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

DECIDED ON : 10th MARCH, 2017

+ **CRL.REV.P.335/2016 & CRL.M.A.No.7308/2016**

‘X’ (Assumed name)

..... Petitioner

Through : Mr.Mohit Mathur, Sr.Advocate with
Mr.Neeraj Chaudhari & Mr.Akshay
Chandra, Advocates.

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through : Ms.Manjeet Arya, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present revision petition has been preferred by the petitioner – victim ‘X’ (changed name) to challenge the legality and correctness of an order dated 02.03.2016 of learned Addl. Sessions Judge in Crl.A.No. 09/2015 arising out of FIR No.63/05 registered under Section 509 IPC at PS Prasad Nagar whereby judgment dated 31.10.2014 of learned Metropolitan Magistrate acquitting the respondents was upheld.

2. Learned Senior Counsel for the petitioner urged that the impugned orders cannot be sustained as there was cogent and material evidence on record to establish commission of offence punishable under Section 509 IPC. The Trial Court did not appreciate the evidence in its true and proper perspective and fell into grave error to observe that dirty words used by the respondents were not incorporated in the complaint. The co-complainant ‘Y’ (Assumed name) had categorically narrated various

incidents whereby respondent Murli Lal Sharma had outraged her modesty by uttering objectionable words / foul comments.

3. At the outset, it may be mentioned that FIR No.63/2005 was lodged on the joint complaint of 'X' (the present petitioner) and 'Y' on 26.07.2004. Both the complainants examined themselves as PW-2 and PW-1 respectively. By a judgment dated 31.10.2014, the respondents were acquitted of the charges. The present petitioner filed Crl.A.No. 09/2015 to challenge respondents' acquittal which resulted in its dismissal. Co-complainant 'Y' seemingly did not challenge the respondents' acquittal.

4. It has emerged on record that respondent No.2 Murari Lal Sharma was also acquitted by a judgment dated 12.07.2012 of learned Metropolitan Magistrate in case FIR No.316/2009 registered under Sections 354/506 IPC at PS Patel Nagar. 'Y' has filed Crl.A.No.982/2012 to challenge Murari Lal Sharma's acquittal in the said proceedings. The said appeal is pending disposal before this Court and it is being contested by respondent Murari Lal Sharma.

5. Admitted fact is that both the complainants and the respondent No.2 were working at Hotel Siddhartha in 2004. The petitioner and her colleague 'Y' were working as guest attendants. Respondents Murari Lal Sharma, Satish Gupta and Raj Rani were working in the said hotel as guest attendants etc. Various complaints were lodged by them against each other. Finally, the petitioner and her colleague 'Y' filed a typed complaint before the police on 26.07.2004 against the respondents. Main allegations were against Murari Lal Sharma and it was alleged that he used to abuse them; make dirty gestures. Complaint lodged with the management did not yield any result. It was alleged that Satish Gupta and Raj Rani also used to

indulge in objectionable activities. It was further alleged that they were criminally intimidated and threatened to be abducted by the respondents.

6. In her Court statement as PW-1 'Y' made vital improvements and implicated Murari Lal Sharma for taking shower in the hotel and dropping towel in her presence and calling her near him through gestures. No such incident was narrated in the complaint. No complaint whatsoever was made to the management any time about it. No cogent evidence has come on record to infer if Murari Lal Sharma used to take bath in the hotel or drop towel. 'Y' did not raise alarm on any such occurrence. 'Y' further alleged that Murari Lal Sharma used to open his zip and touch her on her breast in the pantry. It is on record that there used to be many officials in the pantry. It is unbelievable that she would remain silent and not report the incident promptly.

7. Other allegations stated in the examination-in-chief are that the accused used to speak in filthy language and threatened her to kidnap. Satish Gupta uttered certain objectionable / dirty words. It is alleged that Raj Rani used to prompt co-accused Murari Lal Sharma to go to her when she was alone.

8. In the cross-examination, 'Y' admitted that an In-charge used to remain present in the ladies health club all the times. She admitted that Murari Lal Sharma had also registered an FIR against her and 'X' in July, 2004 prior to the lodging of the complaint in question. She admitted that towels in the health club were not meant to be used by the health club staff. Independent security guards used to have inspection of the spot. She further admitted that the entries in the register were used to be made by the guests as well as by the receptionist. There used to be around 5 - 6 persons at a

time in the gym. She further admitted that lot of people used to remain present at the cafeteria. She denied the suggestion that allegations against the respondents were at the behest of the management.

9. In her entire testimony, 'Y' did not reveal any specific date or time when any such specific incident had occurred. She did not raise hue and cry at any stage to sound her colleagues. She did not lodge any such complaint before the management about the respondents' conduct and behaviour. On the contrary, Murari Lal Sharma had filed various complaints against her and an FIR was registered prior to the lodging of the FIR in question.

10. PW-2 'X', the petitioner, in her Court statement merely deposed that Murari Lal Sharma used to torture her and Satish Gupta and Raj Rani assisted him in the endeavour. Murari Lal Sharma used to threaten her to kidnap. He used to utter dirty words to 'Y'; used to harass her unnecessarily and mark her 'absent' despite reaching the department before 10.15 a.m. He used to harass 'Y' using abusive language. In the cross-examination, she informed that 7 / 8 officials were there along with her in the health club (beauty parlour). 'Y' was posted in the health club. She volunteered to add that she also used to come to the beauty parlour. She admitted that no complaint was given to the hotel management in 2004 against the respondents. She further elaborated that her attendance was recorded at the reception counter by a receptionist. She admitted that the accused had lodged complaints with the departments regarding her coming late to the hotel.

11. On evaluating the testimony of victim 'X', it transpires that she has not corroborated PW-1's testimony in its entirety. There is no

consistency between the statement of PW-1 and PW-2 given before the Court. The petitioner did not elaborate as to how and in what manner the respondents used to cause annoyance. No complaint whatsoever was lodged by them promptly. It is highly unbelievable that the respondents without any ulterior motive would harass the petitioner and her colleague 'Y' in the presence of so many other officials present there. No such witness despite their availability has been examined. The statements of the victims have not been corroborated by any independent evidence. No individual from the hotel has been examined to ascertain if any complaint whatsoever was ever made by the victims against the conduct and behaviour of the respondents.

12. It has come on record to show that Murari Lal Sharma was a union leader and his relations with the management were conflicting in nature. He has examined himself as DW-3 besides examining DW-1 (Ram Gopal) and DW-2 (Suresh Kumar). Satish Gupta has appeared as DW-4. They have denied the allegations of the victims and have given their own version which inspires confidence.

13. The impugned judgment based upon fair appraisal of the evidence and endorsed by the Appellate Court deserves no intervention.

14. The present revision petition lacks in merits and is dismissed. Pending application also stands disposed of.

15. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MARCH 10, 2017 / *tr*