

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

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Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 630/2016

SASHIDHARAN KOLLERY & ORS. Petitioners

versus

STATE & ANR. Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Rebecca John, Sr. Advocate with Mr. Siddharth Yadav and Mr. Chinmay Kanojia, Advocates

For the Respondents : Ms. Meenakshi Dahiya, APP for State.
Ms. Anandita Singh, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 630/2016 & Crl.M.A.14823/2016 (stay)

1. Petitioners impugn order on charge dated 25.07.2016, whereby, Trial Court has framed a charge against petitioner Nos.1 and 2, i.e., Mr. Sashidharan Kollery and Mr. Kabir Khattar under Sections 342/354/506 (II) read with Section 34 Indian Penal Code and against petitioner No.3 Mr. Yogesh Kumar under Section 506 (II) Indian Penal Code in FIR No.17/2014, Police Station Safdarjung Enclave.

2. Subject FIR was registered on the complaint of respondent No.2 alleging harassment at work place. It is contended that since July 2012, she was facing problems and that petitioner Nos.1 and 2 were pestering her for sexual advances. It is alleged that in September 2012 that CFO of the Company was verbally informed and an e-mail was also marked in October 2012 to him. It was alleged that petitioner Nos.1 and 2 wanted her to meet them alone. It was alleged that they had taken her to an isolated room and threatened her to fulfill their wishes. It is alleged that they were also pressurizing her to meet them at a guest house after office hours and if she disclosed the same to anybody, she would lose her job. It is alleged that when she made a complaint by an e-mail, they issued a transfer letter.

3. It is alleged that she made complaints in February 2013 by e-mails to the CFO and the President and further, lodged a complaint with Delhi Commission for Women (DCW) on 13.02.2013. It is alleged that on 25.03.2013, she once again joined the Company and when she was entering the office, petitioner No.3 Yogesh Kumar shouted at her for more than two minutes that she had been given a letter not to come to Delhi office and that her computer, telephone, etc. were disconnected. It is alleged that on the same day when she was once again entering the office at about 6:15-6:30 in the evening, petitioner No.3 was standing with an unknown person and told him to arrange for an acid bottle to fix her.

4. After investigation, charge sheet was filed stating that all the allegations made by the respondent No.2 started after she was issued a transfer letter from Delhi to Bangalore office. Charge sheet records that respondent No.2 had continued to take excessive leaves. Statement of various officers of the Company were recorded and they had stated that there was a separation of the Customer Care Department from the Subscription Department in the month of September, 2012 and the same was brought under the control of the petitioner No.2 for better monitoring and improving the customer grievances of the Company.

5. Respondent No.2 continued to avail excess number of leaves and she had issues with other colleagues including her Supervisors and colleagues, who were females.

6. E-mails were exchanged between her and the CFO about her performance for HR Rules and the reasons for leaves she had taken during the time. She had taken excessive sick leaves, privileged leaves and had requested that her leave status be adjusted against the same instead of any deduction being made from her salary. E-mails were exchanged with regard to several work-related issues.

7. Charge sheet further records that on 15.09.2012, one lady employee, who was heading the Customer Care Department in Bangalore, resigned leading to a vacuum and the management, considering the weak economic environment and company's

economic position, decided not to hire a Customer Care Executive but to fulfill the requirement by posting respondent No.2 to Bangalore in her existing position. The transfer was as per the terms and conditions of the appointment letter.

8. Respondent No.2 was transferred to Bangalore office vide letter issued on 30.01.2013. It is noted that thereafter respondent No.2 had written several e-mails requesting to avert/nullify her transfer citing reasons liker her treatment in RML Hospital and also that she had to take care of her aging and sick mother besides lack of knowledge of South Indian language and the costs involved in shifting.

9. An E-mail was written by her on 11.02.2013. She was requested by e-mail dated 25.02.2013 to join the Bangalore office by 04.03.2013. On 13.02.2013, she made a complaint before the Delhi Commission for Women (DCW) with allegations bordering on harassment. The Delhi Commission for Women (DCW) issued summons on 27.02.2013 *inter alia* to the petitioners requiring them to appear on 05.03.2013.

