

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

Judgment reserved on: August 04, 2010
Judgment delivered on: September 13, 2010

+ **CRIMINAL M.C.NO.1248/2010 & CRL.M.A.NO.5082/2010**

ASHOK CHATURVEDI **....PETITIONER**

Through: Mr. Sudhir Walia, Advocate

Versus

STATE & ANR.

....RESPONDENTS

STATE

....RESPONDENT NO.1.

Through: Mr.R.N. Vats, APP

NISHA PRIYA BHATIA IN PERSON RESPONDENT NO.2.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Ashok Chaturvedi, the petitioner herein, vide this petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India is seeking quashing of the order passed by the learned Additional Sessions Judge on 3rd April 2010 dismissing the Revision Petition filed by the petitioner against the summoning order dated 22nd December 2009 passed by the Metropolitan Magistrate, Dwarka Courts in Complaint Case titled `Nisha Priya Bhatia v. Ashok

Chaturvedi' being CC No.25/2009 under Section 499/500 of the Indian Penal Code (for short 'IPC').

2. Briefly stated, allegations in the petition are that the petitioner joined Indian Police Service (for short 'IPS') in 1970 and was allocated Madhya Pradesh Cadre. On his promotion, he joined the Cabinet Secretariat, Govt. of India in February 1975 and he was then posted as Secretary(R), Cabinet Secretariat, Govt. of India, New Delhi as Chief of the Research and Analysis Wing(R&AW) which post he continued to hold till his retirement on 31st January 2009.

3. That the complainant i.e. respondent No.2 herein joined R&AW, Cabinet Secretariat in the year 1987. She was appointed as Director, Training Institute, Gurgaon in July 2004 where she remained posted till August 2007. Thereafter, she was posted as Director at the Headquarters, New Delhi. While she was posted at the Headquarters, the respondent No.2 made a complaint of sexual harassment against Shri Sunil Uke (Joint Secretary), her immediate senior officer. This complaint was referred to the Complaint Committee of the Department constituted pursuant to the guidelines issued by the Supreme Court in **Vishaka & Others Vs. State of Rajasthan** [1997 (6) SCC 241]. The Complaint Committee enquired into the allegations made by the respondent No.2, although she withdrew her complaint on 24th December 2007.

4. That despite of withdrawal of the complaint, the petitioner asked the Complaint Committee to continue with the inquiry and submit the report in terms of Rule 15 of CCS (CCA) Rules, 1965. The respondent No.2 did not appear before the said committee and informed that she has no faith in the departmental inquiry and that she was satisfied with the Complaint Committee which was constituted by the Central Govt. The Complaint Committee submitted its report on 19th May 2008. In Para 3 of the conclusions, the Committee observed thus:-

“Ms.Bhatia’s threat to take her own life, allegation of threats to her from other quarters and her behaviour on subsequent occasions(Annexure-C) appear to indicate a disturbed state of mind. As such counselling may benefit her.”

5. It is further alleged that the respondent No.2 used to sent threatening, vulgar and abusive SMSs with sexual intonations to senior officers, ventilating personal and administrative grievances and also threat to commit suicide. This behaviour of the respondent No.2 became a cause of serious concern in the organisation. As such, an opinion was sought from the Head of the Department of All India Institute of Medical Sciences (AIIMS) regarding her behaviour and SMSs sent by her to the officers. Dr.Rajat Ray, M.D., Head of the Department of Psychiatry, AIIMS allegedly opined, vide his communication dated 26th November 2009, as under:-

“Please recollect our conversation with regard to certain Behavioural changes noticed in one of your office colleague (Ms.Nisha Bhatia) and examination of hand written copies of some of her SMS text messages. My initial impression suggests presence of a Psychiatric illness in her and I would advice Psychiatric opinion of assess her condition.”

6. That in the meanwhile, respondent No.2 also made a complaint of sexual harassment against the petitioner. This complaint could not be enquired into by the Complaint Committee because the petitioner was senior to the Chairman of the said Committee. Therefore, the said complaint was referred to the Complaint Committee constituted by the Central Govt. which could enquire into the allegations of sexual harassment made against the officers of the level of Secretary and Additional Secretary and equivalent level officers in the Ministry, Departments and Organisations directly under the control of Central Govt.

