Reserved Judgment

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 1028 of 2015

Chandan Kumar Soni .....Petitioner

Versus

State of Uttarakhand and others ….Respondents

Mr. Arvind Vashistha, Senior Advocate, assisted by Mr. Gopal K. Verma, Advocate for the petitioner.
Mr. Siddharth Bisht, Brief Holder for the State.
None is present for respondent nos. 2 and 3.

Per: Hon'ble Ravindra Maithani, J.

Instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") has been preferred to quash the proceedings of Criminal Case No. 73 of 2015, State Vs. Chandan Kumar Soni, under Section 3 (2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short "the Act") and Section 509 IPC, pending in the court of Judicial Magistrate, Dwarahat, District Almora (for short "the case").

2. The case has a history behind it, which is as hereunder:-

The petitioner is working as Registrar of the Vipin Tripathi, Kumaun Institute of Technology, Dwarahat, District Almora (for short "the Institute"). Respondent No.3 D.S. Pundir was Director of it. The respondent no.2 (hereinafter referred to as the "aggrieved woman") was working a Caretaker in one of the hostels of the Institute. On 13.03.2014, the aggrieved woman gave a complaint to the respondent no.2, alleging that the petitioner has been harassing her repeatedly; he would telephone her at odd hours; message her; seek personal details like date of birth for preparing horoscope; would taunt

her on her body; would assure her to secure her government job. On this complaint, the Director of the Institute constituted a Committee (for short “the Committee”) on the same day, comprising of seven members. The Committee submitted its report on 13.05.2014. The Committee concluded that the petitioner did not cooperate with the Committee in its proceedings and he was held guilty of sexual harassment as defined under the Act. The Committee recommended that the petitioner be punished. The Director of the Institute forwarded the report of the Committee to the Police for lodging an FIR on 03.06.2014. Based on it, FIR No. 14 of 2014, under Section 3 (2) of the Act and Section 509 IPC was lodged against the petitioner and investigation carried out. After investigation, charge sheet under Section 3 (2) of the Act and Section 509 IPC has been submitted by the Investigating Officer against the petitioner on 05.12.2014. The court took cognizance on this charge sheet on 23.07.2015 and accordingly, proceedings of the case were instituted.

3. Instant petition has been filed for quashing the proceedings of the case. In these proceedings, notices were issued to the respondents. Counter affidavits have been filed by the aggrieved woman as well as by the Director of the Institute, who is respondent no.3. State has also filed counter affidavit. At the time of hearing, none represented respondent nos. 2 and 3.

4. Heard learned counsel for the petitioner and learned counsel for the State and perused the record.

5. Learned counsel for the petitioner would submit that it was incumbent upon the Institute to constitute an Internal Complaints Committee which was not constituted. On the complaint dated 13.03.2014, of the aggrieved woman, the Director of the Institute constituted a Committee which may be termed as an *adhoc* Committee.

It is not a Committee validly constituted under the Act. Even, it is also argued that initially, the aggrieved woman gave unsigned complaint, which was subsequently signed by her in the proceedings before the Committee. It is also argued that the petitioner had challenged FIR in Writ Petition (Criminal) No. 1021 of 2014, which became infructuous after filing of the charge sheet.

6. On behalf of the petitioner, reference has been made to the provisions of the Act, particularly, Section 27 of the Act to argue that cognizance of the offences punishable under the Act, can be taken only on a complaint made by the aggrieved woman or any person authorised by the internal Committee. But, it is argued that in the instant case, the complaint has not been filed and even the FIR has been filed by the Director of the Institute, who is not authorised to file FIR under Section 27 of the Act. On behalf of the petitioner, it is also argued that the aggrieved woman never lodged any FIR, she had only given a complaint to the Director under the Act. On merits, it is argued that the allegations levelled against the petitioner does not make out a case under Section 509 IPC. It may at the most be termed as insulting a woman, but in no case, it can be construed to constitute outrage the modesty of the aggrieved woman. It is argued that the cognizance ought not to have been taken in the matter, therefore, proceedings deserve to be quashed.

