

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10388 of 2015 (O&M)

Date of Decision : 23.12.2016

Rajinder Kumar and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Anupam Gupta, Senior Advocate, with
Mr.Rohit Samhotra, Advocate, for the petitioners.

Mr.K.S.Nalwa, Addl.A.G.Punjab.

Complainant-respondent No.2 in person.

RITU BAHRI, J. (ORAL)

Petitioners Rajinder Kumar-Senior Divisional Manager and Vikas Aggarwal, Branch Manager, Life Insurance Corporation of India, are seeking quashing of FIR No.268 dated 30.11.2014 under Sections 342, 354-A, 509, 506, 34 IPC registered at Police Station Samrala, Police District Khanna, District Ludhiana (Annexure P-2) along with all consequential proceedings arising therefrom.

A complaint was forwarded to the office of petitioner No.1 on 04.08.2012 by Navjot Lehal-complainant/respondent No.2 with the allegations of ill treatment and humiliation being suffered by her at the hands of the Branch Manager. In this complaint, she alleged that on 03.08.2012 at 4:45 p.m, she along with her two other women colleagues namely Anju Dhar and Shelly were standing on the road in front of LIC Office of Samrala, waiting for the bus for Chandigarh, the Branch Manager,

Sh.Prem Singh Badhan appeared on the scene and specifically and

categorically targeted the Navjot Lehal-complainant/respondent No.2 in abusive manner and tone, the Branch Manager screamed at the Navjot Lehal-complainant/respondent No.2 why she is standing there and ordered her to go in the office. Thereafter, she went back to the office by climbing the stairs. That the other two women colleagues stood their and boarded the bus. Sh.Prem Singh Badhan screamed at the Navjot Lehal-complainant/respondent No.2 on a public place made her feel humiliated and it was an assault of her dignity as the Branch Manager not even uttered a single word to the other two women employees and specifically and categorically targeted the complainant. It was further stated by the complainant that some women employee colleague who is on good terms with Mr.Prem Singh Badhan enjoy full relaxation every day. It was further stated in the complaint that if any untoward incident happens with the complainant, Sh.Prem Singh Badhan would be directly responsible for it and the LIC organization would be failing to provide protection to life, liberty and dignity of the complainant. This complaint is Annexure P-4 on record. The another complaint made by her i.e. Annexure P-5 on 19.09.2012, stating therein that Mr.Prem Singh Badhan have overburdened with the work of enquiry seat. When the complainant handled both the seats efficiently and effectively for three days, it made Mr.Prem Singh Badhan furious, as he was not able to find any fault in the work of the complainant, he was desperately looking for just to take revenge and sting the complainant for approaching your good self with her earlier representation. Thereafter, vide order dated 18.09.2012, Mr.Prem Singh Badhan assigned the EDMS Incremental job to the complainant and even this was not enough , he also indulged in verbally pressuring through AAO Varun Khurja the total work of EDMS which was

pending for last more than one year be completed in a day by the complainant-Navjot Lehal. On the same day an office order was issued directing her to complete the work immediately. The complainant has referred to the letter dated 03.09.2012 which was attached on record as Annexure C-3 shows that the work and conduct of Mr.Prem Singh Badhan was found to be low performance and discrepancies in the work and management.

Another complaint dated 22.09.2012 (Annexure P-6) made by the complainant with regard to similar allegations against the work and conduct of then Branch Manager, Prem Singh Badhan. After the amendment of Sexual Harassment Act, 2013, another complaint was made on 08.05.2013 giving details by making reference of Vishaka guidelines that she had been humiliated, harassed and exploited by the superior officer and she be restored to Samrala posting and an order dated 09.11.2013 (Annexure P-3) transferring her from Samrala to Ludhiana-2 be withdrawn. The details of the representation made by the complainant has been given in para 10 of the present petition.

It is further stated that after the receipt of the letter dated 04.08.2012 (Annexure P-4), an inquiry was ordered to be conducted and petitioner No.2 was appointed as Inquiry Officer. Petitioner No.2 made inquiry from lady employees of the Branch office and also the Secretary and the President of the Employees Association regarding the conduct of Sh.Prem Singh Badhan, Branch Manager, Samrala Branch and it was opined by the petitioner No.2 that the allegations made in the complaint by the complainant were not correct and it was solely on the ground that the respondent No.2-complainant did not adhere to the office timings and

wanted to leave the office before the office timings, which was not acceptable to the Branch Manager and being irritated, the complaint was filed by the complainant. The report dated 03.09.2012 furnished by the complainant/petitioner No.2 was annexed as Annexure P-16.

