

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

% *Judgment reserved on :30.07.2014.*
Judgment delivered on : 05.08.2014

+ W.P.(CRL) 1775/2010
RANBIR S. ARORA

..... Petitioner
Through Mr.Vijay Aggarwal, Mr.Mudit
Jain, Ms.Gossia Shah,
Mr.Samprita Ghosal and Mr.
Dheeraj Gupta, Advocates

versus

STATE & ANR

..... Respondents
Through Ms.Kusum Dhalla, APP for the
State.
Ms.Sunita Hazarika, Ms.Ipsita
Behura and Mrs.Bulbul Das,
Advocates for R-2.

+ CRL.M.C. 1166/2010
ADITYA CHOPRA

..... Petitioner
Through Mr.M.S.Ahluwalia, Advocate

versus

STATE & ANR

..... Respondents
Through Ms.Kusum Dhalla, APP for the
State.

Ms.Sunita Hazarika, Ms.Ipsita
Behura and Mrs.Bulbul Das,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners Ranbir S. Arora and Aditya Chopra seek quashing of the complaint dated 03.10.2009 of which cognizance has been taken under Sections 354/323/509/34 of the IPC. On 16.10.2010, summons had been issued to the petitioners. On 03.09.2012, the matter was referred to the Delhi High Court Mediation and Conciliation Center hoping that the parties could arrive at an amicable settlement but no settlement could be arrived at. This was reported vide order dated 12.12.2012.

2 Record shows that a complaint was made by 'KS' on 03.10.2009. She was an airhostess and was on a flight IC-884 operating from Sharjah to Delhi via Lucknow. Captain Ranbir Arora was the pilot and Aditya Chopra was his co-pilot. As per the complaint, the complainant had gone to wish the pilot and co-pilot as per protocol; they were unprofessional and misbehaved with her. After taking-off, the captain

called her inside; she was accompanied by Amit Khanna (cabin crew). Captain Ranbir Arora used abusive language against her; the co-pilot Aditya Chopra also got up from his seat and tried to hit Amit; to calm the situation, the complainant and Amit walked out. On this Captain Ranbir Arora pushed the complainant on her chest and again used abusive language; her arm got bruised.

3 Arguments have been addressed.

4 As per the version of the petitioner Ranbir Arora, the FIR had been registered on a complaint dated 03.10.2009 made at 01:30 pm; the first complaint was lodged by the victim in the log book which she had made between 07:30-08:00 am which did not reflect the contents of the complaint. This FIR is belated and an improved version. The version of the complainant is even otherwise contradictory. Cabin staff Amit Khanna had given a contrary version in his statement under Section 161 of the Cr.PC on the role attributable to the petitioners; in one breath, he had named the present petitioner but on an earlier occasion, he had named the co-pilot. Such contrary versions being unexplained dent the version of the prosecution and this is a fit case where the FIR should be

quashed at the initial state itself as trial would serve no purpose and it would be an exercise in futility. To support this proposition reliance has been placed upon 2008 (2) JCC 1017 Budhan Singh & Ors. Vs. State; submission being that where the statements made by the persons about the incident at an earlier point of time did not reveal the involvement of the petitioner, the FIR lodged later in time was clearly held to be motivated and was thus liable to be quashed. The second argument professed by the learned counsel for the petitioner is that Ranbir Arora has been exonerated in the enquiry conducted by Vishaka Committee (constituted after the judgment of the Apex Court reported as AIR 1997 SC 3011 Vishaka and Others Vs. State of Rajasthan & Others). The National Commission for Women had also exonerated the petitioner and so also the Departmental Enquiry. In such an eventuality where the issue involved in the Departmental Enquiry and in the FIR is the same, the FIR cannot be permitted to be proceeded with. To support this submission reliance has been placed upon (2011) 3 SCC 581 Radheshyam Kejriwal Vs. State of West Bengal and Another. The last submission is qua the provisions of Section 188 of the Cr.PC; submission being that the offence was committed in air-space and in the

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absence of mandatory sanction from the Central Government, cognizance of the offence and the order issuing summons to the petitioner could not have been passed. To support this submission, attention has been drawn to the aforementioned statutory provisions.

