to respond to specific questions in order to throw light on the prevailing working conditions in the ESC and also the treatment meted out to other employees. It is stated that 16 employees of the ESC gave statements before the Complaints

Committee against D.K. Sareen and D.P. Gupta. It is stated that not
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only did Navneet Kaur depose before the Complaints Committee but Kanhaiya Prasad and Rajender K. Singh also gave statements against the top functionaries of the ESC. The Complaints Committee concluded that the allegation of sexual harassment have been proved against D.K. Sareen and D.P. Gupta.

17. It is stated that thereafter a tirade was launched by D.K. Sareen and D.P. Gupta against the employees who had deposed against them during the enquiry. Show cause notices, suspension and termination became the order of the day in the department. According to Navneet Kaur both Sangeeta Gupta and Rachita Sharma were in collusion with D.K. Sareen and D.P. Gupta against the employees who appeared as witnesses against them. Criminal complaints were accordingly lodged by Sangeeta Gupta and Rachita Sharma before the learned MM.

18. It is contended by Mr.Rajat Aneja, learned counsel for the petitioners that when the two complaints are read as a whole not even a prima facie case is made out for proceeding against any of the petitioners here for the offence under Sections 500 and 501 IPC. The proceedings in such cases are conducted in camera and no public participation is permitted. In the circumstances, the question of the offence under Section 500 and 501 IPC being attracted does not arise at all. It is stated that a new Rule 13 C was introduced in the CCS (Conduct) Rules detailing the measures to be put in place for enforcing the law against sexual harassment of working women. Rule
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3 C was introduced in the CCS (Conduct) Rules to give effect to the judgment of the Supreme Court in *Vishaka's* case. It is further mentioned that a complete mechanism has been introduced by the Government of India through the Department of Personnel & Training clarifying that the findings of the Complaints Committee would be binding on the disciplinary authority for the purpose of initiating disciplinary proceedings against the delinquent Government officials.

19. In their respective complaints, the allegations by Sangeeta Gupta and Rachita Sharma were that pursuant to a criminal conspiracy, accused 1 to 7 in the complaint had made defamatory verbal as well as written imputations/statements against both Sangeeta Gupta as well as Rachita Sharma. It is alleged that there was no warrant at for making such imputation and statement which had the effect of destroying the reputation of Sangeeta Gupta. The specific statements stated to have been made before the Complaints Committee which according to the complainant is defamatory read as under:

“(a) Others too have faced problems especially women, e.g., Ms. Sangeeta, Assistant Director who subsequently probably became more amenable and therefore had no further problems. Ms. Seema Rani’s case (DEO) etc. Also I think faced delay in confirmation.

“(b) All the staff including Ms. Nirmal, Anu, Rajinder, Rajni, Seema Rani, meena, and Gurmeet etc. including Sangeeta were promoted. Only I was left out. Even Shri Vikas Gupta as promoted without the required administrative proceedings. I was the only one who was

not promoted in order to harass me, further for forcing me to all in line and fulfill their dirty expectations. Details of the sexual harassments, I have undergone in the hands of Shri Sareen and Shri Gupta are mentioned in my earlier written statement.

(c) Yes, however, I would not like to give names. In the beginning, Shri Gupta was not so much in the picture.....there are other ladies and incidents of complaints against these officers but I would not like to mention specifically.

(d) Apart from me only Ms. Sangeeta was an officer and she would have got the message and succumbed. And regarding other ladies, I would not like to disclose their names. They will stand on their own if they want to stand against the immoral expectations.”

20. The defamatory verbal and written imputations/statement made by

M.K. Sharma are alleged to be as under:-

“(i) “I think Shri Vikas Gupta joined after Ms. Kaur.....but ED asked me to consider the case of Shri Gurmeet Singh, his P.A. and Ms. Sangeeta Gupta, Receptionist also.....Very Good.”

