

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1792 OF 2014

Erfan Khatib

.Petitioner

Vs.

The State of Maharashtra & anr.

.Respondents

Mr. Rahul Tiwari, Advocate, for the Petitioner
Mrs. P. P. Shinde, APP, for the Respondent – State

**CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.**

DATE : 09.08.2018

ORDER (Per Revati Mohite Dere, J.)

. Heard learned counsel for the Petitioner and the
learned APP for the Respondent No. 1 – State.

2. Rule. Rule is made, returnable forthwith with the
consent of the parties and is taken up for final disposal. Despite
service of notice of final disposal on Respondent No. 2, none
appears for the Respondent No. 2.

3. By this Petition, the Petitioner seeks quashing of proceeding, being C. C. No. 651 / PW /2014 (arising out of C. R. No. 292 of 2013 registered with the Bangur Nagar Police Station, Mumbai) pending on the file of the learned Additional Chief Metropolitan Magistrate, 68th Court, Borivali, Mumbai.

4. A few facts as are necessary to decide the aforesaid Petition are as under :-

The Respondent No. 2 – Ms Renita lodged a complaint / FIR with the Bangur Nagar Police Station, Mumbai on 22.11.2013 as against the Petitioner, alleging offences punishable under Sections 354, 354(A)(1)(i) of the Indian Penal Code. The Respondent No. 2 in her complaint / FIR has stated that she was working in Serco Global Services (SGS) as a team leader from 29.04.2013; that she was working in the Banking section of SGC and that her timings were from 9.00 a. m. to 6.00 p. m.; and that she was supervising the work of about 26 workers, who were working under her. She has stated that the Petitioner, an Assistant Manager was working in the said

Company for four years and that he was supervising and monitoring her work. The Respondent No. 2 has alleged that from June, 2013, the Petitioner had started making allegations against her without any basis, however, she ignored the same, as he was the Assistant Manager; that the Petitioner would ask her to come out for a drive, however, she ignored the same; and that the Petitioner had pushed her on a few occasions and had even touched her. According to Respondent No. 2, she had two months prior, informed about the same to the H. R. Department and had even sent an email to the H. R. Department. Respondent No. 2 has stated that she learnt from the H. R. Department one month prior that the Petitioner was only given an understanding. According to the Respondent No. 2, as the Petitioner would talk to her sarcastically and insult her, she lodged a complaint with the H. R. Department. She has stated that on 18.11.2013, she received a communication from the Company, that she was being shifted to some other department and that till then, she should not come for work. Pursuant thereto, the Respondent No. 2 approached the Bangur Nagar Police Station on 22.11.2013 and lodged a complaint / FIR as against the Petitioner alleging

offences punishable under Sections 354, 354(A)(1)(i) of the Indian Penal Code. Pursuant thereto, the Petitioner was arrested and was subsequently enlarged on bail. After completion of investigation, charge-sheet was filed as against the Petitioner in the Court of the learned Additional Chief Metropolitan Magistrate, 68th Court, Borivali, Mumbai.

5. Learned counsel for the Petitioner submitted that a false and malicious complaint has been lodged by the Respondent No. 2 as against the Petitioner, as the Petitioner had complained about Respondent No. 2's work to the concerned department. He submitted that the Petitioner was working as an Assistant Manager with Serco Global Services (SGC) for five years and that he had an impeccable record and had earned several awards for his dedicated service. He submitted that Serco Global Services was an outsourcing Company and that one of their clients was the State Bank of India, having 157 branches in 33 different countries and that out of these 33 countries, Serco Global Services was handling the processing work of 11 countries. He submitted that the nature of work handled by the

Petitioner's Company was, forwarding Bank documents / details of its customers for its entry, processing with respect to opening of Accounts, remittance of funds as well as maintaining of Accounts. He submitted that the entire process would be verified and when found to be correct by the BPO Operations, would then be entered into the Core Banking System and as such, the entire work being highly technical, was required to be completed within a specified time frame. According to the learned counsel for the Petitioner, team leaders are appointed for getting the said work executed and considering the nature of work, the team leaders are expected to be highly efficient and alert in their response. He submitted that the team leaders are given intensive training by the Management for the same i. e. the training included monitoring and managing the processing, fostering the staff, management information system, keeping a tab on the number of applications received, processed as well as the back log of work, managing escalation process of the Banks customers. He submitted that each country has a different processing system in accordance with the needs of its clients. According to the learned counsel for the Petitioner, on 29.04.2013, the