7. It is alleged that on 30th September 2008, a three-member committee was entrusted with the task of enquiring into the complaint of sexual harassment made by the respondent No.2 against the petitioner. During said inquiry, the Committee recorded the deposition of the respondent No.2/complainant as also the deposition of the petitioner. This Committee also examined the report of the Complaint Committee constituted by the Department to look into the complaint of

sexual harassment made by the respondent No.2 against Sunil Uke and submitted its report on 23rd January 2009. As per the said report, the Committee came to the conclusion that there is not enough evidence to take action against the petitioner Ashok Chaturvedi and Sunil Uke. On the basis of this report, the Central Government issued an order/memorandum No.13(3)/6/88-DO.II(A)-3744 dated 22nd September 2009.

8. That on 19th August 2008, the complainant/respondent No.2 attempted to commit suicide in front of Prime Minister's Office and in this connection an FIR No.151/2008 under Section 309 IPC was registered at Police Station Parliament Street, which case is still pending trial before the competent court at Patiala House.

9. That after the above mentioned incident, a press release was issued on 19th August 2008 by the Prime Minister's Office under the heading "PRESS NOTE – FACT SHEET ON SUICIDE ATTEMPT BY MS. NISHA PRIYA BHATIA". This press note was allegedly issued by the Cabinet Secretariat as per the procedure and it was released by Press Information Bureau, Govt. of India on 19th August 2008.

10. The press release, apart from other details, also stated thus:-

"- The officer was given several opportunities to present her case, but she refused to cooperate with the committee. Notwithstanding, the committee completed the inquiry on May 19,208 and found that her allegations could not be

substantiated. Moreover, the committee found that her behaviour on a number of occasions, duly documented by the committee, appear to indicate a 'disturbed state of mind' and recommended medical counselling.

- Based on examination of reports of her 'erratic behaviour, a senior medical officer of the All India Institute of Medical Sciences (AIIMS) opined 'presence of a Psychiatric illness in her and advised Psychiatric opinion to assess her condition'.

- Ms.Bhatia was advised to go for medical counseling, which she refused.

- It is subsequently learnt that she went to the PMO and attempted to commit suicide. She was immediately shifted to hospital for medical care and her family was informed about the incident."

11. Feeling aggrieved by the aforesaid Press Release, the respondent No.2/complainant filed a criminal complaint being CC No.25/2009 against the petitioner in the Court of Metropolitan Magistrate, Dwarka on 10th December 2008 claiming that the Press Release was issued by the Press Information Bureau, Government of India at the behest of the petitioner with a mala fide intention to harm the reputation, self-respect, dignity and virtues of the respondent No.2/complainant and, thus, it constituted the offence of defamation.

12. Learned Metropolitan Magistrate, on the basis of the preliminary enquiry, came to the conclusion that the evidence produced by the complainant, prima facie, disclosed commission of offence under Section 499/500 IPC and summoned the petitioner to undergo trial for the aforesaid offence.

13. Feeling aggrieved by the summoning order, the petitioner preferred a Revision Petition claiming that no case of defamation was made out. The petitioner also took a plea that since the Press Release was given by him in his official capacity, he is protected under Section 197 Cr.P.C. and Magistrate could not have taken cognizance of the purported offence without previous sanction for prosecution by the Central Govt. The learned Additional Sessions Judge, vide impugned order dated 3rd April 2010, dismissed the revision petition.

14. Learned Shri Sudhir Walia, Advocate appearing for the petitioner has submitted that the impugned summoning order dated 22.12.2009 passed by learned M.M. and the order of the learned Additional Sessions Judge dated 03.04.2010 dismissing the revision petition are bad in law because both the court of learned M.M. and the revisional court failed to take note of the fact that the impugned act of approving the press release, which is foundation of the complaint filed by respondent No.2, was committed by the petitioner in his official capacity being the Head of the Intelligence Organisation i.e. R&AW. Learned counsel submitted that the need for issuing the press note

arose because respondent No.2 attempted to commit suicide in front of the Office of the Prime Minister of India on 19.08.2008, which event was given wide publicity in print and electronic media. He further contended that since the petitioner was the Chief of R&AW in terms of Section 31(C) of the Intelligence Organisations (Restriction of Rights) Act 1985, the press release, since it pertained to the incident involving the Officer of R&AW, had to be approved by the petitioner, being the head of the organisation. Learned counsel for the petitioner, thus contended that since the press release was approved by the petitioner in his official capacity, he is entitled to the protection under Section 197 of the Code of Criminal Procedure and the learned Magistrate had no jurisdiction to take cognizance of the offence complained against the petitioner without the proper sanction of the Central Government.

