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

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Reserved on: 23.09.2022
Pronounced on: 20.10.2022

+ **CRL.M.C. 3949/2010**

MAMTA TYAGI

..... Petitioner

Through: Mr. N.S. Dalal, Advocate.

versus

STATE OF DELHI & ANR.

..... Respondents

Through: Mr. Satish Kumar, APP for
State

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The petitioner has preferred the present petition under Section 482 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") for setting aside the impugned orders dated 07.06.2010 and 15.09.2010, whereby vide order dated 07.06.2010, the complaint under Section 200 Cr.P.C for summoning, trying and prosecuting the accused for the offence under Section 354 of Indian Penal Code ("IPC") was dismissed by the learned ACMM in Criminal Complaint No. 805/1, and thereafter, vide order dated 15.09.2010, the revision petition filed against the dismissal

of the complaint was also dismissed by the learned Additional Sessions Judge, Rohini in Criminal Revision Petition No. 26 of 2010.

FACTUAL MATRIX

2. The brief facts are that the petitioner was working as a Lower Division Clerk (LDC) with Aryabhat Polytechnic under the supervision of Respondent no. 2 who allegedly used to call her inside his office to make phone calls or to keep the files of the office. On 12.09.2008, the office superintendent Ms. Veena Bhutani had asked the petitioner to go to the office of the respondent no. 2 for making a call to J.A.O. Accordingly, the petitioner had gone to the office of the respondent no. 2 and made the said call. Thereafter, it is alleged that when she gave receiver to the respondent no. 2, he with bad intention had deliberately caught her hand and tried to outrage her modesty. The petitioner has also alleged that she somehow managed to free her hand from Respondent No.2 and told him that he does not have any manners, but he threatened her that if she discloses this fact to anybody, he will get her transferred.

3. It is the case of the petitioner that she disclosed this incident to Ms. Veena Bhutani but she did not pay any heed to her request, and rather told the petitioner that it was her personal matter and she should sort it out herself. Thereafter, the petitioner filed complaint dated 16.09.2008 to Joint Secretary of Directorate of Technical Training Education on which no action was taken, and later the petitioner sent a complaint to the Chief Secretary, NCT Delhi on which no action was taken either.

4. It is further alleged by the petitioner that she then made a representation to the Lt. Governor, pursuant to which a vigilance inquiry was set up, however, no result came out of such enquiry and the committee held that charges of sexual harassment against Respondent No.2 were not proved. Thereafter, the complainant/petitioner was constrained to lodge a complaint against the respondent no. 2 with the SHO, Police Station Model Town on 01.07.2009, however, no action was taken against the respondent no. 2 who retired on 31.12.2009. Thereafter, she filed a complaint under Section 200 Cr.P.C. for prosecuting the accused under Section 354 of IPC. The learned ACMM dismissed the same on 07.06.2010. The relevant para of the said order dated 07.06.2010 reads as under:

“...4. I have heard the arguments by Ld counsel for the complainant Sh Alok Srivastava adv. on the point of summoning and perused the records carefully.

5. It is the an admitted case of the complainant that the alleged incident took place on 12.9.08 and she made a complaint to SHO, PS Model Town in this regard only on 01.07.09. No explanation has been given by the complainant for this gap of 10 months between the date of alleged incident and the date of the complaint. Even otherwise it is not clear as to why the complainant remained quite for the above-said period of 10 month. Further there appears to be an improvement in the deposition of complainant as CW-1 as compared to her complaint dated 01.07.09 given to SHO, PS Model Town, as to what happened during the incident in her deposition. Complainant has deposed in her deposition in court that accused caught her hand in a wrong way and complainant told him (accused) that he did not have manners and on that accused threatened her that if she would tell the incident to any one, she would be got transferred whereas in her complaint to the police she has

