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

+ **CRL.A. 1343/2019**

KRISHNA CHAWLA

..... Appellant

Through: Mr. Rajesh Anand, with Mr. Pawan
Yadav Advocates.

versus

STATE & ANR.

..... Respondents

Through: Ms Meenakshi Chauhan, APP for
State with SI Hema Ram, PS Hauz
Khas.

AND

43.

+ **CRL.A. 1345/2019**

KRISHNA CHAWLA

..... Appellant

Through: Mr. Rajesh Anand, with Mr. Pawan
Yadav Advocates.

versus

STATE & ANR.

..... Respondents

Through: Ms Meenakshi Chauhan, APP for
State with SI Hema Ram, PS Hauz
Khas.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.11.2019

CRL.M.A. 40988/2019 in CRL.A. 1343/2019

CRL.M.A. 40993/2019 in CRL.A. 1345/2019

1. Exemptions are allowed, subject to all just exceptions.
2. The applications are disposed of.

CRL.M.A. 40989/2019 in CRL.A. 1343/2019

CRL.M.A. 40994/2019 in CRL.A. 1345/2019

3. The captioned appeals have been filed after an inordinate delay. However, the appellant states that she was not aware of the appeals instituted by the respondents herein. She states that she became aware of the impugned judgment on 13.08.2019 from one of the office staff working with the Delhi Development Authority (DDA). She, thereafter, contacted the counsel and obtained the certified copy of the appeal and the other documents. She states that these were delivered to her counsel on 02.09.2019 and thereafter, her counsel started preparing for the appeal. However, his daughter was hospitalised from 08.09.2019 to 11.10.2019 and therefore, he could not prepare the appeal in time.

4. In view of the aforesaid averments, the applications seeking condonation of delay in filing the present appeals are allowed.

CRL.A. 1343/2019

CRL.A. 1345/2019

5. The appellant has filed the present appeals against the common judgment dated 04.06.2019 passed by the learned Additional Sessions Judge – 03(South), Saket Courts, New Delhi (hereafter ‘the Appellate Court’) allowing the appeals (CA No. 399/2018 and CA No. 429/2018) preferred by Mahipal Singh and Puran Singh (arrayed as respondent No 2 in these appeals) and acquitting them of the offences under Section 509/34 of the IPC.

6. The appellant, who was working as a stenographer with the Delhi Development Authority (DDA) at the material time, had filed a complaint regarding an incident on 30.11.2000 against three other employees of DDA

– Ram Garib, Puran Singh and Mahipal Singh. Pursuant to the said complaint, an FIR (FIR No. 983/2000 under Section 509/34 of the IPC, registered with PS Hauz Khas) against the said accused (Ram Garib, Puran Singh and Mahipal Singh) was registered. After the investigation, they were charged with the offence of insulting the modesty of the appellant in furtherance of their common intention by uttering vulgar words and thus, committing an offence under Sections 509/34 of the IPC.

7. The appellant was examined as PW1. She deposed that at the material time – that is, on 30.11.2000 – she was working with DDA at Khel Gaon as a Senior Stenographer. She stated that on 30.11.2000 at 03:15 p.m., she left her purse in an almirah and went to collect her salary. On her return, she found that her purse was opened and ₹2,600/- were missing from the said purse. She stated that she called Ram Garib, Puran Chand and Mahipal Singh and inquired from them. She alleged that instead giving a reply regarding her queries, they started using filthy language against her and also cracked filthy jokes on her. She stated that the language was so filthy that she could not repeat the same. However, she could write down the same and was permitted to do so.

8. The Court of learned Metropolitan Magistrate convicted the three accused by a common judgment dated 05.07.2018 relying solely on the testimony of the appellant (PW1). By an order dated 20.09.2018, the accused were released on probation on furnishing of a personal bond and bail bond in the sum of ₹50,000/- as per Section 4 of the Probation of Offenders Act, 1958 for a period of one year. They were also granted benefit of Section 12 of the said Act.

9. Aggrieved by the same, Mahipal Singh and Puran Chand appealed against their conviction (CA No. 399/2018 and CA No. 429/2018). These appeals were allowed by a common judgment dated 04.09.2019, which is impugned herein.

10. The Appellate Court had examined the evidence obtaining in this case and had found that in the given facts, the accused the accused could not be convicted on the sole testimony of the appellant and the same required corroboration. The Appellate Court also held that the learned Metropolitan Magistrate had erred in not analysing the cross-examination of the witnesses and had merely relied on their examination-in-chief.

11. The Court also noted that there were inconsistencies in the complaint filed by the appellant and in her testimony recorded subsequently.

12. The aforesaid FIR was based on the complaint filed by the complainant. The FIR indicates that the appellant had alleged that on 30.11.2000 at 03:15 p.m., she had left her purse in the room and had gone to collect her salary. When she came back, she found that her purse was opened and ₹3,000/- were missing from it. She stated that she inquired about the same from Mahipal Singh, Puran Chand and Ram Garib and they had used abusive language and filthy words. She stated that she had complained about them to senior officials on previous occasions as well but no action has been taken against the accused by the said senior officers. She stated that Puran Chand used to come to office after consuming alcohol and was given to using foul language / words. However, she also stated that she had found her money (₹3,000/-) which was kept in a drawer of her table.