15. Respondent No.2 who appeared in person, on the other hand, has contended that the act of the petitioner in authorising the issue of defamatory press release was an intentional act to defame respondent No.2 and it had nothing to do with the discharge of official duty of the petitioner and it was not even remotely connected to his official function. Respondent No.2 further contended that the petitioner was the Chief of R&AW which is an external intelligence agency of India and the duties of the officers working in this agency can be described as collection, analysis and dissemination of external intelligence and at best these duties can be stretched to include the information on links abroad of criminal/terrorist groups operating in India i.e. their external

linkages. Thus, according to respondent No.2, the official duty of the petitioner as Chief of R&AW had no connection whatsoever to justify his act of authorising the issue of defamatory press release against respondent No.2 and describing her as a person in need of psychiatric help. It is submitted that respondent No.2 had filed a complaint of sexual harassment against the petitioner and for that reason the petitioner mala fide authorised issue of a defamatory press release against respondent No.2 with the intention to strengthen his false propaganda going on since 2007 that the respondent No.2 was a mentally unstable person and he deliberately concealed the fact that he was the main accused in the sexual harassment complaint filed by respondent No.2. Respondent No.2 further submitted that in order to claim protection under Section 197 of the Code of Criminal Procedure, the accused is required to show that there is a reasonable connection between the act complained of and the discharge of his official duty, which is missing in this case. Thus, the learned M.M. has rightly taken cognizance of the complainant without insisting for sanction for prosecution. In support of her contention, respondent No.2 has relied upon the judgment of the Supreme Court in the matter of **P.K. Pradhan Vs. State of Sikkim**, (2001) 6 SCC 704, **State of Orissa through Kumar Raghvendra Singh & Ors. v. Ganesh Chandra Jew**, (2004) 8 SCC 40, **B.S. Sambhu Vs. T.S. Krishnaswamy**, (1983) 1 SCC 11, **R. Anant Govilkar v. State of Maharashtra & Ors.**,

(2008) 11 SCC 289 and **Harihar Prasad Vs. State of Bihar**, (1972) 3 SCC 89.

16. Before advertent to the rival contentions made by the parties, it would be appropriate to have a look on the law relating to the sanction under Section 197 of the Code of Criminal Procedure.

17. In the matter of **P.K. Pradhan** (supra), the Hon'ble Supreme Court observed thus:

“5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation.

.....

15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of

and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

18. In the matter of **Harihar Prasad** (supra) relied upon by respondent No.2, the Hon’ble Supreme Court, while dealing with applicability of Section 197 of the Code of Criminal Procedure, referred to the principles laid down in the cases namely **Shreekantiah Ramayya Munipalli v. State of Bombay, AIR 1955 SC 287** and **Amrik Singh Vs. State of Pepsu, AIR 1955 SC 309**, observed thus:

“66.

The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while

discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.”

19. In the matter of **B.S. Sambhu** (supra), the Supreme Court, relying upon the judgment in the case of **Matajog Dubey vs. H.C. Bhari**, *AIR 1956 SC 44* held that defamatory language by a Judge to an advocate does not attract the requirement of sanction under Section 197 Cr.P.C.

20. In the matter of **State of Orissa through Kumar Raghvendra Singh & Ors.** (supra), the Supreme Court, inter alia, observed:

“9. Prior to examining if the courts below committed any error of law in discharging the accused, it may not be out of place to examine the nature of power exercised by the court under Section 197 of the Code and the extent of protection it affords to public servants, who apart from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Sections 197(1) and (2) of the Code read as under:

“197. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

* * *

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.”