The complaint made by complainant/respondent No.2 on 19.09.2012 (Annexure P-5), petitioner No.1-Rajinder Goyal was appointed as another officer to probe into the case and allegations made therein but both the petitioners were signatories to the said order of appointment of the Inquiry Officer and consequently, Mr.B.R.Birdi, Manager (F&A)/DM was appointed as the Inquiry officer. After recording the statements of the senior officers, employees and field staff, the Inquiry Officer came to a positive conclusion that there was no bad intention or ill-will of any kind towards the respondent No.2 and allegations made by her were false and fabricated one. A copy of report dated 28.09.2012 was attached herewith as Annexure P17 colly.

Keeping in view the repeated allegations made by the respondent No.2 against the Branch Manager, the Divisional Office Ludhiana, she was transferred from Samrala to Ludhiana vide order dated 09.11.2012. At this stage, another representation dated 12.11.2012 (Annexure P-9) was made for withdrawal of the transfer order by referring Vishaka Guidelines. The matter was referred to the Zonal Office and pursuant to the advice of the Zonal Office, the petitioner No.1, in his capacity of being Senior Divisional Manager, constituted a committee of 3 officers, all females, to inquire into and investigate the allegations made by respondent No.2 thoroughly and minutely and submit its report at the earliest. She was personally called to join the inquiry proceedings and

written communications were addressed to her which were duly received by the respondent No.2. She gave her reply on 10.12.2012, as regards the allegations and it was pointed out that the constitution of the committee was against the guidelines/directions given by the Hon'ble Supreme Court. The committee conducted a detailed and thorough investigation into the allegations made by the respondent No.2 and submitted its report dated 09.01.2013 that it is apparently clear that not even a single witness or evidence had come forward to prove the allegations levelled by the respondent No.2 against the then Branch Manager, Mr.Prem Singh Badhan.

Thereafter, petitioner No.1 had wrote a letter to the Regional Manager (P&IR), Zonal Office, New Delhi to constitute a committee of senior officials, particularly to conduct an Inquiry into the allegations made by the respondent No.2. After conducting inquiry, a report dated 27.08.2013 (Annexure P-19 colly), the allegations of sexual harassment could not be proved and found to be false.

The order dated 20.03.2014 (Annexure P-20) has been place on record which has been passed by Punjab State Women Commission, whereby, after going through the complaint made by respondent No.2/complainant, no matter of sexual harassment against the complainant was made out and the complainant was advised to proceed on administrative side with the high officials for her transfer and consequently, the case was consigned to records. Thereafter, complainant/respondent No.2 was served with a charge-sheet dated 30.07.2014 for initiation of disciplinary proceedings under Regulation 39 of the LIC of India (Staff) Regulation 1960, for committing serious breach of the discipline. At this stage,

complainant/respondent No.2 made a request for registration of FIR. This

complaint was referred to Senior Superintendent of Police, SAS Nagar, Mohali and consequently, it was marked to Incharge Women Cell for inquiry and report vide letter dated 22.03.2014, who consequently issued summons under Section 160 Cr.P.C. to the Chairman and also the Zonal Manager of the corporation for appearance. The Chairman and Zonal Manager of the corporation were constrained to file a petition before this Court to with a prayer to quash the summons under Section 160 Cr.P.C. to them, wherein, notice of motion was issued and a reply was filed by the DSP, SAS Nagar, Mohali which is attached herewith as Annexure P-22. As per reply, it was submitted that inquiry was completed by the Incharge Women Cell, SAS Nagar, Mohali and a detailed report was submitted vide report No.139/5S dated 18.04.2014 with the conclusion that the allegations levelled by the respondent No.2 against the petitioners and also the other officials have been found to be false and baseless. This report was accepted by the Senior Superintendent of Police and consequently, it was brought to the notice of this Court that the petitioners, therein, are no longer required as the inquiry was already completed and the allegations were found to be unsubstantiated. Consequently, in view of the reply (Annexure P-22), the petition as referred was dismissed as having become infructuous vide order dated 23.09.2014 (Annexure P-23). Thereafter complaint made by complainant/respondent No.2 against the higher Police Officials with the allegations of corruption against both the Incharge Women Cell and also against Chairman, Punjab State Women Commission, Chandigarh. Thereafter, DIG, Roopnagar Range, pursuant to the complaint made to him, constituted a SIT and in this regard report has been submitted. Thereafter, the matter was again referred to the SIT, who again submitted their report

No.269/5S on 27.10.2014 to the SSP, SAS Nagar and again it was opined by the District Attorney that the matter falls within the jurisdiction of Police District Khanna and therefore, the same was referred to SSP, Police District, Khanna. The report was submitted by the DSP on 11.11.2014, whereupon the SSP, Khanna ordered for seeking legal opinion on 13.11.2014. Instead of taking legal opinion as per the orders passed by the SSP, Khanna, FIR No.268 dated 30.11.2014 under Sections 342, 354-A, 509, 506, 34 IPC was registered as Annexure P-2.

