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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5006 OF 2015

Charles Welsh

.. Petitioner

Vs.

1. The State of Maharashtra and ors.

.. Respondents

Mr. Archit Jaykar a/w Ms. Trupti Khadse i/by M/s. Jayakar & Partners for petitioner.

Mr. J. P. Yagnik, APP for respondent nos.1 and 2 – State.

Mr. M. A. Choudhari for respondent no.3.

CORAM: NARESH H. PATIL &
A. M. BADAR, JJ.

APRIL 01, 2016.

P.C.

1. On the complaint filed by respondent no.3 – Deepa Menon, an F.I.R. came to be registered for offence punishable under Section 509 of the Indian Penal Code and under Sections 19(g) and 26 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, against the petitioner.

2. It is alleged by the complainant that she was a Reporter

employed in M/s Fulcrum Worldwide Software Pvt. Ltd. (referred to as “Fulcrum”). Petitioner – Charles Welsh was the founder Editor and the Complainant was working with him. Between 20th to 24th July, 2015, the complainant, along with the petitioner and other officers of her Company had gone to ITC Hotel, Lower Parel for a conference. During the interactions, while talking generally to his colleagues, the petitioner allegedly used abusive words “fuck” and “fuck off”. Those words were used knowingly and with an intend to insult the complainant. It is alleged that complainant felt ashamed on hearing those utterances.

3. It is further alleged that on 22/7/2015, a party was hosted. The complainant, due to her commitments, could not remain present for the party and after finishing work, she left home. The complainant was told that the petitioner was not happy as the complainant did not attend the party.

4. It is alleged that on 29/7/2015, the complainant received two e-mails from the petitioner, which were abusive. She complained of the same to the HR Head one Ms. Suvarna Deorukhkar, who assured that CEO was personally looking into the matter. The complainant stated that after

her complaint to HR, the petitioner started behaving badly with the complainant and she was allegedly asked to withdraw the complaint and was mentally harassed for not doing so.

5. On noticing that the Management was not taking any steps to solve the matter, the complainant was constrained to approach the National Commission for Women, New Delhi. The Commission directed her to approach the Amboli Police Station, Mumbai in this regard.

6. Learned counsel appearing for the petitioner submitted that on reading the complaint and considering the facts and circumstances, no offence is made out for registering an F.I.R. Learned counsel has referred to the e-mails correspondence, letters and other documents placed on record. Learned counsel submitted has placed reliance on a reported judgment of this Court (Nagpur Bench) in the case of *Sau. Anuradha R. Kshirsagar and anr. vs. The State of Maharashtra and anr.* [(1990) 3 Bom CR 644] in support of his submissions.

7. We have perused the record, the FIR and the judgment cited by the learned counsel for the petitioner in *Sau. Anuradha R. Kshirsagar'* case (Supra).

8. By an order dated 23/12/2015, this court ordered that till returnable date i.e. 3/2/2016, no coercive steps shall be taken against the petitioner. The matter was adjourned thereafter from time to time and the ad-interim relief was continued. By an order dated 17/3/2016, we had adjourned the matter to 18/4/2016 and continued ad-interim relief by directing the APP to take instructions. On 18/3/2016, this court passed following order :-

- “1. At the request of petitioner, stand over to 1st April, 2016.
2. Ad-interim relief granted earlier to continue till next date.
3. Learned APP submits that in three weeks time, the investigation will be completed.”

9. Prima facie we find that the allegation made in the FIR by the complainant is abusive in nature and intend to insult the modesty of a woman. Section 509 of the Indian Penal Code reads as under :-

“509. Word, gesture or act intended to insult the modesty of a woman.- Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or

exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”

10. We have perused the e-mails, which are annexed to the petition. The few contents of the e-mails are recorded in the statement of the complainant dated 21/11/2015 in English, which read as under :-

“1) Anything else asshole? I'm ready to fight to the death and I don't want cowardly shits on my payroll- got it?
2) Take Deepa aside and explain whose cash pus her rent as well as your own if I get another hint dissent like you dared to & quit.”

Prima facie we find that the complaint discloses commission of a cognizable offence. Offence under Section 509 of the IPC is cognizable and bailable one.

11. At this stage, it is not appropriate to observe anything more as the investigation is in progress. We expect the Investigating Agency to

investigate the matter fairly and complete the investigation within three weeks from today.

12. We may refer to observations of the Apex Court in para 13 of the judgment in the case of N. Soundaram vs. P. K. Pounraj and anr. **[(2014) 10 SCC 616]**, which read as under :

“13. It is well settled by this Court in a catena for cases that the power under Section 482 of Cr. P.C. has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. [See *State of Haryana v. Bhajan Lal*.] The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 Cr. P.C.. [See *MCD v. Ram Kishan Rohtagi*.] An investigation should not be shut out at the threshold if the allegations have some substance. [See *Vinod Raghuvanshi v. Ajay Arora*.]”

13. In the facts, we are not inclined to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of Indian or under Section 482 of Cr. P. C. Keeping all issues on merits open, writ petition stands rejected.

(A. M. BADAR, J.)

(NARESH H. PATIL,J.)