The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent

then no prosecution can be set in motion. For instance, no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance, as a court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression “no court shall take cognizance of such offence except with the previous sanction”. Use of the words “no” and “shall” makes it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to *Black’s Law Dictionary* the word “cognizance” means “jurisdiction” or “the exercise of jurisdiction” or “power to try and determine causes”. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

10. Such being the nature of the provision the question is, how should the expression, “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”, be understood? What does it mean? “Official”, according to the dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In *B. Saha v. M.S. Kochar* it was held:

“17. The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, ‘it is no part of an official duty to commit an offence, and never can be’. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, *directly and*

reasonably connected with his official duty will require sanction for prosecution under the said provision.”

Use of the expression “official duty” implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

11. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that the act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force, which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in the course of service but not in discharge of his duty and without any justification therefor then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in *Matajog Dobe v. H.C. Bhari* thus:

“The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner, with the discharge of official duty. ...

There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

21. In the matter of Director of **Inspection & Audit Vs. C.L. Subramaniam** , 1994 Supp (3) SCC 615, the Apex Court laid down:

“6. If the provisions of Section 197 CrPC are examined, it is manifest that two conditions must be fulfilled before they become applicable; one is that the offence mentioned therein must be committed by a public servant and the other is that the public servant employed in connection with the affairs of the Union or a State is not removable from his office save by or with the sanction of the Central Government or the State Government, as the case may be. The object of the section is to provide guard against vexatious proceedings against judges, magistrates and public servants and to secure the opinion of superior authority whether it is desirable that there should be a prosecution. If on the date of the complaint itself it is incumbent upon the court to take cognizance of such offence only when there is a previous sanction then unless the sanction to prosecute is produced the court cannot take cognizance of the offence. Naturally at that stage, the court taking cognizance has to examine the acts complained of and see whether the provisions of Section 197 CrPC are attracted. If the above two conditions are satisfied then the further enquiry would be whether the alleged offences have been committed by the public servant while acting or purporting to act in discharge of his official duties. If this requirement also is satisfied then no court shall take cognizance of such offences except with the previous sanction. For this purpose the allegations made in the complaint are very much relevant to appreciate whether the acts complained of are directly concerned or reasonably connected with official duties so that if questioned the public servant could claim to have done these acts by virtue of his office, that is to say, there must be a reasonable connection between the act and the discharge of official duties. It is in this context that the words “purporting to act in discharge of official duties” assume importance. The public servant can only be said to act or purporting to act in the discharge of his official duties if his act is such as to lie within the scope of his official duties.”

22. From the perusal of above referred judgments, it is apparent that prior sanction for prosecution in terms of Section 197 of the Code of Criminal Procedure is required to be obtained from the concerned Government when the offence complained against the public servant is attributable to the decision of his official duty or it has a direct nexus to the discharge of the official duty. Sanction would not be necessary

when the offence complained of has no connection whatsoever with the decision of official function by the public servant. The protection under Section 197 Cr.P.C. is available equally to the serving as well as retired officers. A plea relating to lack of sanction should be considered at an early stage in the proceedings but this would not mean that the accused cannot take such plea or the Court cannot consider it at a later stage. Each case has to be considered on its own facts. There may be cases in which it may not be possible to determine the question whether or not the sanction for prosecution was required without recording evidence on merits. In such cases, the plea relating to want of sanction may be deferred till the recording of relevant evidence.

23. Coming to the merits of the case. It is not disputed that at the relevant time, the petitioner Ashok Chaturvedi was the Chief of R&AW wing of Cabinet Secretariat and the respondent No.2 Nisha Priya Bhatia was Director, R&AW. It is also not disputed that respondent No.2 had filed complaints of sexual harassment against the petitioner as well as one Sunil Uke. As per the record, the complaint against Sunil Uke was referred to the Complaint Committee constituted pursuant to the guidelines issued by the Hon'ble Supreme Court in Vishaka's case. The copy of the report of Complaint Committee is annexed on the record as Annexure "B" and as per this report, the Complaint Committee, after inquiry found the evidence lacking to support the allegations of sexual harassment made by respondent No.2 against Shri Sunil Uke. The

conclusions of the inquiry committee report and their recommendations are reproduced thus:

"CONCLUSION"

There is lack of evidence to support Ms. Nisha Priya Bhatia's complaint against Shri Sunil Uke regarding sexual harassment. Moreover, in her letter dtd. 24.12.2007 (**Annexure – J**), Ms. Bhatia has herself withdrawn the complaint against Shri Sunil Uke. The department has already repatriated Shri Uke on 30.8.2007 to his parent cadre. While Ms. Bhatia's complaint regarding sexual harassment against Shri Uke could not be substantiated due to lack of any evidence for the same, the statements/depositions in the CD (**Annexure – Q1 to Q8**) of six witnesses indicate strained relations between the two officers. Shri Sunil Uke's own submission to the Committee (copy enclosed at **Annexure – W**) reveals a prejudiced attitude towards a female junior colleague.