Mr.Anupam Gupta, learned senior counsel for the petitioner vehemently argued that the allegations referred in the FIR against the two employees did not make out a case of Section 354A. The amendment came into existence with the coming of the Criminal Law (Amendment) Act, 2013 (13 of 2013), which came in effect on 03.02.2013. It was not in dispute that the alleged occurrence, as per the case of prosecution, relates back to the period when the respondent No.2 remained posted at Branch Office, Samrala, District Ludhiana and in particular, the period from 30.04.2012 to 09.11.2012, when she was transferred from Branch Office, Samrala to Branch Office, Unit-II, Ludhiana. During this period, there was no Section 354-A IPC was into the statute book and therefore, it would be unconstitutional to invoke a penal provision which has been enacted subsequently. Under Article 20(1) of the constitution of India which enumerates this proposition of law, wherein a person cannot be charged for an offence against the provisions under Article 20(1). A person was to be convicted for violating a law in force when the act charged is committed. He has further argued that if the allegations are taken to be true in its entirety, it was over-emphasized that non-compliance/non adherence of

Vishaka/Guidelines, would not be, in any eventuality, sufficient to constitute an offence under Section 354-A IPC. On 24.05.2013, Sh.Rajinder Kumar, Senior Divisional, LIC Office, Ludhiana, Shri Prem Singh Badhan, Branch Manager, LIC Office, Samrala and Shri Vikas Aggarwal, Manager (P&IR) at about 4:45 had called the complainant in the cabin of Branch Manager Shri P.S.Palli and by closing the door and also by getting her mobile switched off and by illegally confining her had issued threats that she should withdraw all her complaints. In the FIR, with respect to this incident, there is no allegation against the two petitioner i.e. Rajinder Kumar and Vikash Aggarwal had made out under Section 354(A). The allegations which pertain to conduct of petitioners that they had not conducted inquiry in a fair manner would not cover the offence under Sexual Harassment Act, 2013. Mr.Gupta, learned senior counsel has further argued that essential ingredients to make out an offence under Section 354 A are totally missing as per allegations set out in the FIR. Confining the complainant in a room and switching off of her mobile phone would not make out an offence under Section 354-A.

Mr.Gupta had referred the following judgments :-

(i) **State of Punjab Vs. Major Singh, AIR 1967 Supreme Court 63 (V 54 C 8)** (ii) **State (Admn., U.T.Chandigarh) through Secy., and Anr. 2005(3) RCR (Criminal) 772** (iii) **Tarkeshwar Sahu Vs. State of Bihar (now Jharkhand) (2006) 8 SCC 560** and (iv) **Ajhar Ali Vs. State of West Bengal (2013) 10 SCC 31** and has argued to make an offence under Section 354A and there should be culpable intention of the accused to outrage the modesty of a woman. Apart from criminal force there should be an intention to outrage the modesty of a woman. In the facts of the present

case just by locking the complainant in a room of the office and asking her to withdraw the complaints against Mr.Prem Singh Badhan, Branch Manager, would not make out an intention of the petitioners that there were an intention to outrage the modesty of the complainant-Navjot Lehal.

On notice reply has been filed by DSP Samrala has been taken on record. As per reply, after registration of FIR, investigation was conducted in a fair and unbiased manner and after completion of investigation, challan against the petitioners and their co-accused was presented in the Court of learned Sub Divisional Judicial Magistrate, Samrala, on 05.03.2015 for the offences under Sections 342/354-A/509/506 read with Section 34 of IPC and petitioners can take all the pleas before the trial Court at the time of framing of charges and no ground is made out for quashing the FIR.