7. In support of his contention, learned counsel placed reliance upon the principles of law as laid down in the case of Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill, (1995) 6 SCC 194 and Abhijeet J.K. Vs. State of Kerela Represented by its Public Prosecutor and others, 2020 SCC Online Kerela 703.

8. In the case of Rupan Deol Bajaj *(supra)*, the Hon’ble Court defined the word “modesty” and observed as hereunder:-

> "14. Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter *Oxford English Dictionary* (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word `modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". *Webster's Third New International Dictionary of the English language* defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the *Oxford English Dictionary (1933 Edn.)* the meaning of the word `modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".
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> 15. *In State of Punjab vs. Major Singh*[1] a question arose whether a female child of seven and a half months could be said to be possessed of `modesty' which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the `common notions of mankind' referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of `modesty' and the interpretation given to that word by this Court in *Major Singh's case*[1] it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to `outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady - "sexual overtones" or not, notwithstanding."

9. In the case of Rupan Deol Bajaj *(supra)*, the Hon'ble Court in para 17 also observed "**it is undoubtedly correct that 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 attending circumstances of a given case."**

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1 (1994) 4 SCC 602 : 1994 SCC (Cri) 1087

10. In the case of Abhijeet J K *(supra)*, in para 10, a distinction was drawn between offence under Section 509 IPC and mere insult of a woman as hereunder:-

> "10. There is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract Section 509 I.P.C., merely insulting a woman is not sufficient. Insult to the modesty of a woman is an essential ingredient of an offence punishable under Section 509 I.P.C. The crux of the offence is the intention to insult the modesty of a woman."

11. It is also argued that some of the members of the Committee were bias towards the petitioner because earlier in his official capacity, the petitioner had raised his voice against the irregularities which were being committed in the Institute.

12. On the other hand, learned State counsel would submit that in such cases, intention is important. It is argued that to attract the provision of Section 509 IPC, even gesture is sufficient; the intention can be gathered by the victim only; it is argued that nothing has been shown as to why the report has been lodged by the aggrieved woman. Learned State counsel would submit that there is no ground to make interference. The factual aspects may be examined at the trial and the petition deserves to be dismissed.

13. In the year 1997, in the case of Vishaka and others Vs. State of Rajasthan and others, (1997) 6 SCC 241, the Hon'ble Supreme Court having considered the provisions in the "Convention on the Elimination of All Forms of Discrimination against Woman" as also the general recommendation of CEDAW, prescribed guidelines and norms for the effective enforcement of basic human rights of gender equality and guarantee against sexual harassment and abuse, more particularly

against sexual harassment at workplace. The Act was enacted in the year 2013. Section 3 of the Act is as hereunder:-

> "3 Prevention of sexual harassment.- (1) No woman shall be subjected to sexual harassment at any workplace.
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> (2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:-
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> (i) implied or explicit promise of preferential treatment in her employment: or
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> (ii) implied or explicit threat of detrimental treatment in her employment; or
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> (iii) implied or explicit threat about her present or future employment status: or
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> (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her: or
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> (v) humiliating treatment likely to affect her health or safety."

14. A bare perusal of the above, reveals that in fact, Section 3 (2) is not penal provision. It merely defines as to what amounts to sexual harassment. A mechanism has been provided in the Act for redressal of sexual harassment at workplace by constituting Internal Complaints Committee or local Committee, as the case may be. Chapters IV and V of the Act makes provision as to how a complaint of sexual harassment at workplace shall be dealt with. Inquiry report is submitted under Section 13 of the Act. It does not make any offence under the Act. Section 14 of the Act provides for punishment for false or malicious complaint or false evidence. Section 17 provides for penalty for publication or making known contents of complaints and inquiry proceedings for which punishment is given under Rule 12 of the Rules made under the Act. Apart from it, Section 26 provides for penalty for non compliance of the provisions of the Act.

15. Section 27 of the Act makes provisions for taking cognizance under the Act. It reads as hereunder:-

> "27. Cognizance of offence by Court- (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

> (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
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> (3) Every offence under this Act shall be non-cognizable."