merely stated that accused caught her (complainant) hand with bad intention. Nowhere the in the complaint made to the SHO, PS Model Town, it was mentioned by the complainant that accused had told the complainant that if she would tell the incident to anyone, she will be got transferred. Also as per the complaint, she disclosed this incident to the office employee Veena Bhutani but still Veena Bhutani has not been made a witness nor there is any deposition to this effect on record to give credence to the story of the complainant and corroborate her version. Also the concerned J.A.O has not been examined by the complainant to show that on that particular date and time, the principal had made a call to J.A.O. Further none of the office staff of the office has been examined to the effect that principal used to call the complainant in her room alone and that he (principal) used to say that he would sign the file in the presence of the complainant only. Furthermore even as per the case of the complainant vide order dated 4.3.10 Vigilance Officer Sh D.K.Gaur had warned the complainant by stating that her complaint against R.L.Yadav was found to be false & that she would not make any such complaint against anybody. The present complaint of the complainant is against the principal, who was her senior officer, who has admittedly got retired on 31.12.09. It is also an admitted case of the complainant that her CR for the period from 15.5.08 to 10.10.08 was spoiled. The making of the complaint to police belatedly and non production of her complaint to senior officers on record, creates doubt on the story of the complainant. In case titled as M/s Pepsi Foods Ltd.vs/ Special Judicial Magistrate reported in 1998 Cr.L.J wherein it was held" Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the has not bring only two witnesses to support his allegations in this complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of

allegations made in the complaint and that evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed and bringing charge home to the accused."

6. Considering the facts and circumstances and in view of aforesaid Judgment, I am of the considered opinion that there is no sufficient material on record for summoning the accused R.L.Yadav for the offence U/S 354 IPC or for any other offence. Accordingly, the present complaint case is dismissed. File be consigned to record room..."

5. On 05.07.2010, the petitioner filed a revision petition against the order dated 07.06.2010 passed by the learned ACMM. The said revision petition was also dismissed by the learned Additional Sessions Judge, Rohini Courts, Delhi on 15.09.2010. The relevant portion of the same reads as under:

"7...the perusal of the record reveals that Ld. Trial Court has properly dealt with the various contentions raised on behalf of the petitioner and have come to the correct and reasonable conclusions on the basis of the material available on record. In the instant case, it has been rightly observed by the Ld. Trial Court that the making of the complaint to the police belatedly, non-examination of the material witnesses i.e Veena Bhutani or other staff members and non production of her complaints to senior officer on record, creates doubt in the story of the complainant (petitioner herein). Further, in view of the material and evidence adduced on record, it has been rightly held by the Id. Trial Court that there was no sufficient material on record for summoning the accused for the offence u/s- 354 IPC or for any other offence.

8. It has been further submitted on behalf of the petitioner that impugned order passed by the Ld. Trial Court was based on surmises and conjectures and mere assumptions & presumptions and was not sustainable in law, however the

said contentions put forward on behalf of the petitioner does not hold water and are contrary to the record as perusal of the impugned order reveals that it has been passed on the basis of the proper appreciation of the material on record and is based upon the sound, cogent and just reasoning.

Ld. Counsel for the petitioner has relied upon the case law cited as AIR 1996 SC 309 and AIR 1997 SC 3011, however the said case law is not applicable in the present case as the fact and circumstances of the present case are different from the fact and circumstances of the cases discussed in the said case law and in my considered opinion, the aforesaid case law is not of any help to the petitioner in the present case.

9. Thus, in view of the above discussion and observations and having regard to the fact and circumstances of the present case, I am of the considered opinion that there is no illegality or infirmity in the impugned order dated 07.06.2010 passed by the Ld. Trial Court. Accordingly, the present revision petition filed on behalf of the petitioner against the impugned order dated 07.6.2010 passed by the Ld. Trial Court in case titled as "Mamta Tyagi Vs. R.L. Yadav" bearing CC No. 805/1, u/s-354 IPC, PS: Model Town, is hereby dismissed.

SUBMISSIONS BY THE LEARNED COUNSELS

6. Before this Court, learned counsel for petitioner submitted that learned Magistrate as well as learned Appellate Court have committed an error by holding that delay of 10 months in registering the complaint with the police had affected the case to the extent that the complaint was suspicious and not worthy of summoning the accused. It was further submitted that while summoning an accused, only a prima facie case has to be made out and the merits of the complaint cannot be

looked into at this stage. Learned Counsel for petitioner stated that the Vigilance Inquiry which was set up pursuant to the representation made to the Lt. Governor turned to be eyewash as the members of the committee worked under Respondent no. 2. It was also submitted that the matter is required to be decided on merits after summoning the accused, without being influenced by the Report of the Vigilance Inquiry. It was further averred that non-examination of other witnesses is not fatal to the case as statement of the Petitioner alone is sufficient to summon the Respondent No.2. It was also argued that as far as the finding regarding writing of adverse ACR of the complainant and that being the reason for filing this complaint is concerned, it is totally misplaced as adverse ACR of the complainant had been written much after the incident in question and much after filing of the first complaint.