Respondent No. 2 was appointed as a team leader in Serco Global Services and the Petitioner, being the Assistant Manager of the said Company was her immediate superior; that the Respondent No. 2 had to perform several functions as a team leader which included Operation Management, People Management etc. within a time frame. Learned counsel submitted that in accordance with the office procedure, the Respondent No. 2 was also required to undergo intensive training for accomplishing her duties as a team leader and had to pass the evaluation process. He submitted that due to the non-readiness of the Respondent No. 2 to undergo the evaluation process on 17.06.2013, the same was postponed; that on 25.06.2013, the Respondent No. 2 underwent the evaluation test, however, the trainer – Ms Pranali Chavan informed the Petitioner that the Respondent No. 2 had failed the test due to her dis-interest and unwillingness to understand the process; the failure was also informed to the H. R. Department; that on 15.07.2013, training was again given to the Respondent No. 2, however, the Respondent No. 2 only cleared the first part pertaining to outward remittance and failed to attempt the

account opening test; pursuant to which, the trainer – Ms Pranali Chavan raised issues, that the Respondent No. 2 was not showing any willingness to learn or adapt to the training manuals. The Respondent No. 2 was given a final warning regarding her performances on the client front with respect to managing escalations, co-ordinations etc. not being upto the mark. It appears that the Line Manager – Mr. Anthony Gonsalves suggested removal and replacement of Respondent No. 2, however, the Petitioner as the immediate superior, decided to give the Respondent No. 2 a month's time to review her career and learn two additional processes and clear the evaluation test. On 16.08.2013, upon taking update, the trainer informed lack of urgency and recommended improvement in her written communication skills. On 14.08.2013, on receipt of an email from the client, the Respondent No. 2 was communicated about the same. On 27.08.2013, the Respondent No. 2 cleared her Process Evaluation Test for 2 more geographies only. On 18.09.2013, under an email, the Respondent No. 2 was asked to process 10 applications forms a day to keep her updated on the process requirement, however, she failed to process even one

application. On 10.09.2013, the Respondent No. 2 was asked to change her working pattern. On 18.09.2013, the Respondent No. 2 was sent an email seeking her response on various issues and as on 19.09.2013, no response was received , a reminder Email was sent for keeping the Line Manager in loop. On 19.09.2013, the Respondent No. 2 was apprised of her response keeping the Line Manager and the business Human Resources of the Company in loop. On 20.09.2013, the Respondent No. 2 was asked to explain the ambiguity in the Daily Activity Sheet to which her response was vague. The Respondent No. 2 was asked to be more precise while replying. On 25.09.2013, the Petitioner sent an email to Mr. Santosh Tawade of the H. R. Department stating that the Respondent No. 2 was not improving in her work and about her inappropriate conduct & insubordination. On 30.09.2013, Mr. Santosh Tawade asked the Petitioner and his Line Manager – Mr. Anthony Gonsalves to meet Mr. Dhiraj Solanki, Senior Manager, Human Resources; with respect to a closure of an issue. In the said meeting, the Petitioner was informed that a complaint was made against him alleging harassment at work. Learned counsel for the Petitioner further

submitted that pursuant thereto, Mr. Dhiraj Solanki, Senior Manager, Human Resources addressed an Email dated 30.09.2013 to the Petitioner with respect to his rude and intimidating behaviour i. e. the tone and tenor of communication should be softened, necessary professional hygiene be maintained while giving feed back to the staff etc. An enquiry was conducted into the said allegations by a Committee. After the enquiry dated 14.08.2013, the Committee came to the conclusion that the findings are inconclusive on the issue of harassment and that charges of sexual harassment could not be corroborated. However, the Petitioner was warned to confine his communication with female staff to professional norms and desist from disorderly and rude behaviour and was asked to have a mild tone while communicating. Learned counsel for the Petitioner further submitted that due to service work load, the entire staff worked till late on 07.11.2013 to complete the client processing, however, the Respondent No. 2 left the office early. He submitted that due to Respondent No. 2's lack of adequate process knowledge, a cross border fund from South Africa was erroneously processed, but for the timely intervention of the