5 On behalf of the petitioner Aditya Chopra, the same arguments have been pressed. In addition, it is stated that there is no specific role attributed to Aditya Chopra and for this proposition attention has been drawn to the statement of Amit Khanna, the cabin crew member. Reliance has been placed on the judgment of the Apex Court 2005 (3) JCC 1788 Surkhi Lal Vs. Union of India; submission being that where the Departmental Proceeding on the same issue had found no case against the accused, criminal proceedings qua the same issue cannot continue; it would be a useless exercise. Reliance has also been placed upon 2013 (9) SCC 293 Prashant Bharti Vs. State of NCT of Delhi to support a submission that a clear case of quashing is made out where the four steps as enunciated in para 30 of the said judgment are followed; submission being that all the aforementioned four principles would apply in this case; the instant is a clear case where FIR needs to be quashed.

6 Needless to state that the complainant, who is represented by her lawyer and is present in person, has refuted these submissions. Submission being that the statement of the complainant cannot be ignored. There is no improvement in her FIR qua the first allegation which was the entry in the log-book; this log book entry was even otherwise not supposed to expound detailed facts. Submission being that apart from the statement of the victim, the statement of two eye-witnesses i.e. Chhavi Jaggarwal and Maria Thorpe who were working as airhostess have also detailed the role of the present petitioners. Reliance has also been placed upon 2012 (8) SCALE State of NCT of Delhi Vs. Ajay Kumar Tyagi to answer the second argument that exoneration in Departmental Proceeding would not ipso facto result in the quashing of the criminal prosecution. Learned counsel for the complainant has placed reliance upon (2010) 10 SCC 798 Subrata Das Vs. State of Jharkhand and Another in support of her submission that the powers of the Court under Section 482 of the Cr.PC should be used sparingly and quashing of an on-going investigation may be resorted to only in the rarest of rare cases and where the Court is of the conclusive view that continuation of such a proceeding would be an abuse of the process of W.P. (Crl) No.1775/2010 & Crl.M.C. No.1166/2010

the Court. Reliance has been placed upon (2011) 9 SCC 527 Thota Venkateswarlu Vs. State of Andhra Pradesh through Principal Secretary and Another to answer the argument that the proviso regarding the sanction as contained in Section 188 of the Cr.PC will come into play only at the stage of trial and no sanction is required at the time of commencement of trial.

7 In rejoinder, it is submitted that the judgment of Ajay Kumar Tyagi (supra) relied upon by the respondent has not been followed by a later judgment which is binding; for this argument, reliance has been placed upon (2013) 11 SCC 130 Lokesh Kumar Jain Vs. State of Rajasthan. It is pointed out that the principles laid down in P.S. Rajya Vs. State of Bihar (1996) 9 SCC and which had reiterated the principles in Radheshyam Kejriwal (supra) has again reiterated that exoneration in Departmental Proceedings on an identical charge in a criminal prosecution would not allow the latter to continue.

8 Written submissions have also been filed by the respective parties.

9 Arguments have been heard. Record has been perused.

10 Record shows that the present complaint had been filed on 03.10.2009 against the petitioners. Pursuant thereto a Committee had been constituted on 05.10.2009 by the Department to enquire into this complaint. This Committee had been constituted pursuant to the judgment delivered in the Vishaka case wherein guidelines had been issued for employers and workplaces/institutions to ensure prevention of sexual harassment of women. A Complaint Mechanism was directed to be created in the employer's organization for a redressal of the complaint made by the victim; these guidelines were noted to be binding and enforceable in law until suitable legislation was enacted to occupy the field. According a Committee comprised of six persons of whom the Chairperson was Ms. Amrita Sharan was constituted.

11 The issue before the Committee was inter-alia as follows:-

“News items have appeared in various newspapers regarding the case against a pilot and Co-Pilot for assaulting an Airhostess making a reference of Vishakha judgement case. The letter further stated that an Intra Complaint Committee (ICC) should be set up with a woman as its chairperson, who should be senior in the hierarchy to the accused and at least 50% of the Committee members should be women, with one representative from an NGO, experienced in dealing with such cases.

Accordingly, this Committee has been constituted, primary to find facts regarding the allegation of sexual harassment made by the Airhostess and submit its report. Ms. Shobhana Shah, vice President, Rashtriya Mahila Sansthan Delhi Branch has been nominated as the NGO representative.”