(ii) “I never saw Ms. Kaur in ED room, (except on 2-3 occasions), but whenever she used to come from ED’s room, she appeared disturbed and she used to say that she can not be Sangeeta or Rachita. Ms. Sangeeta is known to have close relations with ED and known for staying late on certain occasions and Ms. Rachita with Shri Gupta. It is learnt that on one occasion, Ms. Sangeeta Gupta had come to the office at around 11 PM in the night when Mr. D.K. Sareen ED was waiting for her in office.”

(iii) “ I tried to pacify her several times. Even I had told Shri Sareen and Shri Gupta both, on different occasions, about the remarks Ms. Kaur used to say that ‘She cannot become Sangeeta and Rachita but it was in vain.....since Shri Gurmeet Singh, Shri Vikas Gupta, Ms. Sangeeta Gupta and Ms. Rachita Sharma have close proximity with ED and AED, other staff live in terror”.

21. The defamatory written imputations attributed to Rajender K. Singh are as under:

“(i) “Mrs. Sangeeta Gupta also a close neighbour of Shri D.K. Sareen at Vasant Kunj.....She has gone abroad from ED along with Senior Officer.”

(ii) “Ms. Rachita Sharma is also very close to Shri D.P. Gupta and has been in his room for most of the time. She is.....very frequently.

(iii) “On other hand most of the staff after completing 14-15 years got only 2 promotions after joining the council. Why this partiality.”

22. And those made by accused No.4 Kanhaiya Prashad read as under:-

“(i) “I Used to often see Ms. Rachita and Mr. Gurmeet in Mr. Sareen’s office. Ms. Rachita used to be crying but after sometime in few months she was friendly with him. Once Ms. Sangeeta and Mr. Sareen came from Moten Meridian very late to office about 9 p.m. This happened in winters about 4-5 years ago. Sangeeta said something about forgetting her belongings in office. They both were in Mr. Sareen’s room for a long time.”.

(ii) “Once I served tea in Mr. Gupta’s room to Mr. Gupta and Rachita. When I went to pick up the cups I saw Mr. Gupta holding Ms. Rachita from behind. This happened about 5years ago. It has come to my knowledge that after that incidence, Mr. Gupta has been trying to get me removed from ESC. I don’t know what reasons have been given in my personal file”.

23. Likewise the imputations stated to have been made by accused No.5, 6 and 7 were also set out in the complaint. Interestingly, these statements were made on various dates between 13th September, 2004 and 6th May, 2005. It is alleged in the complaints that these statements had lowered the reputation and character of both Rachita Sharma and Sangeeta Gupta not only before the Complaints Committee but other employees of the ESC as well. It is alleged that “the aforesaid members further published and circulated the aforesaid defamatory imputations in the form of their report dated 19.07.2005 to the Secretary (DIT), Chairman and Members of the Working Committee of the ESC.” It is alleged that the accused, named in the complaint circulated and showed their statements and, therefore, liable to be prosecuted for the offence under section 500 and 501 IPC read with section 120-B and 34 IPC.

24. Interestingly, the complaint itself was filed only on 10th March, 2006. The pre-summoning evidence of the complainant was recorded by the learned MM. Thereafter the learned MM proceeded to issue

summons to the accused named in the complaint including the petitioners M.K. Sharma, Anupama Sharma and Navneet Kaur for the offence under section 500 and 501 IPC read with section 34 and 120 IPC.

25. It is against the summoning order that the present petitions were filed in which notices were issued by this Court on 30th November, 2006. Thereafter on 18th December, 2006, this Court passed an interim order staying the further proceedings in the criminal complaint. Certain other developments took place after the filing of these petitions. This Court quashed the report of the Complaints Committee which had found both the officers guilty, on technical grounds. The appeal filed against the said order of this Court has been admitted by the Supreme Court by granting leave to appeal.

26. On 1/4th June, 2007 Navneet Kaur was placed under suspension by the ESC and disciplinary proceedings were initiated against her. By an order dated 19th July, 2007 this Court stayed the suspension as well as the disciplinary proceedings against Navneet Kaur.