Petitioner, stopping the processing of the transaction. Learned counsel submitted that an escalation email was received from the Deputy Manager, State Bank of India, United Kingdom on 08.11.2013 highlighting the issues, which were not addressed, which showed the Respondent No. 2's incompetency and ignorance to manage process and client escalations. He submitted that on 18.11.2013, Mr. Tawade from the H. R. Department took cognizance of the issue highlighted on the email and a decision was taken that the Respondent No. 2 be removed from the Petitioner's process department and be transferred to re-deployment pool with effect from 21.11.2013. According to the learned counsel, the Respondent No. 2 felt that she was moved from the said department at the behest of the Petitioner and hence, held a grudge against him, pursuant to which, she lodged the aforesaid complaint / FIR. He submitted that as several complaints were received as against the Respondent No. 2, with respect to her performance, the management took a decision of transferring the Respondent No. 2 to another department and subsequently, for want of experience, her services were discontinued. He further submitted

that pursuant to the false complaint lodged by the Respondent No. 2 with the H. R. Department of the Company, the Committee conducted an enquiry and came to the conclusion that the findings were inconclusive on the issue of harassment and that the charges of sexual harassment could not be corroborated. It is submitted that hence, out of grudge & vengeance, the aforesaid complaint / FIR was lodged by the Respondent No. 2 against the Petitioner.

6. Learned APP opposed the Petition.

7. Perused the papers including the charge-sheet. At the outset, it is pertinent to note that notice was issued to the Respondent No. 2 on 09.06.2014, returnable on 21.07.2014. When the Petition came up on board on 14.03.2016, the following order was passed :-

“ Registry informs that respondent No. 2 refused to take notice. Issue fresh notice to respondent No. 2 intimating that the petition would be disposed of finally at the stage of admission. Stand over to 25th April, 2016.”

8. On 09.07.2018, learned APP on the instruction of API, Mr. Pravin Pawar, Bangur Nagar Police Station stated that the Respondent No. 2 is not residing at the address mentioned in the cause title of the above Petition and that the Respondent No. 2 was married and was residing at her matrimonial home and that the address is not known to the Respondent No. 2's parents, because of some estrangement between the Respondent No. 2 and her parents. Learned APP further submitted that the Respondent No. 2 is also not working with the Organization where she was earlier working and neither is the Management aware of the whereabouts of the Respondent No. 2. Accordingly, learned counsel for the Petitioner was directed to take appropriate steps to effect service of notice on the Respondent No. 2 by substituted service. On 23.07.2018, learned counsel for the Petitioner filed Affidavit of service dated 18.07.2018 regarding paper publication in 'Free Press Journal' and 'Navshakti' stating that the aforesaid Writ Petition would come up before the High Court on 23.07.2018. In spite of the same, neither the Respondent No. 2 is present nor is she represented by

an Advocate. The hearing of the Petition was, thereafter, deferred to 07.08.2018. Even today none appears for the Respondent No. 2.

9. Coming to the facts and as noted earlier, the Respondent No. 2 had joined Serco Global Services on 29.04.2013 as a team leader. The Petitioner herein, being the Assistant Manager, was working in the said Company for four years and as part of his work, was also required to supervise and monitor the Respondent No. 2's work. The Respondent No. 2, as a team leader was required to undergo intensive training for accomplishing her duties as a team leader and had to pass the evaluation process, considering the nature of work that Serco Global Services undertook. It appears that the Respondent No. 2 could not complete the process in time due to her non-readiness and on account of her failure to get through the test, due to her dis-interest and unwillingness to understand the process. It appears that the Respondent No. 2 had failed to attempt the account opening test and that the trainer had raised the issue of the Respondent No. 2 not showing any willingness to learn or

adapt to the training manuals. Infact, it appears that the Respondent No. 2 was also given a final warning regarding her performance on the client front with respect to managing escalation, co-ordination not being upto the mark and the Line Manager – Mr. Gonsalves had even suggested removal and replacement of the Respondent No. 2. It also appears that the Respondent No. 2 had complained as against the Petitioner with the H. R. Department with respect to his rude and intimidating behaviour. It is mentioned in the said complaint made to the H. R. Department, that the Petitioner had asked the Complainant i. e. Respondent No. 2 to work for six days despite the fact that the CSE's were on 5 days working pattern; that she was not getting OT for extra work and pay in lieu of working for national holidays; that the Petitioner was nagging and pressurizing her to get the work done and that he would raise his voice and speak to her and other employees rudely in the process; and that the Petitioner had asked her to go out with him. After inquiry, the Committee concluded that the findings were inconclusive on the issue of harassment and that the charges of sexual harassment could not be corroborated. However, the Petitioner was given a