12 A copy of the FIR and the log-book entry made by the complainant was also forwarded to the Committee. The Committee chose to meet the petitioners as also the complainant. The statements of the members of the cabin crew which included Amit Khanna, Chhavi Jaggarwal and Maria Thorpe were also recorded. The Committee vide its report dated 07.10.2009 concluded that although a scuffle and loud exchange of words/abuses had taken place in the cockpit of IC-884 of 03.10.2009 where the complainant ‘K’ was also present and for which a regular Departmental Enquiry can only determine the extent of involvement of each of the individuals; it had opined that the allegation of sexually coloured behavior qua the petitioner Ranbir Arora was baseless.

13 Charge-sheet was filed on 29.10.2009. Till this point of time, it was only Vishaka Committee report which was available on record.

14 On 09.11.2009, the Enquiry Committee of the National Commission for Women also submitted a report. This was pursuant to a complaint given by the complainant. This Committee was constituted under Section 8 (1) read with Sections 19 (1) and 10 (4) of the National Commission for Women Act, 1990 comprising of six members. Statements of the relevant parties including the complainant, the petitioners, Maria Thorpe, Chhavi Jaggarwal and Amit Khanna were recorded. The Committee accordingly recommended that crew cabin members should maintain proper discipline and decorum; the charge-sheet issued to the complainant on 22.10.2009 by the National Aviation Company of India Limited should be withdrawn.

15 A Departmental Enquiry had also been initiated against the petitioners. These proceedings culminated on 23.09.2011. Relevant would it be to point out that the Departmental Proceedings are not a part of the pleadings and had not been filed along with this petition. This was obviously for the reason that the Departmental Proceedings were yet going on when this petition was filed which was on 01.12.2010.

16 The whole case of the petitioner is in fact bordered on his submission that where there is exoneration in the Departmental Proceedings, the criminal prosecution as contained in the FIR cannot be permitted to be continued. The FIR was registered on 03.10.2009 and the departmental proceedings were concluded on 23.09.2011. Learned counsel for the petitioner has relied upon (1973) 1 SCC 37 M/s Laxmi & Co.. Vs. Dr. Anant R. Deshpande and Another to substantiate his argument that a subsequent event can be taken into account even if it does not form a part of the pleadings. The ratio of this case related to a dispute between a licensor and licensee. There is no doubt that the Court may take notice of subsequent events where the Court finds that because of altered circumstances i.e. devolution of interest, it may be necessary to shorten the litigation and where the original relief has become inappropriate because of subsequent events. No such case is made out in the instant case. The FIR is based on allegations of molestation and physical abuse by the victim; offence related to the modesty of a woman. FIR has been registered under Sections 354/509 read with Section 34 of the IPC.

17 At this stage, learned counsel for the petitioner had pointed out that he may be permitted to withdraw this petition with liberty to file another petition incorporating the enquiry concluded in the Departmental Proceedings. This Court is not inclined to burden the docket of this Court yet further and without delving any further into the merits of this argument of the learned counsel for the petitioner qua this subsequent event, has chosen to examine the enquiry conducted in the Departmental Proceedings as well.

18 This Court has been informed that these proceedings concluded on 23.09.2011. They are not a part of the record but the copies of the reports of the Enquiry Officer have been placed on record.

19 The Enquiry Officers examined the conduct of Captain Ranbir Arora and Captain Aditya Chopra respectively and whether the acts alleged against the petitioners would tantamount to breach of Standing Order 1 and misconduct within the meaning of Standing Orders 16 (8), 16 (11), 16 (13) and 16 (35) of the Standing Orders (Regulations) regarding discipline and appeals, applicable to him which reads herein as under:-

“Standing Order 1: Every Employee of the Company shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interest, credit and prestige of the Company.

Standing Order 16 (8): Breach of any Standing Order or any law or rules applicable to the establishment.

Standing Order 16 (11): ‘Disorderly and indecent behavior’ within the meaning of the term ‘Drunkenness, riotous, disorderly or indecent behavior in the premises of the establishment’.

Standing Order 16 (13): Commission of any act subversive of discipline or of good behavior in the premises of the establishment.

Standing Order 16 (35): Quarreling.”

20 Evidence was led. The Enquiry Officers concluded that it had not been established that the delinquents committed a misconduct within the meaning of the aforementioned Standing Orders. The Competent Authority while noting that the charges leveled in the course of enquiry have not been established yet gave a warning to both the petitioners advising them to be careful in future in discharge of their duties; greater control should have been exercised to ensure that the situation does not go out of restraint affecting the image of the company before the passengers.

