

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :19/03/2021

Order passed on : 08/06/2021

CRR No. 124 of 2020

- Bhuneshwar Prasad Ghiri S/o Bhagwat Prasad Ghiri, Aged About 43 Years, Occupation - Teacher, R/o Village Nagpura, Police Station Sargaon, Tahsil Patharia, District Mungeli Chhattisgarh., District : Mungeli, Chhattisgarh

---- Applicant

Versus

1. State of Chhattisgarh Through District Magistrate, Bemetara District Bemetara Chhattisgarh., District : Bemetara, Chhattisgarh
2. Smt. Jalvati Sahu W/o Manrakhan Lal Sahu, Aged About 35 Years, Occupation - Teacher, R/o Quarter No.12A, Street No.38, Zone-2, Khursipar, Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh (Claimant)

---- Respondents

For Applicant – Shri T.K. Jha and Shri Ganesh Ram Burman, Advocates.

For Respondent No.1 – Shri B.P. Banjare, Deputy Govt. Advocate.

For Respondent No.2 – Shri Vaibhav A. Goverdhan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

08-06-2021

1. This criminal revision has been brought challenging correctness, legality and propriety of the judgment dated 15-01-2020 passed in Criminal Appeal No.70/2019 passed by the Sessions Judge Bemetara, District Bemetara, Chhattisgarh convicting the applicant for offence under Section 506 Part I of the IPC sentencing with R.I. for 01 year with fine of Rs.5000/- and under Section 354A of the IPC sentencing R.I. for 01 year with fine of Rs.10000/-, along with default stipulations.

2. It is submitted by learned counsel for the applicant that the judgment of conviction against him by the appellate court is totally erroneous, illegal and arbitrary. The applicant was prosecuted before the Trial Court in Criminal Case No.1395/2017 for offences under Section 354A and 506 B of the IPC. Learned

trial Court acquitted the applicant from all these charges by judgment dated 31-10-2019. Respondent No.2 then preferred appeal before the Sessions Judge, Bemetara which was decided by the impugned order mentioned hereinabove.

3. It is submitted by learned counsel for the applicant, that the conviction against the applicant is bad in law. The joint complaint that was made by respondent No.2 and others was not specific and it does not contain any details as to in what manner the complainant and the other victims were being molested by the applicant. The complaint against the applicant had been that because of him the complainant and others felt mentally and physically tortured, that the applicant is engaged in indecent acts with the complainant and others and also that the applicant has abused and misbehaved with them. This complaint by itself does not make out any offence of Section 354A of the IPC as there was no act complained by the victims covered under Section 354A of the IPC. Similarly, the offence under Section 506 Part I is not made out on the basis of this complaint. It is also submitted that the complaint mentions that the action of the applicant was alleged to have continued for some years, whereas, the complaint was given on 18-09-2017, hence, the FIR (Ex.-P/2) in this case was miserably delayed. The FIR (Ex.-P/2) was immediately lodged on the complaint (Ex.-P/1) filed by the complainant and others, which was not proper course adopted by the police, which is against the principles laid down by Hon'ble the Supreme Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and others**, (2014) 2 SCC 1.

It is submitted that the complainant and others who were posted as teachers in the Higher Secondary School of Nandghat, as all of them used to commute daily from their places of residence in different cities and towns to their workplace, because of which the applicant used to raise objections, therefore, the complainant and others were annoyed with the applicant. It is submitted that one teacher Usha Banjare (PW-6) has admitted in cross-

examination that her husband appeared in the examination of Class XII, she has denied that the husband of Usha Banjare was caught copying and cheating in examination. She has also stated that husband of Jalwati Sahu (PW-1) has also appeared in the examination of Class XII of the same center, but other suggestions that he was caught cheating was again denied.

It is submitted that these were the activities which the applicant wanted to expose, because of which the complainant and others were aggrieved and they have filed false complaint against the applicant. It is submitted that the impugned judgment is totally perverse and against the facts, circumstances and the law. Therefore, it is prayed that this revision petition be allowed and the impugned judgment be set aside and the judgment of acquittal by the trial Court be restored.

4. Learned counsel for the State/respondent No.1 opposes the submission and submits that conviction of the applicant is based on cogent and reliable evidence of the complainant and other witnesses. The judgment of acquittal by the trial Court had been improper and illegal which has been rightly set aside in the appellate judgment which does not call for any interference by this Court in the revisional jurisdiction.

Reliance has been placed on the judgment in the case of **Om Prakash Vs. State of Uttranchal**, (2003) 1 SCC 648 and submitted that it is a case in which the conduct and behavior of the applicant is repulsive to the collective conscience of the society and therefore, the accused is menace to the society.

Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter **Surjit Singh V. State of Punjab**, 1993 Supp (1) SCC 208 and it is submitted that the applicant is not entitled for grant of relief.