10. On 27.02.2013, an e-mail was received from the brother of respondent No.2 that she was severally ill and was unable to join due to her ill health, which was followed by another e-mail of 04.03.2013 contending that she would be unable to join on account of her ill health. Charge sheet also records that she had refused to join office citing health reasons but she was present before the Delhi

Commission for Women (DCW) in fine health arguing for her cause and case.

11. The company had also constituted an Internal Complaint Committee in terms of the Vishakha Guidelines. Respondent No.2 attended the meeting. However, two of the members resigned from the Committee on the ground that they were no more entitled to be the member of the ICC. The Committee was reconstituted with an external member. However, the respondent contended that she had no faith in the Committee and refused to participate.

12. Charge sheet further records that investigation had revealed that there was no mention of sexual advances being made in any of the e-mails that the respondent No.2 had written to her seniors. On the contrary, the issues raised were with regard to the disputes on the leaves taken by her and her transfer to Bangalore in the month of January 2013 to which she was objecting. It is noticed that even in the complaint to the Delhi Commission for Women (DCW), there is no allegation of sexual advances and complaint was made with regard to her transfer.

13. Charge sheet notes that specific allegations were made with regard to the incident of September 2012 and the incident of assault, sexual favour and threat. However, in none of the e-mails or the complaint made on 13.02.2013, to Delhi Commission for Women (DCW), there is any reference to the said incident. Charge sheet

records that investigation has not corroborated any such allegations, on the contrary, the issues emanated out of her conduct, excessive leaves and transfer to Bangalore. Charge sheet was filed without arrest.

14. Various e-mails which were referred to by the complainant in her FIR as also in her statement under Section 164 Cr.P.C., were made part of the investigation report and were placed before the concerned Trial Court.

15. The complainant was appointed as a Customer Care Executive on 06.03.2009. The appointment letter which forms part of the investigative report shows that the job of the complainant was transferable as per the requirements of the Company. The complainant has alleged that in September 2012, sexual advances were made and she was being targeted. She has further alleged that she had written e-mails to her superior officers.

16. The e-mail dated 25.10.2012 of the complainant, which is specifically referred to by her, does not show that there was any allegation of any sexual advances having been made. The grievances raised by the complainant are usual work related. Even the response of the petitioner No.2 is with regard to the complaint received against her for excessive leaves. Repeated e-mails exchanged show that concern was being raised by the Company as well as the petitioner Nos.1 and 2 with regard to her work-related issues as well as

excessive leaves. None of the e-mails referred to by the complainant in either her complaint given to the DCW and the police or her statement under Section 164 Cr.P.C. corroborate the allegations of sexual advances or assault on the part of the petitioners. The contemporaneous e-mails exchanged between the complainant and her superior officers do not corroborate or substantiate the allegations made by the complainant. The contemporaneous e-mails, on the contrary, contradict the very version of the complainant, which is alleged by her in her statement recorded under Section 164 Cr.P.C.

17. There is clearly major improvement in her statement under Section 164 Cr.P.C, which was recorded on 13.01.2014, after nearly a year of her first complaint, which was made on 13.02.2013 to the Delhi Commission for Women (DCW). The complaint given by the complainant respondent No.2 as well as the contemporaneous e-mails completely contradicted her statement given under Section 164 Cr.P.C.

18. The incident alleged is of September 2012. Thereafter the e-mails that were exchanged between the Company/petitioners on the one side and the respondent No.2 complainant on the other show that there were several issues being raised by the superior officers with regard to the conduct of the respondent No.2 and her relation with other employees besides her taking excessive leaves.

19. On 30.01.2013, she was transferred from the Delhi office to the Bangalore office after which for the first time, she starts making complaints against the petitioners. Even the complaint lodged by her against the petitioners with the Delhi Commission for Women (DCW) does not corroborate or substantiate her statement given under Section 164 Cr.P.C. after one year.