27. Meanwhile a fresh Complaints Committee was constituted in which Navneet Kaur did not participate. This committee gave a report on 26th July, 2007 holding that Navneet Kaur had failed to prove her complaint. The said report has been challenged by Navneet Kaur by an independent petition.

28. Without serving the copy of the enquiry report on Navneet Kaur or any show cause notice the ESC terminated her services on 12th August, 2008. Navneet Kaur thereafter filed yet another petition challenging the said order. It is stated that as a result of her filing a complaint against D.P. Gupta and D.K. Sareen for sexual harassment, Navneet Kaur has got embroiled in 13 other cases. It is submitted Navneet Kaur had also been transferred/removed from services. Interestingly, it is stated that Navneet Kaur has herself never been given a copy of the report of the Complaints Committee and it is only pursuant to the order of 17th November, 2007 passed by the Division Bench of this Court in LPA No. 1819/1996 that she was given a copy. However, the said report did not contain the copy of the statements made before the Complaints Committee. It appears that in fact the two delinquent officers had access to the records of the Complaints Committee and also obtained copies of not only the report but the depositions as well. Reliance is placed by the petitioner upon the judgment in *Rajendra Kumar Sitaram Pande v. Uttam and Another (1999) 3 SCC 134*.

29. It is added by Mr. Rajat Aneja in the course of the submissions that Navneet Kaur has since been completely exonerated in the disciplinary proceedings against her. It is submitted that as long as the appeal is pending before the Supreme Court it cannot be said that the subsequent report of the Complaints Committee has become final, warranting any separate litigation on that basis. It is pointed out that

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D.P. Gupta himself appeared as CW-2 in the complaint filed by Sangeeta Gupta which showed that they were in collusion. It is submitted that the mere fact of not filing their response to the summons cannot make them liable for defamation under section 500 and 501 IPC. Reliance is placed upon the decision of *Hemraj Poonamchand v. Babulal Bhagirath* AIR 1962 MP 241 (V. 49 C 69). Reliance is also placed on the judgment of *Madhu Sudan Singh v. Union of India & Ors.* 1999 IV AD(Delhi) 42 and *Arvind Kumar v. Sukhbir Sharma* 2000 I AD(Delhi) 720.

30. The stand taken as reply to both the petitions is more like a defence of D.K. Sareen and D.P. Gupta. It questions the jurisdiction of the Complaints Committee and the merits of the complaint filed by Navneet Kaur against D.P. Gupta and D.K. Sareen for sexual harassment. It is stated that by letters dated 5th May and 23rd June, 2005 Navneet Kaur again made various defamatory and verbal imputations against Rachita Sharma and Sangeeta Gupta.

31. There appears to be considerable weight in the submissions made on behalf of the petitioners. The proceedings before the Complaints Committee constituted in terms of the judgment of the Supreme Court in *Vishaka's* case (supra) are expected to be held in camera given the sensitivity of the case in general and the right of privacy and dignity of both the complainant as well as the complained. The allegation of sexual harassment is indeed a serious one which if proved can entail

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the loss of reputation and status for the person found guilty. However, even the knowledge of the pendency of such proceedings and the fact that a certain person is facing such a charge might itself tend to spoil the reputation of such person. Keeping in view this aspect a procedure has been devised, like in the instant case, where the committee constituted will preserve the confidentiality and right to privacy of both sides. These proceedings are usually in camera the same are not made known publicly. These are in the nature of quasi-judicial proceedings before tribunal acting as a fact finding body. If a person has to face the charge of defamation on the basis of what is stated (before the Complaints Committee) then no person would feel free to come forward to depose before such a committee. This would deny a valuable right made available to a victim of sexual harassment at the workplace which has been acknowledged by the Supreme Court in *Vishaka's* case itself.