written warning to confine his communication with female staff to professional norms and desist from disorderly to rude behaviour. The Petitioner was also warned to have a mild tone and to soften his communication. The said report is dated 07.08.2013. It appears that thereafter, the Respondent No. 2 continued with her work in the same department, however, there were several customer complaints. It appears that in September, 2013; the Respondent No. 2 was asked to process 10 applications per day, however, she failed to process even one application. The Respondent No. 2 was even asked to change her working pattern, however, there was no response. The Respondent No. 2 was also asked to explain the ambiguity in the Daily Activity Sheet to which her response was vague. There are several emails annexed to the Petition, in support of the aforesaid. One of the Emails dated 11.11.2013 sent by the Petitioner to Mr. Tawade reflects that there was miscommunication by the Respondent No. 2 and a mention of business loss of INR 18, 39,907/- and subsequently, a transfer was suggested. It appears that on 08.11.2013, an escalation email was received from the Deputy Manager, State Bank of India, United Kingdom highlighting the

issues not being addressed, raising questions on the Respondent No. 2's competency and showed her ignorance to manage process and client escalations. Subsequently, on 18.11.2013, a decision was taken to remove the Respondent No. 2 from the process department. On 22.11.2013, the Respondent No. 2 lodged the aforesaid complaint / FIR as against the Petitioner. It may be noted that some of the allegations mentioned in the complaint / FIR, as against the Petitioner have not been mentioned / disclosed in the complaint lodged by the Respondent No. 2 with the H. R. Department of the Company. The emails annexed to the charge-sheet only disclose exchange of correspondence between the representatives of the Company and the Respondent No. 2 with regard to the work and operations carried out by them. It appears from one of the Emails sent by the Respondent No. 2 to Mr. Tawade dated 08.09.2013 that she had asked the Petitioner that she would be coming late to work on two occasions, however, the said request was denied. Respondent No. 2 has also alleged that there was partiality towards some, inasmuch as, some agents were given paid leave whereas, she was working six days a week. In the Email dated 15.08.2013

addressed to Mr. Tawade, Respondent No. 2 has stated that the Petitioner was very rude while talking and that he always spoke in a high tone and did not appreciate feedbacks given and that he came back very strongly for not accepting the feedbacks; that she was not paid for working more than 5 working days; that they were not paid and given extra payment for working on National holidays and that the Petitioner would flirt and had asked her to come out for a date.

10. The facts reveal that there were several complaints made by several persons against the Respondent No. 2, with regard to her capacity to work. This is fortified by the emails annexed to the Petition, sent by the Company representatives to the Respondent No. 2. The Respondent No. 2's emails reflect that she had a grievance against the Petitioner, who was her supervisor i. e. he was rude, and make her work overtime, that she was not given OT and that he had also asked her out. The findings of the Committee, who conducted the enquiry, pursuant to the complaint made by the Respondent No. 2, concluded that the findings were inconclusive on the issue of harassment and

that the charges of sexual harassment could not be corroborated. However, the Petitioner was given a warning to soften his tone and desist from disorderly and rude behaviour. Having regard to the nature of dispute / allegations & the inconsistencies, we are of the opinion that the complaint / FIR against the Petitioner appears to have been lodged malafidely and as such the possibility of false implication cannot be ruled out. The charge sheet consists only of the statement of the Respondent No. 2 - complainant and the emails. The allegations against the Petitioner asking the Respondent No. 2 for a date are vague & general in nature. No specifics have been provided. No statement of any other employee has been recorded to corroborate the same. In the factual background of the case, continuation of the proceeding would be an abuse of the process of law. Accordingly, the Petition deserves to be allowed. Rule is made absolute in terms of prayer Clause (b).

(REVATI MOHITE DERE, J.)

(R. M. SAVANT, J.)