13. In her testimony before the learned trial court, she stated the allegations made in the FIR, however she stated that the amount was now ₹2,600 instead of ₹3,000. She improved upon her complaint significantly. She stated on her making inquiries from the accused, they had used filthy language against her, which she could not repeat. She also alleged that they had cracked filthy jokes on her. She further alleged that the accused persons had been using filthy words against her and she had lodged a complaint with senior officials regarding such behaviour; however, no action has been taken by the senior officials. She stated that Puran Chand was under influence of liquor and all the three accused had been teasing her since morning of the said day. She stated that she had informed the police on the previous day regarding misbehaviour on the part of the accused. The police had chided them not to misbehave but the accused had also indulged in misbehaviour on the next date, that is, 30.11.2000. She further stated that she had lodged a complaint on 09.10.2000 against the accused despite which the accused had misbehaved with her. She further stated that she had also lodged complaint with the police on 09.07.2003, 20.05.2003 and 26.11.2003 (these were marked as A, B and C). She stated that the accused used such gestures which she cannot repeat in Court. She stated that such gestures were so filthy that the same even shamed male members of the staff.

14. Next, she stated that they used to write abusive words on the door and wall of her room. She also stated that she had caught the accused making abusive remarks and calls, which they made from the intercom. She thereafter wrote down the filthy language allegedly used by the accused, on a sheet of paper.

15. The appellant was cross-examined. She admitted that the amount alleged to have been stolen on that date was ₹2,600/- and not ₹3,000/-. She stated that despite protesting to the police, they had written the incorrect figure. A specific question was put to her as she had not testified that she recovered the amount of ₹3,000/- from her table drawer on the same day. In response, she denied that she had recovered the said amount and stated that she had sent a complaint /protest in this regard. She admitted to her signatures on the complaint but claimed that the above statements were incorrectly recorded. She stated that at the time when she became aware about her money going missing, three other persons were sitting in her room. She also admitted that she had not named the accused in her complaint filed earlier (that is, on 09.10.2000).

16. On further cross-examination, the appellant admitted that she had also filed a complaint against her immediate superior (Shri AK Gupta) and an FIR had been registered under Sections 509/34 of the IPC at PS IP Estate. The incident with Sh. A.K. Gupta was of a similar nature and pertained to his conduct during office hours. On further cross-examination, she admitted that she had also filed a complaint dated 22.01.1997 against one Ganesan and a complaint dated 06.03.1997 against one Surender Pal.

17. The Appellate Court noted that although general allegations of use of filthy language had been made against all the three accused, the appellant had not specified as to which accused had made which derogatory statement. According to the appellant, she had called all the three accused to her room to make inquiries and instead replying they had used abusive language. It appears from her testimony that there were three other persons present in the

room. However, none of them were examined by the prosecution.

18. It is also apparent that the misbehaviour complained of was during office hours and there would be a number of independent persons who could depose about the incident, if any. However, the prosecution did not examine any witness in support of the allegations made.

19. The accused had examined the four witnesses. Sh. N.S. Arora, Engineer Assistant to the Chief Engineer was examined as DW-2. He had deposed that he was sitting in his room on 30.11.2000 and he had heard the noise from outside. He rushed out of the room and the complainant was heard shouting. He stated that there were 8-10 persons standing there. He inquired from a few (1-2) of them and they stated that the complainant had alleged that her money had been stolen. He stated that Mahipal Singh was not present at that time. He stated that all persons (8 to 10 in number), decided to go to the office of Chief Engineer but found that he was not available in his office. He stated that they thought that they would wait for him but in the meanwhile, came to know that the complainant had gone to the police station. He specifically deposed that the complainant had not levelled any allegations against any of the accused prior to arrival of the police. He also stated that during his tenure, he had not come across any complaint against Mahipal Singh from any female staff. He also affirmed that the appellant had never made any complaint of any kind of misbehaviour against Mahipal or any other accused persons.

20. After examining the documents, the Appellate Court found that there was no material which would establish that the complainant (appellant) had

made any allegations against the accused prior to 30.11.2000. The names of the accused were not mentioned in any of the complaints. The Court also noticed that the appellant had made complaints of sexual harassment against other persons in the past as well. The suggestion was also made that the appellant had been making complaints with the view to secure her transfer to the office of her choice.

21. It also came in evidence that a departmental inquiry had been held on the complaint against the accused on the complaint made by the complainant regarding the incident of 30.11.2000. However, the accused were not found guilty of the allegations made by the complainant.

22. Given the facts as obtaining in this case, the conclusion of the Appellate Court that the accused could not be convicted on the sole testimony of the appellant, cannot be faulted. Indisputably, the complaint made by her is at variance with her testimony in certain aspects. Further, the appellant's testimony is also beyond the complaints made. It is also cannot be disputed that the complainant's testimony is wanting, inasmuch as, it does not specify which language is used by which accused.

23. In this view, this Court does not find any reason to interfere with the decision of the Appellate Court in acquitting the respondents.

24. The learned counsel appearing for the appellant had contended that the appeals preferred before the Appellate Court were not maintainable, inasmuch as, they had been granted probation. He submitted that having prayed for probation before the learned MM, they could not prefer an appeal the order of conviction. The said contention is unmerited. Merely because

the accused had sought for a lenient sentence, did not preclude them from filing an appeal against the order of the learned Metropolitan Magistrate convicting them of the offence under Sections 509/34 of the IPC.

25. In view of the above, the appeals are dismissed.

NOVEMBER 25, 2019
RK

VIBHU BAKHRU, J