As per reply dated 21.09.2015 filed by DSP, Samrala, a letter has been received in the office of the SSP Police, District Khanna from SSP District SAS Nagar, on 14.07.2015. In this letter, it has been clarified that the petitioners have obtained a stay by taking the affidavit of DSP(HQ) SAS Nagar, filed in CRM-M-13432 of 2014 as a ground. In this letter, it has been shown that the report dated 18.04.2014 of Prasin Kaur, Incharge Women Cell, SAS Nagar, has been prepared without joining S.K.Rai and A.P.Singh in the inquiry. Therefore, his departmental inquiry had been initiated and he was found to be accused by the the SP (HQ).

Mr.Nalwa, learned counsel for the State has argued that detention of the complainant in the office room by three employees would amount to criminal offence as per definition in Section 342A of the IPC and

by locking in the room and switching off her mobile would amount of

criminal assault where a case of outraging the modesty of a woman is made out and this FIR cannot be quashed after presentation of challan.

He has referred to the judgment of Supreme Court in the case of **Raju Pandurang Mahale Vs. State of Maharashtra and Anr. 2004(2) RCR (Criminal) 936 and Aman Kumar and another Vs. State of Haryana 2004(1) RCR (Criminal) 925** and has argued the wrongful confinement of the complainant in the room of an office would amount to an offence under Section 354 IPC.

A copy of challan has been placed on record by the petitioners and the contents of the FIR after narrating the facts as set out in the FIR. After constituting SIT, inquiry was conducted consisting of

- (i) Superintendent of Police, City-I, District SAS Nagar, Chairman,
- (ii) Deputy Superintendent of Police, City-I, District SAS Nagar, Member
- (iii) Ms.Gurmit Kaur, Lady Inspector, Police Lins, SBS Nagar Member

After recording the statement of employees of LIC Branch and perusal of relevant record shows that complainant-Navjot Lehal had joined the office of LIC, Unit-II, Ludhiana on 21.11.2009 and confirmed on 27.12.2010. Ms.Navjot Lehal worked in the said branch during the period from 21.11.2009 till 30.04.2012. During this period, there was no complaint regarding the doing office job by the complainant-Navjot Lehal. Since there was long travel between Mohali and Ludhiana, hence applicant submitted an application in the office of Senior Divisional Manager, LIC Office, Ludhiana, on the basis of which, she was transferred on 28.04.2012 from LIC, Unit-II, Ludhiana to LIC office, Samrala. On this, complainant-Navjot Lehal joined at her new place of posting i.e. office of LIC, Samrala

on 30.04.2012. During this period, Sh.Prem Singh Badhan being LIC Manager was lying posted at Samrala. On 13.08.2012, when Sh.Prem Singh Badhan, LIC Manager, was out of station in connection with checking, complainant-Navjot Lehal obtained permission from her senior and left the office about 10-15 minutes before the scheduled time and arrived from office to main road, where she was waiting for bus with other colleagues. At that very time, Sh.Prem Singh Badhan, Branch Manager, came back from checking, who called the complainant to his office after office time and caused harassment to great extent without any reason. Thereafter on 17.09.2012, an order was passed by the higher authorities directing the complainant to clear the pending work by forming committee. Mr.Prem Singh Badhan without constituting any committee on 18.08.2012, issued written directions to clear the pending work of B.D.M.S.

Thereafter, she was transferred on 09.11.2012 by Rajinder Kumar, Senior Divisional Manager, LIC Office, Ludhiana from Samrala to LIC Office, Unit II, Ludhiana. Thereafter on 24.05.2013, Rajinder Kumar, Senior Divisional Manager, LIC Office, Ludhiana, Sh.Prem Singh Badhan, Branch Manager, LIC Office Samrala and Vikas Aggarwal, Manager, PDIA had called the complainant in the cabin of Sh.P.S.Pali, Branch Manager, closed the door, switched off her mobile phone, detained her and threatened that she may withdraw the applications filed by her. Sh.Prem Singh Badhan, Branch Manager was having evil eye upon the complainant and he started passing indecent comments on complainant-Navjot Lehal and started pressurizing her that she may accompany with him to farm house for roaming here and there. But when complainant refused to do so, Mr.Prem

scheduled work. The complainant was not given proper hearing by Sh.A.P.Singh, Zonal Manager and Sh.S.K.Rai, Chairman, being a lady employee. Her case was not properly considered by Inquiry Officer i.e. Vikas Aggarwal. On this count, she has faced sexual harassment and the challan has been filed against all the three accused i.e.Mr.Prem Singh Badhan, Branch Manager, LIC Office, Samrala, Rajinder Kumar, Senior Divisional Manager, LIC Office, Ludhiana and Vikas Aggarwal, Manager LIC Office.