20. The allegations against petitioner No.3 is that he had earlier misbehaved with her and on 25.03.2013, in the beginning when she had attempted to enter the office, he had shouted at her and told her that she had been given a letter not to enter the office and her computer and television had already been disconnected. It is alleged that she once again came to the office at 6:15 to 6:30 pm when petitioner No.3 is alleged to have told an unknown person to bring a bottle of acid and threatened her.

21. It is pertinent to note that in none of the complaints contemporaneously made after the alleged incident of 25.03.2013, there is any reference to such incident. There is also no corroboration found that the complainant respondent No.2, who had been transferred to Bangalore office, made any attempt to enter the office on 25.03.2013. Charge sheet noted that on 27.02.2013, the Delhi Commission for Women (DCW) had issued summons to the petitioners to appear before the Commission on 05.03.2013. Hearing had taken place before the Delhi Commission for Women (DCW) prior to 25.03.2015. Thereafter, the Company had even filed a writ

petition on 01.04.2013 before the Delhi High Court. There is no corroboration that any such attempt was made by the complainant to enter the office on 25.03.2013 when the incident is alleged to have happened with petitioner No.3. Further, there is no explanation as to why respondent No.2 attempted to enter the office at 6:15 to 6:30 pm. On the other hand, in her contemporaneous e-mail she has protested to her being asked to stay back even at 4 pm on the premise that everyone in the office would leave at 2 pm and the official timing was only upto 2 pm.

22. Furthermore, as noticed above, the alleged incident is not referred to by her in any of her contemporaneous e-mails. Rather with regard to the petitioner No.3, she had raised grievances that he was not arranging for an office boy whenever a customer would come on the ground that it is not her duty to arrange for an office boy.

23. Reference may be had to the judgment of the Supreme Court in *George & Ors. vs. State of Kerala & Anr.*: (1998) 4 SCC 605, wherein, the Supreme Court has held that the statement of the witnesses recorded under Section 164 Cr.P.C cannot be used as substantive evidence and can be used for the purposes of contradicting or corroborating such witness.

24. As noticed above, in the present case, the statement recorded under Section 164 Cr.P.C. of respondent No.2 is contradicted by her

own contemporaneous e-mails as well as her complaints made to the police and the DCW.

25. At the time of framing a charge, it is the duty of the Trial Court to assess the entire material collected by the prosecution during investigation and not to frame a charge merely because an allegation is made by the complainant. It is the duty of the Trial Court to assess whether there is material on record to raise grave suspicion of the accused having committed the said offence. The material both against or in favour of the accused has to be assessed by the Trial Court to come to a conclusion as to whether grave suspicion arises or not.

26. The Trial Court in the impugned order has proceeded solely on the basis of the statement recorded under Section 164 Cr.P.C. and completely ignored the contemporaneous e-mails which were available on record. Trial Court completely lost sight of the fact that the statement under Section 164 Cr.P.C. was recorded after one year of the complainant having been removed from office. The contemporaneous material in the form of e-mails written by the complainant from September till February 2013 as also the complaint lodged with the Delhi Commission for Women (DCW) on 13.02.2013 completely contradicted and belied the statement given under Section 164 Cr.P.C. It may be noticed that in the statement under Section 164 Cr.P.C. there are substantive improvements in the version by the prosecutrix and she has even leveled allegations of physical sexual assault by petitioner Nos.1 and 2, with regard to which she was

completely silent in her complaints and grievances raised for over a year.

27. Further, it may be seen that during investigation, as noticed in the charge sheet, the allegations of the complainant were not substantiated or corroborated.

28. Trial Court has clearly committed an error in framing a charge against the petitioners. There is no material on record to raise grave suspicion of the petitioners having committed the alleged offence against the complainant. On the contrary, the version of the complainant is contradicted by her own conduct and contemporaneous e-mails of the period.

29. In view of the above, I am of the considered opinion that the impugned order framing charge against the petitioner Nos.1 and 2 under Sections 342/354/506 (II) read with Sections 34 IPC and against petitioner No.3 under Section 506 (II) IPC cannot be sustained and is, accordingly, quashed. Petitioners are discharged of all the offences.

30. Petition is allowed in the above terms.

31. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019/ st