7. Learned counsel for the petitioner has relied upon the two judgments in support of his case:

i) Rupan Deol Bajaj v. K.P.S.Gill, AIR 1996 SC 309

ii) Vishakha v. State of Rajasthan, AIR 1997 SC 301

8. Controverting the aforesaid submissions, learned Counsel for the Respondent stated that in the departmental proceedings initiated against him, not only was he exonerated of all the charges, but the committee also recommended that disciplinary proceedings should be initiated against petitioner for leveling false allegations against the Respondent no. 2. It was further submitted that there is a substantial delay of 10 months in lodging the complaint with the police, which renders the

entire incident suspect, and that the said delay has not been satisfactorily explained by the Petitioner. It was also argued that the Petitioner has constantly improved her statement before different forums in order to falsely implicate the Respondent no. 2. Further, the non-examination of material witnesses at the stage of pre-summoning is fatal to the case of the petitioner. The said material witnesses were examined during the vigilance inquiry and as per the inquiry report, none of the said material witnesses have supported the case of the Petitioner.

ANALYSIS AND FINDINGS

9. I have carefully considered the rival contentions and also perused the impugned order and the material on record.

10. The moot issue for consideration before this Court is that whether Ld. Additional Sessions Judge has rightly dismissed the revision petition filed by the petitioner and for this, it is necessary to advert to the testimony of the petitioner who was examined as CW-1 on the basis of which she claims that a case for summoning under Section 354 of IPC was made out. The said statement is reproduced hereinbelow:

On Date:

मैं मजदूरी करती हूँ। पॉलीटेक्निक में
LDC के पद पर काम करती हूँ। जब मैं आर्यभट्ट
पॉलीटेक्निक में काम करती थी तब दिनांक 12/08
को मुलजिम जो कि आर्यभट्ट कॉलेज के प्रिंसिपल
थे श्री आर.एल. चव्हाण (मुलजिम) ने मुझे अपने
कमरे में J.A.O को फोन करने के लिए बुलाया।
जो कि मुलाती ने मुझे आकर कहा कि प्रिंसिपल
साहब आपका बुला रहे हैं। J.A.O को फोन मिलता
जैसे प्रिंसिपल को रिस्लीवर दे दिया बात करने के
लिए तब उन्होंने ऐसा बात जलत तरीके से
पेक्षा लिया। तब मैंने उसे कहा "कि तुम्हें
तमीज नहीं है। फिर उन्होंने मुझे धमकी दी कि
अगर यह बात किसी को बताओगी तो मैं
तुम्हारी प्रोमोशन कर दूंगा।" उसके बाद भी
कुछ दिन तक वह ऐसा बात फुट रहे और
उसे मैंने बुझाया। मैंने यह बात किता मुलाती
को बताया तो उन्होंने कहा कि यह तुम्हारे आपसी
आमना है मैं इसे तुम्हारी ओर नहीं कहूँगी।
उस तरह की हरकत करने की कोशिश वह पहले
भी कई बार कर चुके थे। वह हमारे सामने
में यह बोलते थे कि अपनी कदम लेकर खुद को
बचाने में आगे आओ।

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Contd.

