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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : MARCH 01, 2017

DECIDED ON : MAY 31, 2017

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CRL.M.C. 2200/2015 & CRL. M.A.No.7767/15

S.M.R. BAQAR

..... Petitioner

Through Mr. A.Das, Advocate with Ms. Rashi
Bansal, Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Ms. Meenakshi Dahiya, APP.
Ms. Rakshi Dubey, Advocate for R2
alongwith R2 in person

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been preferred to challenge the correctness of an order dated 17.10.2013 of learned Metropolitan Magistrate whereby the petitioner was summoned to face trial for commission of offences punishable under Sections 354/506 IPC in case FIR No.93/2009 registered at Police Station Parliament Street. The petition is contested by the complainant/respondent No.2.

2. Briefly stated the facts of the case are that the complainant 'X' (changed name) filed a complaint case under Section 200 Cr.P.C. along with an application under Section 156 (3) Cr.P.C. against the petitioner and one Sitender Chadha (since discharged) on 25.5.2009 for commission of offences punishable under Sections 354/506/120B IPC. By an order dated 27.5.2009, SHO Police Station Parliament Street was directed to register the FIR on the facts stated in the complaint. On 19.01.2010, final closure report under Section 173 Cr.P.C. was filed by SI Dinesh Kumar; the complainant filed Protest Petition. On 24.07.2010, SHO Police Station Parliament Street informed the court that more investigation was required in the matter. During further investigation, statements of certain witnesses were recorded. Upon completion of investigation, the Investigating Agency again filed cancellation report which was objected to by 'X'. By the order under challenge, the learned Metropolitan Magistrate partly accepted the cancellation report and dropped the proceedings against Sitender Chadha; cognizance was taken against the petitioner for commission of offence under Sections 354/506 IPC.

3. Learned counsel for the petitioner urged that the impugned summoning order cannot be sustained as it was passed without application of mind and in violation of the procedure under Sections 200/203 Cr.P.C. Closure Reports filed twice by the Investigating Agency were ignored without cogent reasons. The Trial Court did not take into consideration the statements of three witnesses Yashpal Singh (P.A.), Dinesh Kumar (peon) and Simi Thakural (stenographer) recorded under Section 161 Cr.P.C. in which they categorically claimed that no such incident of outraging the 'X's modesty had taken place on 18.05.2009. Similarly, the Trial Court

overlooked the statements of witnesses Bharat Singh, Suresh Chauhan and Kanta recorded under Section 161 Cr.P.C. The petitioner was exonerated in departmental proceeding. Counsel further urged that the complaint was motivated and malicious one. 'X' has levelled absurd allegations against the petitioner who had nothing to do with the grant of Child Care Leave (hereinafter referred to as 'CCL') to her. 'X' was in the habit of availing leaves for long durations at various occasions. Delay in lodging the report remained unexplained. Reliance has been placed on *Sonu Gupta vs. Deepak Gupta & Ors.* (2015) 3 SCC 424; *Kapil Garg (Dr.) and Anr. Vs. State* 2003 (70) DRJ 621; *Parminder Kaur vs. State of Uttar Pradesh and Anr.* (2010) 1 SCC 322; *Rajendra Kumar Srivastava & Ors. vs. Samyut Kshetriya Gramin Bank & Ors.* (2010) 1 SCC 335; *Priya Vrat Singh & Ors. Vs. Shyam Ji Sahai* (2008) 8 SCC 232 and *Anjani Kumar vs. State of Bihar and Anr.* (2008) 5 SCC 248

4. Learned counsel for the respondent urged that the victim's statement cannot be suspected at this stage and there are serious allegations against the petitioner for outraging her modesty.

5. Admitted position is that on 18.5.2009, 'X' was working as LDC in National Archives of India, Ministry of Culture, Janpath, New Delhi. She had applied for CCL for 37 days through proper channel on 8.5.2009. Her application was pending on the table of Judicial Administrative Officer, Sitender Chadha (since discharged). The petitioner was the Director General of Archives in the said institution.

6. X's case is that on 18.5.2009, she personally appeared before the Judicial Administrative Officer to request grant of CCL as she was in dire need of it to take care of her two and a half year old daughter. Sitender

Chadha told her that leave could not be sanctioned as the senior officers were not happy with her. She allegedly told her 'Aur Jab Tak Aap Unhe Khush Nahin Karengi Tab Tak Aap Ko Chutti Nahin Milegi'. It was further alleged that when 'X' replied that she was doing her work properly and honestly, the said official replied 'Agar Naukri Karni Hain to Bahut Se Kaam Karne Hote Hain Aur Main Bhi Is Post Par Yeh Sab Kaam Karke Hi Pahunchi Hoon, Nahin To Resign Kar Do'. She felt hurt and shocked by the words uttered by her.