21 The first and foremost question which this Court has to answer is as to whether the Departmental Proceedings which had concluded vide W.P. (Crl) No.1775/2010 & Crl.M.C. No.1166/2010

its report dated 23.09.2011 related to the same issue which is the gist of the complainant in the present FIR. As noted supra, it is the Standing Orders which had been gone into in the Departmental proceedings. “Disorderly behavior” as contained in Order 16 (11) and whether there was a breach of the Standing Orders 16 (13) and 16 (35) had been scrutinized. This was not the issue in the FIR. The FIR had leveled allegations under Sections 354/323/509/34 which related to the personal acts of Captain Ranbir Arora and Captain Aditya Chopra for assaulting and molesting the complainant and also included their use of abusive language; physical push to the victim; injuring her; indecently assaulting her with an intent to do so. The ingredients of FIR which necessarily involved the intent to outrage the modesty of a woman was not the issue before the Departmental proceedings.

22 The Supreme Court in (1995) 6 SCC 194 Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another had an occasion to examine the powers of the Court for quashing the FIR for an offence which was under the same provisions of law i.e. under Sections 354/509 of the IPC. The Apex Court had cautioned the Courts below that the

power of quashing a criminal proceedings should be exercised sparingly, in the rarest of rare cases, noting that the word 'modesty' as contained in Section 354 of the IPC has not been defined in the Statute; the additional submission of the counsel for the respondent that the ingredients of intent was not made out was also negated by observing that an 'intention' or 'knowledge' is a state of mind and may not be governed by a direct evidence; it may have to be inferred from the attendant circumstances of a given case and quashing of the FIR being only at the incipient stage, it is only a prima-facie view which has to be taken.

23 The present FIR is prior in time; Departmental Proceedings are later in time. The petitioner cannot take shelter of a finding returned in the Departmental Proceedings even if it is in his favour as the FIR has preceded the Departmental Enquiry; he cannot seek quashing of the FIR dated 03.10.2009 on the strength or weakness of an Enquiry Report which is dated 23.09.2011.

24 In (2011) 3 SCC 581 Radheshyam Kejriwal Vs. State of West Bengal and Another, the Apex Court had culled out certain principles while dealing with the adjudication proceedings vis-à-vis criminal

proceedings. It had noted that the yardstick to be adopted was as to whether the allegation in the adjudication proceedings and in the proceedings for prosecution were identical and exoneration of the person concerned in the adjudication proceedings was on its merits. The Court must stop at this juncture. This Court is of the view that although the statements of the two eye-witnesses i.e. Maria Thorpe and Chhavi Jaggarwal had been recorded and noted by the Enquiry Officer yet the Enquiry Officer while concluding his finding had not given any merit to those statements; he had in fact totally ignored the statements. Had these statements been taken into account coupled with the statement of the victim, there would have been little scope of exonerating the petitioners. The Adjudication Proceedings were not decided on merits.

25 That apart, this Court has already taken a view that the two sets of facts and circumstances i.e. in the Departmental proceedings and in the FIR cannot be equated.

26 In Ajay Kumar Tyagi (supra) the Apex Court while determining the ratio of P.S. Rajya Vs. State of Bihar (1996) 9 SCC 1 had noted as under:-

“24. Even at the cost of repetition, we hasten to add none of the heads in the case of P.S. Rajya (Supra) is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in the case of P.S. Rajya (Supra), therefore does not lay down any proposition that on exoneration of an employee in the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed. It is well settled that the decision is an authority for what it actually decides and not what flows from it. Mere fact that in P.S. Rajya (Supra), this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from paragraph 23 of the judgment, which reads as follows:

“23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.””

27 It is worthwhile to mention that the judgment of Radheshyam Kejriwal (supra) had in fact proceeded on the ratio of P.S. Rajya which the judgment of Ajay Kumar Tyagi (supra) has noted to be on its own

peculiar facts. The Apex Court in Ajay Kumar Tyagi had ultimately concluded as under:-

“The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding ipso facto would lead to a judgment of acquittal in a criminal trial.”

28 The Supreme Court had emphasized that exoneration in the departmental proceedings would not ipso facto lead to an acquittal in the criminal case. The standard of proof is lower in Departmental Proceedings than that in a criminal case. It is also well settled that the Departmental Proceedings and criminal case have to be decided, based on the evidence adduced therein. The truthfulness of a criminal case can be judged only after the evidence has been adduced and a criminal case cannot be decided on the evidence recorded in the Departmental Proceedings or a report of the enquiry which is based on that evidence.