2. While there is no proof to substantiate Ms. Bhatia's complaint of sexual harassment against Shri Sunil Uke, circumstantial evidence including Shri Sunil Uke's own submission before the Committee points to Shri Uke's discriminatory attitude towards a junior female colleague, which itself violates the spirit of the right to gender equality as laid down in the Hon'ble Supreme Court's guidelines on the issue.

3. Ms. Bhatia's threat to take her own life, allegation of threats to her from other quarters and her behaviour on subsequent occasions (**Annexure – C**) appear to indicate a disturbed state of mind. As such counselling may benefit her.

4. The Committee tried to go into all further issues raised by Ms. Nisha Priya Bhatia to the limits of its mandate. While the Committee acknowledged the difficulties in providing 'proof' of sexual harassment at the work place, it was felt that Ms. Nisha Priya Bhatia's repeated refusal to appear before the Committee despite as many as seven notices to her, constrained the Committee from making any meaningful assessment of these issues.

(Anita Menon)
Steno

(P.C.Sethi)
US

(Nirmala Malla)
US

(A.K.Chaturvedi)
DS

(Anjali Pandey)
Director

(Tara Kartha)
Director (NSCS)

(Shashi Prabha)
Chairperson of Complaint Committee & JS

RECOMMENDATIONS

In view of the above, the Committee recommends that Hon'ble Supreme Court's guidelines on the issue of sexual harassment at work place may be highlighted in order to prevent/recurrence of such incidents. Further, the Department may also draw the attention of lady officials that genuine instances of sexual exploitation/harassment may be filed with any member of the Complaint Committee as far as possible with some material evidence to substantiate their charges. They must also be prepared to cooperate with the Committee if they lodge a complaint.

2. They may also be assured that all such matters will be dealt with discretion and justice. It is suggested that as a confidence building measure, the Committee may meet quarterly to review/assess the position obtaining in the Department with reference to sexual harassment cases and implementation of preventive steps outlined in the Supreme Court guidelines on the subject.

(Anita Menon)
Steno

(P.C.Sethi)
US

(Nirmala Malla)
US

(A.K.Chaturvedi)
DS

(Anjali Pandey)
Director

(Tara Kartha)
Director (NSCS)

(Shashi Prabha)
Chairperson of Complaint Committee & JS"

24. As per Annexure "D" to the petition even the complaint of sexual harassment against the petitioner was looked into by a Committee headed by Rathi Vinay Jha and the said Committee, after enquiring into the allegations, concluded that in absence of any proof of such unwanted action or unwarranted comments amounting to unwelcome

sexually determined behaviour, it is not possible to establish a case of an act of sexual harassment. Thus, from the record it transpires that even the complaint of sexual harassment against the petitioner could not be established.

25. It is not disputed that Ms. Nisha Priya Bhatia, respondent No.2, who was an Officer of R&AW attempted to commit suicide on 19.08.2008 in front of the Office of Prime Minister of India, regarding which a case under Section 309 IPC was registered against her at P.S. Parliament Street. This obviously created a situation calling for issue of a press note to clarify why an Officer of R&AW attempted to commit suicide in front of the Office of Prime Minister. Accordingly, a press note was issued on 19.08.2008 which admittedly was approved by the petitioner. The press note reads thus:

“PRESS NOTE – FACT SHEET ON SUICIDE ATTEMPT BY MS. NISHA PRIYA BHATIA

“1. Ms. Nisha Bhatia, Director in Cabinet Secretariat, lodged a complaint last year alleging sexual harassment by her Joint Secretary.