7. 'X's further case is that thereafter she went to the petitioner's office with permission. He allegedly told her that his Junior Administrative Officer had already apprised her as to what he wanted. She replied that she did not tell what he wanted and she had approached him for her personal problems of leave. Upon this, the petitioner allegedly replied 'Bina Liye Diye Kuch Nahin Hota, Tum Mujhe Kuch Do, To Main Kuch Doonga. 'X' replied 'Sir, What I can give you'. The petitioner replied 'Tum Jawan Ho, Sunder Ho, Aur Mujhe Khush Kar Do, Aur Yehi Baat Junior Administrative Officer Ne Aap Ko Samjhaee Hai Aur Tabhi Weh Is Post Par Pahunchi Hai, Usne Bhi Yeh Sab Kuch Kiya Hai.' Thereafter, the petitioner caught hold of her hand. She released her hand, ran towards the office and became unconscious. Later on, she found herself in Ram Manohar Lohia hospital. The complainant further informed that the petitioner visited her in the hospital and apologized for his conduct. He requested her not to reveal the incident to anyone. The complainant further disclosed that she got treatment at CGHS dispensary, Timarpur. On the night intervening 18/19.5.2009, she personally handed over the complaint to the police but no action was taken.

8. On scrutinizing 'X's complaint, it can be inferred that, prima facie, there are serious allegations of outraging her modesty and of criminal intimidation. The allegations in her complaint cannot be ignored or brushed aside at this stage without affording her an opportunity to prove it during trial. No ulterior motive has been assigned by the petitioner forcing the complainant to implicate her senior officer. The Complaints Committee to deal with the complaints of harassment of women at work place in the Ministry of Culture submitted its report dated 30.3.2011. In the absence of solid evidence, no action against the petitioner was pressed. The Committee was also of the view that there was no sufficient ground for them to declare the complainant as the wrong doer. It was specifically noted therein that the complainant had nothing to gain by levelling false allegations; she did not belong to any organized group, union or lobby within the organization. She appeared sincere to the Committee. In the Committee report, reliance was placed upon the statement of Yashpal who claimed to have been present all the times in DG's room (the petitioner) during the relevant period. In 161 Cr.P.C. statement, dated 03.08.2009, Yashpal Singh, however, did not claim that he was present inside the DG's room throughout. The impugned order records that Yashpal Singh, PA was on duty outside his office on 18.5.2009. The complainant met the petitioner in his office and after about two minutes of her entering the office, Satinder Chadha also went inside the office and both of them returned and went to their respective offices. According to PW-Yashpal, no such incident of sexual harassment had taken place in the petitioner's office. The Trial Court observed that when the incident of harassment alleged to have taken place in the petitioner's office, admittedly, none was present at that time in the office except the petitioner and the

complainant. The statement of witnesses Yashpal, Dinesh and Simi Thakural that no such incident of harassment had taken place on 18.5.2009 , were of no consequence as none of them was present in the petitioner's office at the relevant time. Statements made by Yashpal and others need to be tested during trial.

9. Complainant's statement, prima facie, has been corroborated by other materials on record. As per Yashpal's statement recorded under Section 161 Cr.P.C. by the investigating agency, the complainant had visited the petitioner's office with prior permission. He stated in 161 Cr.P.C. statement that on 18.5.2009 when he was sitting outside the petitioner's room on his seat, at around 11.30 a.m., 'X' came and informed him that she wanted to meet the DG regarding her 'CCL'. He made her to sit on the chair and asked to wait. Thereafter, he went inside the DG's office and informed him. The petitioner asked him to call the complainant inside the room. The petitioner further directed him to call Junior Administrative Officer. Thereafter, he came outside the room and directed Dinesh (peon) to call Satinder Chadha. He took the complainant inside the DG's room; came outside and stood at the gate. In the meantime, after about two minutes, Satinder Chadha arrived at DG's room. Apparently during this period, Yashpal was not present inside the room.

10. Yashpal's statement further reveals that 'X' exited after two minutes. After some time, he was informed that 'X' had become unconscious in her chamber. He apprised the petitioner about it and he directed him to shift her to the hospital immediately. He thereafter along with his staff admitted the complainant at RML hospital in the official vehicle. The petitioner went to the complainant's chamber and enquired

about her condition from the staff present there. Thereafter, he and the petitioner went to the Trauma Centre and the petitioner enquired about the complainant's condition. Yashpal's statement gives credence to the complainant's version that soon after exit from petitioner's room, her condition had deteriorated and she had to be admitted in RML hospital.

11. Allegations against the petitioner are specific and definite; these cannot be brushed aside at this stage. Specific role has been assigned to the petitioner. True, the respondent had availed leaves on various occasions for long durations. Possibility of the complainant to be 'annoyed' for not permitting her to avail 'CCL' cannot be ruled out. However, truthfulness and falsity of the allegations preliminary pertains to the realm of evidence and cannot be gone through at this stage.

12. The law is very clear that the court should refrain from quashing the FIR on the ground that the allegations made in the FIR are false. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

13. In *Sonu Gupta vs. Deepak Gupta & Ors.* (2015) 3 SCC 424 it was held:

“At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused person. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to

find out at this stage whether the materials will lead to conviction or not.

At this stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. Even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

14. Resultantly, the petition is dismissed. All pending application(s) also stand disposed of. The petitioner, however, shall be at liberty to raise all these issues before the Trial Court during trial.

15. Observations in the order shall have no impact on the merits of the case. Endeavour shall be made by the Trial Court to expedite the trial as the case pertains to the year 2009.

16. Trial Court record (if any) be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

MAY 21, 2017/sa