32. In *Rajendra Kumar Sitaram Pande v. Uttam and Another* (supra), the accused persons made a complaint to the Treasury Officer, Amravati containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer. The learned MM before whom the complaint was filed postponed the issue of process against the accused and directed the Treasury Officer to submit a report under Section 202 CrPC. After receipt of the said report from the Treasury Officer, the MM was of the opinion that sufficient material existed for issuance of process

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and accordingly issued summons against the accused persons under Section 500 read with 34 IPC. The summoning order was challenged in revision before the Sessions Judge who found that the learned MM was not justified in calling for a report from the Treasury Officer on the basis of the facts of the case. However, the learned Sessions Judge on merits also came to the conclusion that the case was covered by Exception 8 to Section 499 and therefore issuance of process was itself “an abuse of process”.

33. The facts in the present case are not very different. The Complaints Committee has been set up pursuant to the judgment in *Vishaka’s* case. Exception 8 to Section 499 IPC itself covers a situation where the statement is made before the authorized person.

The illustration to exception 8 reads as under:-

“Eighth Exception.--Accusation preferred in good faith to authorised person. It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if, 4 in good faith complains of the conduct of Z, and child, to Z's father--A is within this exception.”

34. None of the witnesses who were employees of the ESC can be

said to have made statements with a view to deliberately defame the complainants. The questionnaire was prepared and issued by the Complaints Committee eliciting responses. These were only for ascertaining the veracity of the complaint filed by Navneet Kaur against D.P. Gupta and D.K. Sharma. Interestingly neither of the two persons accused in the complaint before the Complaints Committee have made any grievance that the statements made before the Committee were defamatory to them. Yet, the timing of the filing of the criminal complaint does lend credence to the contention of the petitioners herein that the idea was to punish all those who had deposed against those two officers. It is alleged that Sangeeta Gupta and Rachita Sharma have been used as a conduit for achieving the common object of the accused officers to punish the complainant Navneet Kaur and all others who had spoken up against them in the enquiry. It is not as if any of these persons who are facing criminal proceedings for defamation, at the instance of Sangeeta Sharma and Rachita Sharma, had a choice of not appearing before the Complaints Committee. In such a situation it cannot be said that what they have deposed before the Committee attracts the offence of defamation.

35. The decision of the Madhya Pradesh High Court in ***Hemraj Poonamchand v. Babulal Bhagirath*** (supra) explains that the proviso to Section 132 Evidence Act undoubtedly affords protection to a witness who is compelled to answer but there cannot be such a presumption every time a witness enters the witness box. The CrI. MC Nos.7834-35/2006, 8473/2006, 8474/2006 &7836-37/2006 Page 21 of 23

compulsion has to be “definite and express.” The decisions in *Balraj Khanna v. Moti Ram AIR 1971 SC 1389* and *Sukra Mahto v. Basudeo Kumar Mahto AIR 1971 SC 1567* suggest that the question as to which of the exceptions to Section 499 would apply can be determined only at the trial. Still, these decisions do not deal with a situation where the employees of an organisation are required to depose before a Committee constituted by such organisation to enquire into a complaint of sexual harassment.

36. On a consideration of the submissions made as well as the record, it appears that there is substance in the contention of the petitioners that Sangeeta Gupta and Rachita Sharma are in fact fighting the battles of D.K. Sareen and D.P. Gupta by proxy. The possibility of a person deposing before such a Committee being hauled up on the charge of criminal defamation on, would inevitably have a chilling effect thus deterring an aggrieved person from availing of a remedy provided by the Supreme Court against sexual harassment at the work place. Navneet Kaur has had to face a large number of cases for making bold to come forward to make a complaint against her superiors. If the judgment of the Supreme Court in *Vishaka’s* case has to be effective and meaningful, then courts should normally not interfere with the proceedings before such Committees or entertain criminal complaints on the basis of what is stated before such Committees.

37. Accordingly, this Court has no hesitation in quashing the Criminal

others and Criminal Complaint No.281/1/06 *Rachita Sharma v. Navneet Kaur and others* respectively and all proceedings consequent thereto insofar as the petitioners are concerned. A certified copy of the order passed today be sent to the learned MM, Patiala House Courts, New Delhi concerned. The complaints will continue as far as the remaining accused are concerned. The petitions are accordingly allowed with no orders as to costs.

S. MURALIDHAR, J.

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