16. The bar under Section 27 can be invoked only if cognizance is to be taken for any offence under the Act. In the instant case, FIR has been lodged under Section 3 (2) of the Act. But, as stated, Section 3 (2) of the Act is a definition clause, which defines sexual harassment. It is not a punishment under the Act. Therefore, the bar under Section 27 does not arise because as stated Section 3(2) of the Act is not an offence punishable under the Act.

17. In the instant case, FIR has also been filed under Section 509 IPC, which is as hereunder:-

> "509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years and also with fine."

18. In fact, Section 11 (2) of the Act also makes mention of Section 509 IPC and provides that under this Section, an aggrieved woman may be provided payment of such sum as the Court may consider appropriate.

19. In the case of domestic worker, Section 11 of the Act also provides for lodging of the FIR under Section 509 IPC. The scheme of the Act is clear that it provides for prevention of sexual harassment of woman at work place. A mechanism is given, but it does not exclude the applicability of the other provisions of the law for example Section 509 IPC. Cognizance of offence under Section 509 IPC is not governed by Section 27 of the

Act. It is independent to it. It cannot be said that a woman cannot lodge an FIR under Section 509 IPC only because of the fact that the offence was committed at her workplace. Section 509 IPC is cognizable offence. It does not provide as to who will file the FIR in the case punishable under Section 509 IPC.

20. In the instant case, the Director of the Institute forwarded initial complaint dated 13.03.2014 of the aggrieved woman as well as the inquiry report to Police for lodging the FIR and on its basis, FIR is lodged, which was investigated and after investigation, charge sheet submitted under Section 509 IPC also. There is no illegality in this procedure. FIR is not based on inquiry report of the Committee alone. It is based on the initial complaint of the aggrieved woman dated 13.03.2014. It is on this complaint of the aggrieved woman that the Committee submitted its inquiry report and thereafter, matter proceeded. Merely, because Section 3 (2) of the Act is mentioned in the charge sheet, it does not invoke provisions of Section 27 of the Act because as stated, Section 3 (2) is not an offence punishable under the Act. Therefore, argument advanced on this aspect has no force at all. No mandatory provision of the Act has been violated in this case. The offence punishable under Section 509 IPC was lodged and investigation carried out as per law, in which cognizance has been taken.

21. An argument has been made that the aggrieved woman never wanted to file an FIR. This argument has no force because offence under Section 509 IPC is cognizable. The aggrieved woman reported the matter to the Director of the Institute, who forwarded the complaint to the Police and the Police can under the law investigate such case under Section 156 of the Code.

22. Learned counsel for the petitioner has also raised arguments with regard to the applicability of Section 509 IPC. It is argued that the aggrieved woman in her statement given to the IO in an answer to a question, categorically told that the petitioner did not molest her and the petitioner did not do any *"Galat Harkat"* (wrong acts) with her. Therefore, it is argued that offence under Section 509 IPC is not made out. In this context only, the definition of modesty has been referred to.

23. This is petition under Section 482 of the Code. The deeper scrutiny of any material is not expected of. If *prima facie* case is made out, it is left to the trial. Basic principle is that the legitimate trial should not be stopped at its threshold. In fact, most of the arguments which have been advanced on behalf of the petitioner pertains to Section 354 IPC, which relates to outraging modesty of a woman. But, in the instant case, charge sheet has been submitted under Section 509 IPC which deals with insulting the modesty of the woman by word "gesture" etc. The intention is most important in such matters. Insofar as, the aspect of modesty is concerned, in the case of State of Punjab Vs. Major Singh AIR 1967 SC 63, the Hon'ble Supreme Court held that in fact the essence of the woman's modesty is her sex. Hon'ble Court observed as hereunder:-

> "I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under S. 354. The culpable intention" of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section."