A perusal of the contents of the petition which has been filed by Rajinder Kumar and Vikas Aggarwal, shows that their role has to be examined in the context of the offence under Section 354, 354A IPC. So far as confining the complainant in a room after office hour at 4:45 P.M. on 24.05.2013 and switching off her mobile, the offence under Section 354 is made out and she was forced to sit in the room with three employees i.e Mr.Prem Singh Badhan, Rajinder Kumar, and Vikas Aggarwal, the offence under Section 342 IPC prima facie is made out. For the offence 506, 509, it is further alleged by the complainant that she was threatened in the room by all the three accused to withdraw her complaints against Mr.Prem Singh Badhan, Branch Manager, and they have switched off her mobile phone and locked the room is a prima facie offence under Section 506 is made out.

Now the question as to whether offence under Sections 354A and 509 IPC is made out against the present petitioners or not.

As far as the role of the petitioners in conducting the inquiry that complaint made by complainant that would not be covered in criminal conspiracy. It is not being disputed that on 24.05.2013, the complainant was

confining in a room at 4:40 p.m. after locking room and threatened her to

withdraw the complaint made against Mr.Prem Singh Badhan, where, confining her in a room along with accused person would not amount to outrage the modesty of a woman under Section 354A IPC would be a question of fact which only the trial Court can decide. At this stage, challan under Section 509 IPC prima facie has been rightly framed.

Last question i.e. offence under Section 354A IPC is made out against the petitioner or not. The content of Section 354A IPC is mentioned as under:-

1. *A man committing any of the following acts— i. physical contact and advances involving unwelcome and explicit sexual overtures; or ii. a demand or request for sexual favours; or iii. showing pornography against the will of a woman; or iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.*
2. *Any man who commits the offence specified in clause (I) or clause (ii) or clause (iii) of sub-section (I) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.*
3. *Any man who commits the offence specified in clause (iv) of sub-section (I) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.*

A plain reading of the aforesaid section shows that the offence is made out when a person committing the act i.e. physical contact and advances involving unwelcome and explicit sexual overtures; or a demand

or request for sexual favours; or showing pornography against the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

A perusal of challan shows that no such ingredients are made out with regard to the allegations made against the aforesaid two petitioners. However, Mr.Anupam Gupta, learned senior counsel for the petitioners has rightly argued that the allegations of the complainant with regard to 354A has been attributed to Mr.Prem Singh Badhan as he passed indecent comments on the complainant and started pressurizing the complainant Navjot Lehal that she may accompany with him to Farm House for roaming here and there and the complainant had flatly refused to do so. Even the petitioners had told the complainant in the room to please her boss would not amount to an offence under Section 354A.

The contents of the Section 354 IPC is read as under :

“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall not be less than one year but which may extend to five years, and shall also be liable to fine.”

To make out an offence under Section 354 IPC, it is necessary that accused should have an intention to outrage the modesty of a woman.

The petitioners were working in the office and Sh.Rajinder Kumar had issued transfer order to the complainant from Samrala to Ludhiana at the instance of Mr.Prem Singh Badhan, Branch Manager which would not amount to make an offence of outrage the modesty of woman. However, keeping in view the consistent complaint made by Navjot Lehal against Mr.Prem Singh Badhan and the aforesaid two petitioners were aware of the details of the complaints and in this backdrop they have associated with

Mr.Prem Singh Badhan in confining the complainant in a room on 24.05.2013 at 4:45 p.m. and switched off her mobile phone and thereafter extended threat that she should withdraw her complaints, offence under Section 354 A would not be made out against petitioners. Primarily offence under Section 342 IPC is made out and the question that Mr.Prem Singh Badhan, Branch Manager and two other persons had common intention to outrage the modesty by criminal force under Section 354 IPC is made out can only be decided after evidence is led before the trial Court.

In ***State of Haryana v. Bhajan Lal*** 1991 (1) RCR (Criminal) 383 this Court in the backdrop of interpretation of various provisions of Criminal Procedure Code has laid down principles of law relating to exercise of power under Section 482 Cr.P.C. to prevent the abuse of process of court or to secure the ends of justice. The parameters laid down are as under:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer

without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The present case does not fall in any of the parameters for quashing of FIR under Section 482 Cr.P.C. At this stage, the instant petition for quashing of FIR is being dismissed. However, liberty is granted to the petitioners to take all the pleas at the time of framing of charges.

(RITU BAHRI)
JUDGE

23.12.2016
anil

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>