मैं नगरपाली को उम्मीद जाहान लेकर गेलानी थी लेकिन वहाँ से कि मैं बहुत तब करूंगा जब मज्जा जाहान लेकर खुद आएगी। तत्पश्चात् 16/9/08 को मैंने Joint Sect. (गैर) लिखित विज्ञापन भी की परंतु कोई कार्रवाई नहीं हुई। उसके बाद मैंने Chief Sect. Delhi NCT को विज्ञापन भी की परंतु फिर भी कोई कार्रवाई नहीं हुई। फिर मैंने 26 को पत्र लिखा उसके बाद एक Departmental Enquiry Setup की गई। इस Enquiry में कोई नतीजा नहीं निकला और मैंने पार vigilance से एक पत्र डाला कि मैरी CR खराब कर दी गई है। यह CR 15/3/08 से 10/10/08 तक भी खराब की गई थी जिसके विवेकिता ऑफिसर मुनिमन और एम मायन को। CR में उन्होंने यह लिखा कि "She is not fit for promotion."। यह CR ^{कॉपी} कंप्लेंट जाहान करने के बाद भी गई। मैंने इस CR के उपलक्ष में अपना representation भी दिया कि यह CR खराब इसलिए की गई है क्योंकि मैंने मुनिमन को complaint कर रखी है। एवं मुझे आज तक कोई response तक भी नहीं दिया गया और CR खराब कर दी गई। मेरे complaint को मुझे कोई भी जवाब नहीं आया। मैंने पुनः विनिमय भी भेजा परंतु कोई कार्रवाई नहीं हुई। तत्पश्चात् 10/2/10 को दूसरी प्रमोशन मिटर आया, उसमें मेरा नाम तो था परंतु CR खराब होने के कारण प्रमोशन नहीं हुई। मैंने CATS में अपना केस जमा दिया। 19/2/10 को CATS में पत्र का आर्डर ^{फां} फां।

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आया कि एक महीने में जेरी representation को
dispose किया जाए। फिर 25/2/10 को Addition sect.
Vinod kr. Jain ने जेरी CR हीन होने का
letter भुझे भिजवा दिया। उसके बाद 4/3/10 को
Vigilance officer S.D.K. Gaur ने भी एक letter
भुझे भेजा जिसमें भुझे यह कहा गया कि
मैंने जो शिकायत R.L. Yadav की नी-वी
वह झूठी थी बात: भुझे wrong किया जाता
है कि मैं आज से किसी की ओर शिकायत
नहीं करूँगी। भुजनिग 31/12/09 को नौकरी
से रिटायर हो चुका है मैंने 1/1/10 को
भुजनिग के खिलाफ चाका मोडल दाऊन करने में
मिन्न कर दिया था परंतु उसके खिलाफ कोई
कार्रवाई नहीं हुई। भुजनिग ने भुझे तंग करने
के लिए आज बार जेरी सीट बदली और
2 साल तक भुझे परेशान किया।

R.O. & Ac
Mantn
13-4-2010

ACMMZ/NW/RHN
13/4/10

11. From perusal of her deposition, it is observed that she has not given sufficient details of the incident and had not mentioned any particular time when the Respondent no. 2 held her hand. The case of the petitioner is that there was no delay on her part to file a complaint with any authority as she had filed complaints before Joint Secretary, (DTTE), to Chief Secretary, Delhi and wrote a letter to Lieutenant Governor, Delhi. However, it is pertinent to note that there are no such letters placed on record to show that she has lodged any complaint with any authority after the incident in question. The first complaint in this case was lodged with the police after a substantial delay of 10 months.

12. Additionally, the petitioner has not examined material witnesses in the present case. The petitioner has deposed that one Ms. Veena Bhutani had been told by her about the incident, however, in her complaint she has failed to examine her as a witness during pre-summoning evidence. Further, a perusal of her complaint to the SHO dated 01.07.2009 shows that she has mentioned in her complaint that respondent no. 2 had caught hold of her hand when she was keeping down the receiver of the telephone with wrong intention and she had disclosed the same to Ms. Veena Bhutani. The statement given by her as CW-1 in the court herself notes an improvement in her deposition. The learned Trial Court has rightly pointed out that the concerned J.A.O has not been examined by the complainant that on that particular date and time the Principal had made a call to the J.A.O, none of the office staff was examined to the effect that the respondent no. 2 used to call her in his room alone and that he used to say that he would sign the file in the presence of the complainant only. The learned Trial Court

has also rightly taken note of the order of the vigilance officer dated 04.03.2010 which reads as under:

“... Smt. Mamta Tyagi, LDC while working in Aryabhata Polytechnic during the year 2008-09 filed a complaint against Sh. R.L. Yadav, the then Principal of Aryabhata Polytechnic alleging therein Mental and Sexual Harassment at work place. The said complaint was referred to Departmental Complaint of DTTE for Prevention of Sexual Harassment of Women at work place. The Committee has observed that the allegations made by her are false and recommended to take action against Smt. Mamta Tyagi. The facts of the case were placed before Principal Secretary, DTTE, who after taking into consideration the facts in totality including relevant records has ordered for issuance of non recordable warning to Smt. Mamta Tyagi to be careful in future. Accordingly, Smt. Mamta Tyagi, LDC is hereby warned to be careful in future...”

13. The learned counsel for the petitioner laid emphasis on the fact that the mere fact that the respondent no. 2 had caught hold of the hand of the petitioner with bad intention itself is sufficient to attract the provision of Section 354 of IPC and merely on this statement the respondent no. 2 should have been summoned. He also states that the act of the respondent no. 2 amounted to sexual harassment at work place since she was threatened to be transferred in case she disclosed to anyone that he had caught hold of her hand.

14. In this regard, it will first be appropriate to discuss Section 354 of IPC, which reads as under:

“...354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both...”

15. From a bare perusal of this provision, it is to be noted that the provision makes penal the assault or use of criminal force to a woman to outrage her modesty. The essential ingredients to establish an offence under section 354 of IPC are as follows:

- (i) The assault must be on a woman or*
- (ii) The accused must have used criminal force on a woman and*
- (iii) The assault or criminal force must have been used intending to outrage or knowing that the accused thereby would outrage her modesty.*

16. A reference in this context can be made to a judgment of the Supreme Court in the case of ***Ramkripal Singh v. State of Madhya Pradesh., AIR 2007 (CrL) SC 370*** wherein the concept of modesty was postulated by the Court as under:

“...What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. 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. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient

to constitute the offence without any deliberate intention having such outrage alone for its object... ”

17. In ***State of Punjab v. Major Singh AIR 1967 SC 63***, 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. The majority view was that even though the victim is a seven and half months old baby and she has not yet developed a sense of shame and has no awareness of sex, nevertheless, from her very birth she possesses the modesty which is the attribute of her sex. Justice Bachawat held as under:

“15. 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 Section 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.”

18. In the case of ***Rupan Deol Bajaj v. Kanwar Pal Singh Gill and Another (1995) 6 SCC 194*** the Hon’ble Supreme Court further explained the essence of the offence of outraging the modesty in the following words:

“..17. 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 the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under Section 354 IPC - an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj.”

19. Taking note of the above legal principles, and after taking into consideration all the factors already discussed above, that is, non examination of material witnesses, non production of alleged complaints made to authorities before lodging a complaint with the police, delay in lodging a complaint with the police which is

unexplained, lack of sufficient details in the petitioner's testimony before the learned Magistrate, report of the Vigilance Inquiry Committee which after examining all witnesses came to the conclusion that charges of sexual harassment have not been established against Respondent No.2, in my opinion it is not possible to hold that a prima facie case against the Respondent No.2 for summoning under Section 354 of IPC is made out in the absence of such evidence.

20. There is no denying that such incidents more often than not occur in isolation, away from public gaze where there are no eyewitnesses of the incident. But in the absence of direct evidence, the Court has to rely on circumstantial evidence. For establishing an offence under Section 354 of IPC, the culpable intention of the accused is the crux of the matter. However, in the present case, the intention or knowledge of the Respondent No.2 with respect to outraging the modesty of the petitioner has not been established either by direct evidence or by attending circumstances. It cannot be said that the alleged act of the accused is sufficient to establish the essential ingredients of the offence punishable under Section 354 IPC.

21. It has been time and again laid down by the Supreme Court that summoning of the accused in a criminal case is a serious matter and should not be resorted to as a matter of course. No material error, illegality and perversity has been pointed out in the order passed by the Courts below so as to warrant interference in exercise of powers under Section 482 of Cr.P.C.

22. The present petition stands dismissed accordingly.

SWARANA KANTA SHARMA, J

OCTOBER 20, 2022/zp