2. The complaint was enquired into by the Complaint committee constituted as per the guidelines laid down by the Supreme Court in this regard. An external lady officer was also co-opted as per these guidelines. The officer, however, withdrew her complaint.

3. The officer was given several opportunities to present her case, but she refused to cooperate with the committee. Notwithstanding, the committee completed the inquiry on May 19,208 and found that her allegations could not be substantiated. Moreover, the committee found that her behaviour on a number of occasions, duly documented by the committee, appear to

indicate a 'disturbed state of mind' and recommended medical counselling.

4. The findings were communicated to Competent Authority in the Government.

5. Meanwhile, a number of complaints have been received from different officers of the organization against Ms. Bhatia. These range from alleged unauthorized communication and contact with media, insubordination, misbehaviour, abuse of authority and sending of objectionable and offensive SMSs to senior officials of the government.

6. Based on examination of reports of her 'erratic behaviour, a senior medical officer of the All India Institute of Medical Sciences (AIIMS) opined 'presence of a Psychiatric illness in her and advised Psychiatric opinion to assess her condition.

7. Ms.Bhatia was advised to go for medical counseling, which she refused.

8. In view of these complaints of misconduct, a preliminary enquiry was ordered on August 8, 2008. When the officer was informed about initiation of the enquiry today, the 19th of August, she indicated that she would not appear in any proceedings, and warned that the department would face the consequences.

9. It is subsequently learnt that she went to the PMO and attempted to commit suicide. She was immediately shifted to hospital for medical care and her family was informed about the incident".

26. According to the respondent No.2/complainant, the facts narrated at serial Nos. 3, 6 and 7 constituted a mala fide attempt on the part of the petitioner to defame respondent No.2. As regards the facts narrated at serial No.3, it is suffice to say that it is only a reproduction of the conclusion of the Inquiry Committee which looked into the complaint of respondent No.2 against Sunil Uke.

27. As regards the facts narrated at serial Nos. 6 and 7, it is submitted by the petitioner that since the complainant had been indulging in sending threatening and abusive SMSs to the senior officers ventilating personal and administrative grievances and also the threat to commit suicide, this behaviour of the respondent No.2 became a cause of concern in the organisation and as such, an opinion was sought from the Head of the Department of AIIMS regarding her behaviour and the SMSs sent by her to various officers. Dr. Rajat Ray, MD, Head of the Department of Psychiatry, AIIMS purportedly vide his communication dated 26.11.2009 indicated thus:

“Please recollect our conversation with regard to certain Behavioural changes noticed in one of your office colleague (Ms. Nisha Bhatia) and examination of hand written copies of some of her SMS text messages. My initial impression suggests presence of a Psychiatric illness in her and I would advice Psychiatric opinion to assess her condition”.

28. It is submitted on behalf of the petitioner that the press note is nothing but the correct narration of the conclusions of Inquiry Report and the opinion given by an expert Doctor. Therefore, no mala fide intentions can be read into the aforesaid act of disclosing the facts in the press release. It is admitted case of the parties that the petitioner was Head of R&AW. Therefore, under the natural course of events, it was his obligation to explain as to why and under what circumstances a senior officer of R&AW had tried to commit suicide and he being the Head of the organisation was required to approve the press note, which

approval was given by him in his official capacity. Therefore, in my opinion, the aforesaid act of approving the press note by the petitioner has a direct link with official duty of the petitioner. As such, a prior sanction under Section 197 Cr.P.C. was required in this case before the learned Magistrate could have taken cognizance in the matter. Accordingly, the cognizance of the offence under Section 499/500 of the Indian Penal Code taken by the learned Magistrate vide order dated 22.12.2009 in this case is bad in law and is hit by Section 197 Cr.P.C. The impugned order of the learned Additional Sessions Judge dated 03.04.2010 dismissing the Revision Petition filed by the petitioner against the summoning order dated 22.12.2009 passed by the learned Metropolitan Magistrate is, therefore, liable to be quashed. The impugned orders are hereby quashed. It is clarified that this order shall not come in the way of learned M.M. in taking cognizance if the necessary sanction for prosecution of the accused is accorded by the Central Government.

29. Petition is allowed accordingly.

(AJIT BHARIHOKE)
JUDGE

SEPTEMBER 13, 2010
ks/pst