29 Learned counsel for the petitioner Ranbir Arora, at this stage, states that a later judgment of the Apex Court reported as (2013) 11 SCC 130 Lokesh Kumar Jain Vs. State of Rajasthan sets out that exoneration in the departmental proceedings where the issue is identical

to that in the criminal case would make out a fit case for quashing of the FIR.

30 This judgment was delivered by two Judges Bench. Ajay Kumar Tyagi was a judgment delivered by three Judges. Ajay Kumar Tyagi has to prevail.

31 In the facts of the instant case, it is clear that the Departmental Enquiry which was concluded later in time than the initiation of the criminal proceeding i.e. the registration of the FIR are two separate issues. The judgment of Radheshyam Kejriwal and Lokesh Kumar Jain (supra) are even otherwise on the ratio that where the Departmental Proceedings initiated by the Department exonerate the accused; on the same set of facts, the Department cannot pursue the criminal litigation. In this case, the criminal prosecution has been set in motion not by the Department but by the victim. First argument of the learned counsel for the petitioner is accordingly rejected.

32 Additional submission of the learned counsel for the petitioners that the statement of the victim is in conflict and at one stage i.e. at the enquiry stage she had roped in Aditya Chopra and later on retracted and W.P. (Crl) No.1775/2010 & Crl.M.C. No.1166/2010

had leveled allegations against Ranbir Arora showing her confused state of mind also make out a case for quashing of the FIR holds no water. The statement of victim as recorded in the log book entry as early as 07:30-08:00 am on 03.10.2009 and thereafter the FIR was recorded at 01:30 pm specified the role of both the petitioners. Her version was fortified by the version of two eye-witnesses which included Maria Thorpe as also Chhavi Jaggarwal; the version of Amit Khanna who had accompanied the victim into the cockpit also cannot be given a go-bye. The statements of these witnesses cannot be gone into at this stage and even if there is minor discrepancy in one version qua the other, it would definitely not make out a case for quashing of the FIR.

33 The Supreme Court in 2002 (2) ACR 1042 (SC) M.L. Bhatt Vs. M.K. Pandita and Others while dealing with a quashing petition has noted as under:-

“The High Court would be entitled to only examine the allegations made in the FIR and would not be entitled to appreciate by way of shifting the materials collected in course of investigation including the statement recorded under section 161 of the Code of Criminal Procedure. We are told that in the meantime the investigation is complete and challan has been filed. The accused has always the remedy at the time of framing of charge to pray for discharge if the materials on the basis of which the

challan has been filed can be said to be insufficient to frame a charge. But by no means, the court would be justified in quashing an FIR by appreciating and shifting the materials collected during the investigation. In the aforesaid premises, we set aside the impugned order of the Delhi High Court and direct that the criminal proceedings pending before the appropriate court, may be proceeded with”

34 The Apex Court in Subrata Das (supra) had reiterated that the powers vested in the High Court under Section 482 of the Cr.PC may be invoked in sparing cases where there is absolutely no legal evidence to support the charge made against the accused. The Court is not called upon to appreciate the evidence or material on record to find out whether the charges leveled against the petitioner stand proved or disproved.

35 The last argument of the learned counsel for the petitioner is based on the provisions of Section 188 of the Cr.PC wherein he has pleaded that since the offence was committed in air-space, sanction of the Central Government was required and in the absence of sanction, investigation could not have proceeded.

36 The Supreme Court in Thota Venkateswarlu (supra) has in this context while dealing with the provisions of Section 188 of the Cr.PC and quoting with approval the judgment reported in (1993) 3 SCC 609 W.P. (Crl) No.1775/2010 & Crl.M.C. No.1166/2010

Ajay Aggarwal Vs. Union of India had held that sanction under Section 188 of the Cr.PC is not a condition precedent for taking cognizance of an offence and if need be, it could be before the trial begins. The Court had inter-alia noted as under:-

“The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.”

37 Petitions are clearly without merit. This Court notes with pain that the proceedings in the Trial Court are stalled since 2010 because of the pendency of these petitions. Petitions being malafide are accordingly dismissed with costs quantified at Rs.25,000/- each.

INDERMEET KAUR, J

AUGUST 05, 2014

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