24. In the case of Pawan Kumar vs. State of Himachal Pradesh, (2017) 7 SCC 780, the Hon'ble Court referred to the menace of eve teasing and held as hereunder:-

> "47. Eve teasing, as has been stated in *Inspector General of Police v. S. Samuthiram*[2], has become a pernicious, horrid and disgusting practice. The Court therein has referred to the Indian Journal of Criminology and Criminalistics (January-June 1995 Edn.) which has categorised eve teasing into five heads viz. *(1)* verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. The present case eminently projects a case of psychological harassment. We are at pains to state that in a civilised society eve teasing is causing harassment to women in educational institutions, public places, parks, railway stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitution as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart it creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom. It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognised. It has to be socially respected. No one can compel a woman to love. She has the absolute right to reject."

25. How to gather the intention? In the case of Additional District and Sessions Judge 'X' Vs. Registrar General, High Court of Madhya Pradesh and others, (2015) 4 SCC 91, Hon'ble Supreme Court in para 26 interpreted it from the discussion which held in the court room itself. It was held that the evaluation of charge of sexual harassment, depends on the manner in which it is perceived. Each case has to be decided on its own merits. Hon'ble Court observed as hereunder:-

> "26. Every day is a matter of learning. Hearing of submissions in this case, we may say, was a matter of further understanding the sensitivities involved in a controversy of the present nature. We may venture to demonstrate this, by noticing a verbal exchange, during the course of hearing, between the counsel for the petitioner and that for the High Court. While the learned counsel representing the High Court was on "his" legs, the learned counsel for the petitioner interjected to express "her" point of view. All through, during the process of hearing, submissions were

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2. (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229

> advanced in a lively and respectful manner, and pointedly on the subject under consideration. Feeling that the thought being projected by the learned counsel was being disturbed by the intervention, the Bench accordingly exhorted learned counsel, to go on unmindful of the interruption. The learned counsel for the High Court, well meaning and deferential as he always is, responded by observing, "The interjections by the learned senior counsel for the petitioner, are always delightful". The learned senior counsel for the petitioner, had serious objection to the term, "delightful" used, with reference to "her". She questioned, the use of the term, "delightful" by posing to the learned senior counsel, whether similar interjections by men, were also considered by him as delightful. Why then, she questioned, should "her" interjection be found "delightful". In expressing her view, she went on to describe the response of the learned senior counsel as "sexually coloured". Having given our thoughtful consideration to the response of the learned counsel for the petitioner, we may only say, that she may well be right. There is a lot to be learnt, from what she innocuously conveyed. Her sensitivity to the issue, one may confess, brought out to us, a wholly different understanding on the subject. It is, therefore, that we have remarked above, that the evaluation of a charge of sexual harassment, would depend on the manner in which it is perceived. Each case will have to be decided on its own merits. Whether the perception of the harassed individual was conveyed to the person accused, would be very material, in a case falling in the realm of oversensitivity. In that, it would not be open to him thereafter, to defend himself by projecting that he had not sexually harassed the person concerned, because in his understanding the alleged action was unoffending."

26. Undoubtedly, modesty of a woman relates to her sex, which she possesses from her birth. Intention to insult the modesty of a woman is made punishable under Section 509 IPC. It also includes intruding upon the privacy of the woman as held in the case of Additional District and Sessions Judge (*supra*). Evaluation of her sexual harassment depends on the manner in which it is perceived. The aggrieved woman is the best judge. She knows what is appropriate and what is an inappropriate touch. She knows how a glare is? She knows a dishonest or impure sight.

27. In the instant case, aggrieved woman has given her statement to the IO. She has reiterated the version of the FIR. She has stated that the petitioner would telephone her at odd hours; sent her messages and would inquire about her date of birth so that he would prepare her horoscope; the petitioner would also ask her roll number so that she may pass her B.Ed; the petitioner would also assure her a government job and would also comment and taunt on her body that she has become fat and she has become 60 Kg etc. Importantly, the victim

also said that the petitioner has never physically outraged her modesty, but it is not required for attracting the provisions of Section 509 IPC.

28. In the instant case, *prima facie*, offence under Section 509 IPC is made out. Filing of the FIR, investigation and subsequent submission of charge sheet and cognizance is in accordance with law. There is no merit in this petition and it deserves to be dismissed.

29. The petition is dismissed accordingly.

(Ravindra Maithani, J.)
24.12.2020

Jitendra