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

+ **CS(OS) 1213/2015 & I.A.No.1791/2017**

VISHAL NARAIN

..... Plaintiff

Through Mr.Rajiv Narain with Mr.Nikhil
Kumar, Advocates with plaintiff in
person.

versus

SAMSUNG INDIA ELECTRONICS PVT LTD Defendant

Through Mr.Niraj Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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31.01.2019

Present suit has been filed for declaration and recovery of Rs.2,50,00,000/- along with *pendent lite* and future interest.

The plaintiff was a former manager of the defendant-company whose services were terminated on 07th February, 2014 due to an incident of alleged misconduct reported against the plaintiff in the media. The relevant portion of the letter dated 07th February, 2014 is reproduced hereinbelow:-

“An incident of grave and serious misconduct has been reported against you in the media today i.e. 7th February, 2014, interalia reporting that you have been booked and placed under police custody for acts of moral turpitude which also constitute a criminal offence under the law of the land. Our internal investigations have revealed that you had no authority to conduct any interview for any employment with the company on the day of the reported incident.

Without commenting on the merits of the reported accusations against you, we regret that actions reported

against you have extensively damaged the reputation of the fair name of the Company as your conduct has been covered extensively in the media.

Samsung India follows a “Zero Tolerance” policy in matters of violation of the Code of Conduct and in matters where any employee is found involved in acts which violate the laws of the land in any manner whatsoever. Globally, Samsung strives to conduct its business in complete deference to the local customs and laws of the land.

Accordingly, in the circumstances we have decided to terminate your services forthwith.

The full and final settlement of your dues if any shall be completed soon.

For Samsung India Electronics Pvt. Limited.”

Subsequently, the plaintiff was discharged by the court of Civil Judge under the Protection of Children from Sexual Offences Act, 2012 vide judgment and order dated 24th November, 2015. The relevant portion of the said order is reproduced hereinbelow:-

“9. All above conduct of the victim shows that she has already and motive in her mind and it was her pre-planned mindset to involve applicant Vishal Narayan and Rajnish in such offence against the women. She had an experience to go to Orchid Hotel in the past, and therefore, during night hours she went to the hotel. It is to be noted that no prudent woman would go to the hotel to meet any man during night in a room for getting a job. Therefore, ingredients of section 354(B) of IPC and section 8 of POCSO does not attract to this applicant prima facie, since the act is not immediate, there was no motive, intention or criminal force applied on the part of the applicant. There is material omission and contradiction regarding allegations about removing her T-shirt, in her statement before police, statement before Magistrate and the statement of informant Nitu. There was no cause for Nitu to

become informant when victim was very well present. Her allegation about tried to disrobing her, touching or kissing her does not fall under section 354(B) of IPC and section 8 of POCSO Act. On the contrary it appears that after conversation with Rajnish there are possibility, that the victim girl agreeable to carry illegal act as she on her own went to the hotel room. She is the girl of understanding age of about 17 years 2 months. The act of her of recording conversation of Rajnish and then going to the hotel Orchid itself shows her intention to involve them in the offence which she herself has created.

10. As per section 354(B) of IPC which is an offence relating to assault or used of criminal force to a women with an intend to disrobe her. Section 8 of POCSO Act speaks the punishment for sexual assault and it is to the effect that whoever with sexual intention touches one of the private parts of the girl or does any other act with sexual intend involving physical contact without penetration commits sexual assault. Section 17 of POCSO Act speaks about abatement which is defined under section 16 to be in instigation or conspiracy or aid. Further explanation to section point out that there should be misrepresentation or anything done to facilitate the commission of an illegal act with mensrea. Thus, as per the ingredients of section charged, if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case.

11. In the present case also in any manner this applicant was not having any common intention to disrobe the victim girl. But at the best it can be said that this applicant and the prosecutrix had their own understanding about the particular subject and she voluntarily acted upon as per the offer made by Rajnish. It can not be said that this applicant outrage her modesty or commit any sexual assault upon the victim.

12. In view of my all above discussion present applicant

Vishal Narayan deserves to be discharged in C.R.No.42/2014 registered with Vileparle police station for offence under section 354(B) of IPC with section 8 and 17 of POCSO Act. In the result, I proceed to pass following order.

ORDER

- 1. Application Ex.10 in S.C.No.161/2014 is hereby allowed.*
- 2. Applicant/accused no.1 Vishal Narayan s/o Shivshankar Narayan, in Session Case No.161/2014, is hereby discharged in C.R.No.42/2014 registered with Vileparle police station for offence under section 354(B), 34 of IPIC with section 8 and 17 of POCSO Act.*
- 3. His bail bond stands cancelled.”*

Today the learned counsel for the defendant-company states that the defendant is willing to issue a new termination letter in accordance with the appointment letters dated 6th April, 2006 and 14th April, 2009. The relevant portion of the said appointment letters reads as under:-

Appointment letter dated 06.04.2006

“9. Termination of services may be effected by either side tendering one month’s notice or payment of one month’s salary in lieu of notice after confirmation.”

Appointment letter dated 14.04.2009

“..... Subsequent to your promotion, your notice period now stands revised to three months notice or payment of three months basic salary in lieu of notice.”

Learned counsel for the defendant further states that the termination shall be treated as simplicitor termination and the same in no manner would cast any aspersion on the character and the conduct of the plaintiff.

In view of the aforesaid statement, learned counsel for the plaintiff, on instructions of the plaintiff who is personally present in Court, states that the plaintiff does not wish to press for any other or further relief in the present suit. He clarifies that the plaintiff shall accept the new termination letter in full and final settlement of all his claims.

Let the revised termination letter be issued to the plaintiff within a period of one week.

In view of the aforesaid, present suit stands disposed of.

Registry is directed to issue to the plaintiff a certificate authorizing him to receive back from the Collector the full amount of the Court fee paid by him in the present suit.

Order *dasti* under the signature of the Court Master.

MANMOHAN, J

JANUARY 31, 2019

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