5. Learned counsel for respondent No.2 opposes the submission made by learned counsel for the applicant and submits that the prayer that has been

made by the applicant in this revision petition is to reappreciate the evidence of the trial Court, which cannot be allowed, as the evidence in the record of the trial Court cannot be appreciated in revisional jurisdiction by this Court. It is also submitted that although the FIR was not full of details, but the statement of the witnesses under Section 161 of the Cr.P.C. had all the details in them regarding the manner in which the offence alleged were committed by the applicant. Learned appellate Court had observed in paragraph 24 of the judgment, that it was the incident of a school which was workplace of the victims, but the complaint committee was not constituted under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in short 'the Act, 2013') and held that there is sufficient explanation given for the delay. Therefore, the present revision petition is not sustainable, which may be dismissed. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Kishan Rao Vs. Shankargouda**, AIR 2018 SC 3173.

6. In reply, it is submitted by learned counsel for the applicant that the case law of Kishan Rao Vs. Shankargouda (supra) is not applicable in this case. It is a case in which the appellate Court has reversed the judgment of the trial Court, therefore, the revisional Court has the authority to look into the evidence and see whether proper appreciation had been made or not. Therefore, the revision petition be allowed and the applicant be acquitted from all the charges against him.

7. Heard learned counsel for the parties and perused the records.

8. Considered on the submissions. The prayer and submission of the applicant is mainly to reject the evidence of the complainant and the witnesses on the ground that firstly that on the ground of delay in making complaint and other ground present to show that the complainant and others had a motive to falsely implicate the applicant. Otherwise, quality of the evidence of these

witnesses had not been subjected to any challenge. Therefore, all the evidence of witnesses regarding acts of causing sexual harassment to the complainant and the victims and also threatening them for consequences remains intact which has been appreciated by the appellate Court.

6. The trial Court has considered these grounds and held that the prosecution case is doubtful. The appellate Court has in the impugned order has observed in paragraph 24 that firstly the school does not have any initial complaint committee in accordance with provision under the Act, 2013. There is no evidence to show that the complainant and others were aware about the manner in which they could be redressed for the grievance they had, which explains the delay. Jalwati Sahu (PW-1) has stated about numerous acts of the applicant and that the complaint was made to the department along with complaint to the police for the reason that the activities of the applicant were rising day by day. The defence counsel has not put a single question in her cross-examination to discredit her statement on ground of delay. Rubi Roy (PW-2) has stated in her examination-in-chief that the applicant used to say that he is a member of Scheduled Castes and nobody can harm him, because of which she and the others were afraid of and could not make any complaint. No question was put in her cross-examination regarding delay. Similar is the statement of other witnesses.

Delay in lodging the FIR cannot always be fatal. In the case of **P. Rajagopal and others Vs. State of Tamilnadu**, (2019) 5 SCC 403, it was held in paragraph 12 that:-

“12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough

given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely [See Apren Joseph v. State of Kerala, (1973) 3 SCC 114 : 1973 SCC (Cri) 195 and Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673]”

9. This appears to be similar case, the applicant was also posted as teacher in the same school where the complainant and others were posted and he had influence, his activities were continuously tolerated by the complainant and the victims for a long time until it became intolerable and then the complaint was given to the police. Therefore, delay in lodging FIR is satisfactorily explained in this case.

In the case of **Kirender Sarkar and others Vs. State of Assam**, (2009) 12 SCC 342 it was observed by Hon'ble the Supreme Court that the law is fairly well settled that FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minutest details of the events. When essentially material facts are disclosed in the FIR that is sufficient. FIR is not substantive evidence and cannot be used for contradicting testimony of the eye witnesses except that may be used for the purpose of contradicting maker of the report. Therefore, the lack of details of the acts committed by the applicant in written complaint by itself cannot be regarded as insufficient for lodging the FIR. The complaint discloses that the women teachers of the institution were physically and mentally harassed and they were abused and misbehaved by the applicant. Rest of the activities of the applicant has been discussed in the statement of the witnesses under Section 161 of the Cr.P.C. Therefore, the submission made on this point is not acceptable and the lack of details in the complaint was not by itself insufficient for lodging the FIR. The complainant (PW-1) stated clearly about sexual harassment and commission of other offences and collection of rest of the details was subject matter of investigation. Therefore, it is not a case in which the directions of **Lalita Kumari Vs.**

Government of Uttar Pradesh and others (supra) are applicable. The argument on behalf of the applicant has no substance and force. After appreciating the evidence present in the record of the trial Court, I am of this view that finding in the impugned judgment against this applicant is not perverse in any manner, on the contrary is based on cogent and reliable evidence, which has been sufficiently corroborated by the evidence of all the witnesses. Hence, on the basis of the discussions made hereinabove, I am of this view that this revision petition does not deserve to be allowed, therefore, it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge