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

Judgment reserved on : 10.11.2022

Judgment delivered on : 13.04.2023

+ **W.P.(CRL) 36/2021 & CRL.M.A. 6615/2021**

MS ARCHANA SHARMA

..... Petitioner

Through: Petitioner in person

versus

THE STATE AND ORS.

..... Respondents

Through: Mr. Sachin Mittal, ASC for State with Mr. Alok Sharma, Mr. Nishant Chauhan, Advs. with SI Manju Chahar, PS IGI Airport

Mr. Anirudh Bakhru, Ms. Ayush Puri, Mr. Umang Tyagi, Ms. Tejaswini Chandrashekhar, Mr. Prateek Kumar Jha, Advs. for R-10

Mr. Daviender Hora, Mr. Anurag Gautam, Mr. Sahil Chouhan, Advs. for R-3

Mr. Sanjay K. Das, Mr. Vikas Kumar Singh, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

JASMEET SINGH, (J)

1. This is a writ petition seeking transfer of further investigation of FIR No. 80/2018 registered under section 509/34 IPC at P.S. IGI Airport to Central Bureau of Investigation from Respondent No.1. The present petition also seeks to direct the concerned agency to arrest or detain Respondent Nos. 2 and 3 for further investigation; to recommend Central Vigilance Commission and Commissioner of Police to take serious action against the

police officials who neglected their duties; to impose heavy cost upon Respondent Nos. 1, 4 to 9 for contempt of Supreme Court's directions in *Lalita Kumari v. State of U.P. 2013 SCC OnLine SC 999* and to direct investigating agency to seize Petitioner's official desktop and laptop of Respondent Nos. 2 and 3 in custody of Respondent No. 10.

2. According to the petitioner, the material facts of the case are:
 - i. The Petitioner is an ex-employee of Respondent No. 10 i.e. M/s GMR DIAL where Respondent No. 2 i.e. Lalitendu Samanta was the Chief Human Resources Officer of Respondent No. 10 and Respondent No.3 i.e. Subir Hazra was the Head of the Department under whose supervision the Petitioner was working directly. Respondent Nos. 4 to 9 were officials of Delhi Police (Respondent No.1). Respondent Nos. 4 to 6 were Deputy Commissioner of Police at IGI Airport during different points in time and Respondent Nos. 7 to 9 were Sub-Inspector during different points in time.
 - ii. On 19.09.2007, the Petitioner joined GMR Delhi International Airport (P) Ltd. as Coordinator and was promoted as Senior Coordinator in 2011.
 - iii. On 25.05.2011, an email was sent by Mr. Arun Behal, the then HoD (Operations) to the Petitioner to join Lost Property Section involving shift duties.
 - iv. In May 2011, the Petitioner met Respondent 2, Lalitendu Samanta, for the first time who was the Chief Human Resources Officer at M/s GMR DIAL (Respondent No.10), seeking transfer from Operation involving shift duties to general duty due to security and medical reasons.
 - v. On 09.05.2011 and 20.07.2011, the petitioner sent an email to Respondent No. 2 regarding transfer to the department headed by Ms. Kiran Jain.

- vi. On 02.08.2011, the Petitioner joined the Strategy Planning Group (“SPG”) Dept headed by Respondent No.3.
- vii. The Petitioner states that from May 2011 to December 2011, Respondent No.2 sexually harassed the petitioner by passing remarks, touching inappropriately, calling at odd hours, seeking sexual favours, stalking and forcing to meet the petitioner outside office premises, standing in objectionable and inappropriate positions behind the petitioner, misusing his power to threaten the petitioner’s job, violating internal job posting policy and not providing the petitioner the transfer letter issued for SPG.
- viii. The Petitioner also states that during this time, the Respondent No.3 aided Respondent No.2 in further harassing the petitioner by vulgar gestures and expressions, threatening her job, unnecessary interference in her work, humiliating her and making unwarranted physical contact with her.
- ix. On 20.12.2011, petitioner recorded the conversation between herself and respondent no.2 in her mobile.
- x. On 05.01.2012, the petitioner filed a written complaint with P.S Nair (Sector CEO, DIAL) against Respondent Nos. 2 and 3. Mr. Nair promised proper justice and persuaded the petitioner not to lodge an FIR in order to save the company’s reputation.
- xi. Thereafter, in February 2012 an Internal Complaints Committee (ICC) was constituted to enquire into the petitioner’s complaint which according to the Petitioner was violative of Vishaka guidelines.
- xii. Aggrieved by the ICC’s report, the petitioner wrote a letter dated 06.06.2012 to Union Home Secretary, Ministry of Home Affairs (MHA) for entrusting the case to CBI.
- xiii. From October 2012 to November 2012, Respondent 7 i.e. Bimla Devi who was the Enquiry Officer under supervision of ACP, SK Sharma and Respondent No 4 i.e. MI Haider (DCP) at PS IGI Airport enquired the

matter without registering an FIR and closed the enquiry without any intimation to the petitioner or any authority.

- xiv. Aggrieved by this, the petitioner filed a civil suit bearing number CS No. 3251/2012 seeking declaration, injunction and damages, impleading Respondent Nos. 2,3,10 and the committee.
- xv. The Petitioner was transferred to Odisha but the Delhi High Court stayed the effect of transfer on 21.12.2012 upon undertaking by Respondent No. 10 i.e. GMR DIAL.
- xvi. On 25.09.2012, the petitioner requested SHO, PS IGI Airport for preserving call details received from Respondent No.2's Airtel mobile number (as given in the petition).
- xvii. On 07.12.2012, petitioner sought the status of the enquiry conducted by Respondent 7 in October 2012.
- xviii. The petitioner filed numerous RTIs seeking statements of Respondent Nos. 2, 3, status of enquiry, etc.
- xix. On 27.01.2015, the petitioner filed a detailed complaint with Respondent No.4 seeking registration of FIR against Respondent Nos. 2, 3 under section 154, Code of Criminal Procedure, 1973 ("CrPC").
- xx. Since no FIR was registered, petitioner approached Patiala House Court filing application under section 156(3) CrPC for registration of FIR.
- xxi. On 13.05.2015, the Patiala House Court directed that "*an independent inquiry be conducted by DIU as the accused persons are very influential and have been continuously influencing officials.*"
- xxii. On 15.07.2016, the court was informed that there is no investigation unit by the name of DIU in the district. Thus, the Ld. ACMM, Patiala House Court amended its order to direct investigation not by DIU but by an officer not below the rank of Inspector.

- xxiii. On 03.09.2016, Respondent No 5 closed the case and filed enquiry report dated 31.08.2016 without registering FIR even post the order of Patiala House Court.
- xxiv. On 13.10.2016 the petitioner filed objections to the report dated 31.08.2016.
- xxv. On 15.12.2017, the Trial Court directed the police to register the FIR. Complying with this order, FIR was registered on 20.02.2018 but only under section 509 IPC and section 354 IPC was conveniently and deliberately left out.
- xxvi. On 08.03.2018 the petitioner was called by Respondent 9, Ms. Anita, to tender her evidence under section 164 CrPC before the Magistrate, which she so did.
- xxvii. On 17.06.2018, the petitioner was served a notice under section 91 CrPC to submit her mobile phone which contained the recorded conversations between the petitioner and respondent 2. In compliance, the petitioner supplied audio CD by post on 01.10.2018.
- xxviii. On 22.10.2018, Petitioner submitted an application before the Ld. ACMM pertaining to inordinate delay caused by IO in investigation, omission of section 354 IPC, summoning of call records/CDR of mobile number of Respondent No.2 from AIRTEL service provider or to include AIRTEL as party.
- xxix. In January 2019, petitioner filed a writ petition being W.P. (Crl.) no. 112/2019 wherein similar prayer was made as in the present writ petition.
- xxx. On 17.12.2020, the Court disposed of W.P. (Crl.) 112/2019.
3. At the outset, the petitioner who appears in person states that the present petition is maintainable as the earlier writ petition being W.P. (Crl) 112/2019 is different from the present petition. The difference between

prayers of the earlier writ petition and present writ petition is that prayer 'a' in present petition is with respect to transfer of 'further' investigation. Prayer 'a' in earlier writ petition was only with respect to transfer of investigation.

4. The petitioner further raises the following contentions:

- i. She states that evidence in the form of audio recording held between Respondent No.2 and the Petitioner, the transcript of which was duly narrated in complaint dated 06.11.2012, 27.01.2015, 09.03.2015 and 17.07.2016, *prima-facie* made out a case for registration of FIR. However, the same has been disregarded by Respondent No.1 and Respondent Nos. 4 – 9, thereby causing miscarriage of justice.
- ii. She further states that Respondent Nos. 1, 4-9 conspired with the accused as no relevant questions were asked to the 8 witnesses during enquiry. Respondent No. 5 in connivance with IO has favoured Respondent No. 2 and 3 as they avoided examination of key witness Ms. Anuradha Ramakrishnan who was also a victim of sexual assault by Respondent No. 2. Till date, she has not been examined.
- iii. Respondent No. 5 submitted fake email dated 29.08.2016 before the Patiala House Court between Respondent 5 and Airtel Mobile Service Provider seeking CDR of the Petitioner and unidentified mobile numbers in an attempt to mislead the court. The requisite certificate under section 65-B Indian Evidence Act was not produced despite directions of the learned Trial Court.
- iv. Respondent No.1 ignored the directions of the Trial Court and registered an FIR No.080/2018 after a lapse of 02 months only under section 509/34 IPC but deliberately omitted section 354 IPC, being a non-bailable offence.

- v. Fair investigation is not expected from Respondent No.1 since Respondent No.9 has openly threatened the Petitioner stating “*ab tu dekh mei teri report kaise banati hun*” and that she will destroy the enquiry.
- vi. Respondent No.9 served a notice under section 91 Cr. P.C. dated 17.06.2018 upon the Petitioner to seize the mobile phone containing the original recorded conversation dated 29.12.2011 between Respondent No.2 and the Petitioner. However, Respondent No.9 collected the mobile without undergoing due process of seizure of evidence, despite verbal and written request by the Petitioner. She states the Petitioner did so in an attempt to spoil the crucial evidence to protect the accused.
- vii. The arbitrary action of the Respondent Nos.1 and 4 - 9 is patently visible from the fact that they took eight years to register FIR against Respondent No.2 and 3 that too after the direction of Hon'ble Patiala House Court on 16.12.2017. Further, even after the registration of FIR on 20.02.2018, Respondent No. 5 - 9 did not make efforts to investigate the matter fairly.
- viii. She states that she is living under fear of Respondent No.2 & 3 who in connivance with Respondent No.1, 4 - 10 destroyed the material evidences against them. Respondent No. 1 - 10 tortuously pressurized the Petitioner to withdraw the case and after her denial, she faced the unemployment on false grounds thereby, causing financial hardship to the Petitioner.
- ix. She further states Respondent Nos. 1, 4 - 9 initially did not register the FIR thereby disregarding directions of the Hon'ble Apex Court in ***Lalita Kumari vs. State of U.P.(supra)*** wherein it was held as under:

“Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

- x. The Petitioner submits that the call log / CDR in charge sheet is fabricated, doctored, tampered and false. She states Respondent No.8-9 under the supervision of Respondent no.6 failed to collect the mobile phone of the Respondent No.2. She further states that the Respondent no.8 - 9 under the supervision of Respondent no.6 knowingly declined to seize the official desktop assigned to Petitioner, laptop to Respondent no. 2 - 3 and 10 containing the emails.
- xi. She states that the instant case is an apt example of irresponsible investigation and intentional mischief to withhold material evidence from the court.

- xii. The Petitioner has also placed reliance on the Hon'ble Supreme Court's judgment in *Vinay Tyagi v. Irshad Ali Alias Deepak & Ors.* 2013 (5) SCC 762 wherein it is held as under:

“43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.”

- xiii. The Petitioner states that there have been major loopholes in the shoddy investigation as notice to the star witness was not served to join investigation, CDRs submitted are forged, doctored, incomplete and unverified. The original CDR should have been obtained from Respondent No. 10. She states the attendance portal data of the complainant to substantiate the said allegation is missing in the chargesheet. She states the Investigating Officer did not examine the CDR of mobile number of Respondent No.2. Even Respondent No.8 has not physically examined the address of Respondent No. 2.
- xiv. Regarding prayer ‘c’ and ‘d’, the petitioner submits that further investigation will unravel the truth.

5. Respondent No. 3 i.e. Subir Hazra was the head of department under whose supervision the petitioner was directly working. Since there is a prayer seeking arrest of Respondent No.3, the Respondent No.3 has filed a detailed counter affidavit stating:

- i) The First complaint was filed by the Petitioner on 05.01.2012 to Mr. P S Nair, the then CEO of Respondent No. 10. The only averment made in this complaint in relation to the Respondent No.3 was that he asked the Petitioner "*to go and meet Mr. L. Samanta*" (Respondent No.2). The learned counsel for respondent 3 states that Mr. Samanta was the HR head and any decisions related to transfers, appointments and performances would only be dealt by an HR head. He states there is no reference to any sexual misconduct and harassment by the Respondent No. 3 in this complaint.
- ii) He states that the ICC committee formed on 30.03.2012 conducted a fair inquiry into the matter and it is stated that as per report, the Petitioner "added a significant twist to the tale by stating that Mr. Lalitendu was using Mr. Subir as a tool to achieve his objects and that Mr. Subir never intended any wrong/bad intentions." He states that this was the version of the Petitioner in her statement where she stated that the Respondent No.3 had no bad intentions and never intended any wrong and that he was being used as a tool.
- iii) After three months of this report, on 06.06.2012, the Petitioner tendered her second complaint, and it was made to the Ministry of Home Affairs. In this entire complaint, the Petitioner made no complaints about any sort of sexual misconduct against the Respondent No.3.
- iv) The complaint of the Petitioner was investigated by WSI, Bimla Devi of the Delhi Police who conducted another enquiry and tendered a report dated 07.11.2012 stating that the Petitioner earlier attempted to

evade the enquiry and thereafter joined the same accompanied by a lawyer. The report states that she did not cooperate and the lawyer accompanying her intervened unnecessarily and tried to mislead the enquiry. The enquiry officer thus found the case to be false and baseless. However, it is mentioned that even in the course of this enquiry the petitioner wanted the case registered only against Mr. Lalitendu Samanta (Respondent No.2) and not Respondent No.3.

- v) The Petitioner filed a civil suit on 20.12.2012 for damages against her employer and others including the Respondent No.3 where she claimed Rs. 40 lacs as damages revealing her ulterior motives. The Petitioner made the Enquiry committee also a co-defendant and made serious allegations against it. Nearly three years after her first complaint, the Petitioner gave a written complaint to the police which was replete with improvisations favouring her case. However, even at this stage there were no direct allegations against the Respondent No.3. However, the Petitioner twisted the tale by alleging that the Respondent No.3 being a close friend of Mr. Lalitendu (Respondent No. 2) acted at his behest. The learned counsel states that the same is factually incorrect and the two were at best, colleagues in the same office working in different departments. He submits that an employee in any organization is bound to know the HR head and that would not render them friends let alone close friends.
- vi) The Petitioner filed an application under section 156(3) on 04.04.2015 before the Patiala House Courts where she made yet another set of allegations improving upon her case. The petitioner improved her allegations to the extent of saying that "*the accused No.1 took the assistance of accused No.2 for achieving their ulterior motives.*" This was a major improvement upon her previous version where she had

been insisting that the accused No. 2 i.e. the Respondent No.3 was merely a tool with no bad intentions of his own.

- vii) The Petitioner tendered her second complaint on 17.08.2016 to the DCP making more improvements in her allegations against the Respondent Nos.2 and 3. The Petitioner for the first-time added expressions like outraging the modesty, stalking, sexual harassment, defamation, criminal intimidation, targeting, chasing, physical contacts, passing sexually coloured remarks, innuendo etc. without giving any specifics at all.
- viii) A detailed report/ ATR was submitted by the ACP/HQ/IGI to the Hon'ble court in the 156(3) proceedings on 31.08.2016 wherein it was concluded by the investigating agency that the "*statement given by the complainant seems to be an afterthought.*" It was further stated that none of the witnesses supported the case of the Petitioner.
- ix) On 15.12.2017, the Hon'ble court of ACMM-01/PHC/New Delhi passed directions for registration of an FIR on the complaint of the Petitioner. The learned counsel states that at every stage the Petitioner not only got a hearing and enquiry but also got a complete redressal of her grievances.
- x) On 19.06.2018, the IO issued a notice dated 16.06.2018 under section 91 CrPC to the Petitioner to submit the phone which she claimed contained the recordings of Respondent No. 2 which were referred to in her complaint. However, the petitioner chose to make yet another set of complaints about another officer of her employer instead of supplying the desired article. Furthermore, in her reply, the petitioner sought to dictate detailed directions to the police authority as to the manner in which they should investigate as also the list of witness they were "required" to investigate.

- xi) On 18.09.2018, the Petitioner gave yet another complaint to the police in as much as a new improved complaint was tendered to the Commissioner of Police, Delhi. In this complaint, the Petitioner yet again made allegations, and this time against the senior officials of Delhi Police at the level of DCP. It is thus clear that every person and/or official who did not and does not act as per the orders of the Petitioner has earned her ire and a successive complaint. This goes to show the petitioner has made a mockery of the entire investigating agency and misused the process of law.
- xii) The learned counsel for Respondent No.3 submits that even as per the ATR submitted by the Police before the Registration of FIR, the Petitioner has admitted that she has no grievances against the Respondent No. 3 and she wants the case to be registered against Respondent No. 2. It also reveals that the Petitioner did not cooperate with the Police Officials and joined the enquiry with a lawyer. When the Petitioner was called for giving her statement, she categorically refused to give statement and said that she would submit her statement later. This clearly shows that the allegations traversed against the Respondent No. 3 are well-designed and afterthought and made with an intent to falsely implicate the Respondent No.3. Therefore, the instant Petition is liable to be dismissed with exemplary cost.

6. Respondent No. 10 i.e., M/s GMR DIAL has filed a counter affidavit and argued as under:

- i) It has been embroiled in the matter unnecessarily. This is evident from the fact that the Respondent No. 10 was not made a party to the application under Section 156(3) Cr.P.C preferred by the Petitioner for registration of the FIR, nor was the Respondent No. 10 arraigned as an

accused in the FIR. The Respondent No. 10 also believes that it is not an accused in the charge-sheet as no notice has been served upon it. In fact, the Respondent No. 10 was not even arrayed as a party in the previous similar writ petition bearing W.P. (Crl.) 112/2019 that stands disposed of *vide* order dated 17.12.2020 by this Hon'ble Court.

- ii) Respondent No. 10 has been made a party in the present petition without any rhyme or reason with the sole intention to malign the reputation and damage the goodwill of the Respondent No. 10.
- iii) The learned counsel for Respondent No.10 submits that Respondent No. 10 ought to be deleted from the memo of parties as no role has been ascribed to Respondent No.10.
- iv) Respondent No.10 also states that the present writ petition is not maintainable and deserves to be dismissed for three reasons:

a. The Petitioner has sought by way of this writ petition to carry out the criminal proceedings in a particular manner. It is settled law that the scope or the manner of the investigation or criminal proceedings cannot be guided by the whims of a complainant or controlled or scuttled by such a writ remedy.

b. Powers of judicial review under Article 226, Constitution of India for transferring investigation of a criminal case to a Central Agency ought to be exercised with great caution which must be exercised sparingly, cautiously and in exceptional situations, guiding principles for which are well settled. The present litigation which is a complete abuse of the process of this Court has no national or international ramifications. Neither does it have any complex issue incapable of being investigated by the Investigating Agency, nor is it a case which is being investigated by more than one investigating agency. Thus, the present case fails to satisfy any of the criteria that is a pre-requisite for

transfer of investigation to the CBI. Respondent No. 10 has relied on judgments viz., *Arnab Ranjan Goswami v Union of India & Ors.*, 2020 SCC OnLine SC 462; *State of West Bengal v Committee for Protection of Democratic Rights, West Bengal*, (2010) 3 SCC 571; *P. Chidambaram v Directorate of Enforcement*, (2019) 9 SCC 24; *Bimal Gurung v. Union of India*, (2018) 15 SCC 480; *Ravi MV v. Amruthur Police*, 2018 SCC OnLine Kar 2221 in favour of this claim.

c. The present writ petition is also hit by principle of *res judicata* as a similar writ petition agitating similar issues with respect to the same criminal case was disposed of by this Hon'ble Court vide order dated 17.12.2020 in Writ Petition (Crl.) No. 112 of 2019 titled as "*Archana Sharma v. State & Ors.*" It is settled law that an issue or a point decided and having attained finality, should not be allowed to be re-opened and re-agitated all over again.

7. Respondent No. 2 has argued as under:

- i) Respondent No. 2 states that the present writ petition is not maintainable as it is barred by doctrine of *res judicata*. The relief of transfer of investigation to CBI sought by the Petitioner herein was an issue before this Hon'ble Court in WP(Crl.) No. 112/2019 and the same stood concluded on merits vide order dated 17.12.2020. Thus, the Petitioner herein is estopped under law to agitate the said issue in a subsequent proceeding before the same Court.
- ii) Once the issue regarding transfer of investigation to CBI stood decided vide order dated 17.12.2020, it is not open to any of the parties to re-litigate the same issue in the same court. Thus, the aforesaid issue cannot be a subject matter of litigation in the present proceeding

on identical facts and figures. The principle of finality in the present case gathers utmost significance.

- iii) The other relief sought by the Petitioner against the Respondent No.2 is for arrest of accused persons. The learned counsel for Respondent No.2 states that power to arrest the accused persons rests with the Police during the stage of investigation and is over upon presentation of the charge-sheet and framing of charges. Thus, the prayer of the Petitioner herein is bereft of any merits.
- iv) He further states that subsequent to filing of charge-sheet and framing of charges, an accused who is admitted to regular bail (which in this case is true for Respondent Nos. 2 and 3 who are both on bail) can be arrested only after cancellation of bail by the Ld. Court that granted the bail either on such application moved by the prosecution or the complainant alleging violation of conditions of bail or by the higher Court of Law on a challenge by the prosecution or the victim. None of the parameters as afore-stated are fulfilled in the present case for grant of relief to the Petitioner herein. Thus, the prayer to arrest Respondent No.2 is not maintainable.
- v) On merits, the respondent No.2 has denied all allegations made against him.

8. Respondents No. 1 and 4 to 9 have made the following arguments:

- i) At the outset, respondent Nos. 1, 4-9 have relied upon the Doctrine of *Res Judicata* with regard to prayer 'a'.
- ii) With regard to prayer 'b' i.e., for arrest of Respondent Nos. 2 and 3, it is respectfully submitted that the investigation of the case has already been concluded after collecting all relevant evidence and charge-sheet of the case has already been filed before the Ld. Court. In case, the petitioner has any grievance with the investigation of the case, it is

open to her to approach the concerned trial court in accordance with law. Hence, the present prayer is not maintainable before the Hon'ble High Court of Delhi. In any case, directions for arrest cannot be sought by way of a writ petition.

- iii) Regarding prayer 'c' for recommending Central Vigilance Commission and Commissioner of Police to take action against the named DCP's and IO's, it is submitted that the allegations levelled by the petitioner are false and baseless. The complaints of the petitioner were properly enquired into and appropriate reports were filed before the concerned Court. No negligence or dereliction of duty on the part of any police officer as alleged has come on record. Furthermore, adjudication of said prayer involves disputed questions of fact, which cannot be agitated by way of a writ petition.
- iv) With regard to prayer 'd' for imposition of cost, it is submitted that the said prayer cannot be summarily adjudicated in present proceedings particularly when the Trial is yet to take place to ascertain the truth or falsity of the case.
- v) Last prayer is to direct the Investigating Agency to seize the Official Desktop of the Petitioner, laptop of Respondent 2 & 3 in custody of Respondent No. 10. Regarding this, it was submitted that if the petitioner has any grievance with the investigation of the case, it is open to her to approach the concerned trial court in accordance with law. This aspect of further investigation, as stated above, has already been adjudicated in WP (Crl) 112/2019.

ANALYSIS:

9. I have heard learned counsel for the parties and the petitioner in person.

10. The Petitioner had filed a similar writ petition being Writ Petition (Crl.) No. 112 of 2019 titled '*Archana Sharma v. State & Ors*', before this Hon'ble Court agitating similar issues with respect to the same cause of action. The petition was disposed of vide order dated 17.12.2020.
11. The similarity in the earlier writ petition bearing WP (Crl.) 112/2019 and the present writ petition is apparent from the following table:

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<i>Prayer in Writ Petition (Crl.) No. 112 of 2019</i>	<i>Prayer in the present writ petition</i>
A) Issue an appropriate directions / Writ to transfer the investigation in fir no.80/2018, u/s 509, registered at IGI Airport Police Station, New Delhi, from the hands of respondents no.1 to CBI as concerned Police Officer at IGI Airport Police Station not performing their duties and Contempt of Hon'ble Apex Court in <i>Lalita Kumari vs. State of U.P.</i> 2012; B) To issue direction to FSL for expeditious disposal of pending examinations of Audio CD preferably within 4 weeks of the orders of this Hon'ble Court.	a) Allow the present Petition and issue writ of mandamus or any other appropriate writ for giving directions to the Respondent No. 1 to transfer the further investigation of FIR No. 80/2018 registered U/s. 509/34 IPC at P.S. IGI Airport to Central Bureau of Investigation from Respondent No.1; b) Direct the concerned agency to arrest/ detain the Respondent No. 2 and 3 immediately for further investigation;

<i>C) To issue a Writ in the nature of Mandamus directing the Hon'ble Patiala House Court to expeditiously conduct the trial proceedings in the long pending complaint filed by the Petitioner/Complainant and pass appropriate orders within 6 months.</i>	<i>c) Recommend Central Vigilance Commission and Commissioner of Police to take serious and effective action against the named DCPs and IOs who neglected the complaint of Petitioner to register as FIR and they made Petitioner to run from Pillar to Post for bringing criminal case into motion being recalcitrant, guilty of negligence not one but more than thrice, dereliction of duties, destruction of material evidence and failed to perform their duties which will send a strong message to entire Police Force that Law is above all and Judiciary is here to protect the justice;</i>
<i>D) Pass such other order or orders as are deemed fit and necessary in the interests of justice.</i>	<i>d) Impose heavy cost upon the Respondent No.1, 4 to 9 for contempt of the Hon'ble Apex Court's directions in Lalita Kumari vs. State of U.P., for realization of their fault and by this way a message would travel among the police officers not to be adamant and detrimental in case of</i>

	<i>cognizable offence;</i> <i>e) Direct the investigating Agency to seize the Official Desktop of the Petitioner, laptop of Respondent 2 & 3 in custody of Respondent No. 10;</i>
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12. Prayer 'a' in both the petitions is identical.
13. The present Petition being W.P. (Crl) 36/2021 attracts the Doctrine of *Res Judicata* as a similar writ petition based on similar issues and almost identical set of allegations has been disposed of by this Hon'ble Court vide order dated 17.12.2020 in Writ Petition (Crl.) No. 112 of 2019.
14. An issue or a point decided and having attained finality cannot be allowed to be re-opened and re-agitated all over again.
15. Doctrine of *Res Judicata* was founded upon the consideration of public policy to provide certainty to litigations. The principle refers to the theory that a person should not be permitted to re-litigate the same issue for a second time against the same person, on the same set of facts, which has been tried and duly determined on merits by a Competent Court of law.
16. Reliance in this regard is placed on the judgment of ***Canara Bank v. N.G. Subbaraya Setty & Anr.*** CIVIL APPEAL NO.4233 OF 2018 where the Apex Court recorded as under:

"5. Res judicata is, thus, a doctrine of fundamental importance in our legal system, though it is stated to belong to the realm of procedural law, being statutorily embodied in Section 11 of the Code of Civil Procedure, 1908. However, it is not a mere technical doctrine, but it is

fundamental in our legal system that there be an end to all litigation, this being the public policy of Indian law. The obverse side of this doctrine is that, when applicable, if it is not given full effect to, an abuse of process of the Court takes place.....”

17. A perusal of the table below shows similarity in the grounds of the present writ petition and earlier writ petition being W.P. (Crl.) 112/2019.

<i>Grounds in Writ Petition (Crl.) No. 112 of 2019</i>	<i>Grounds in the present writ petition</i>
<i>C. Because the both Respondent / Accused being official of GMR, DIAL having a great influence in the system, they thereafter made attempts to influence the IGI Airport Police to hush up the matter of Sexual Harassment at workplace, and remains even today in continuous interference in the police investigation.</i>	<i>B. Because the arbitrariness is evident from the fact that the Respondent No.1, 4- 9, issued notice to Respondent No.2- 3 to join investigation however, Respondent no.2 & 3 sought time to participate and same was granted by the investigating agency as the Respondent No.2 - 3 being influential under shadow of RESPONDENT NO. 10 holding the relations with ministers, leaders and bureaucrats imparted brotherly treatment and hence are privileged roaming scot free even after being an offender.</i>

<i>D. Because the enquiry and investigation so far conducted reveals the truth that the IGIA Police shielded both the Respondent / Accused / Offenders and offence of sexual harassment of women at workplace being the matter against GMR DIAL officials, by filing the closure report thrice dated 07.11.2012, 16.03.2015 and 31.08.2016 by the then DCP Mr. MI Haider (twice), Mr. Dinesh Kumar Gupta and Mr. Sanjay Bhatia now though the matter being cognizable offence violating mandate of the Hon'ble Supreme Court in Lalita Kumari vs. State of U.P. 2013.</i>	<i>F. Because Respondent No. 1, 4 - 9 primarily initially did not register FIR totally disregarded directions of the Hon'ble Apex Court in Lalita Kumari vs. State of U.P. which is contempt of the Hon'ble Apex Court. Rather they assisted / facilitated Respondent No. 2- 3 and 10 in tampering evidences. Respondent No. 1, 4-9 failed to collect the material evidences at appropriate time. Specifically, the call record/ CDR of Respondent No. 2 collected by Respondent no. 8 under the supervision of Respondent No. 6 did not verified with the service provider / AIRTEL to prove its veracity. The Petitioner submits that the call log / CDR in charge sheet is fabricated/ doctored/ manipulated/ tampered and false.</i>
<i>G. Because a detailed statement made by the Petitioner / Complainant clearly making out offence under section 34, 120B, 354, 503, 509 and other relevant</i>	<i>D. Because Respondent No. 1, 4- 9 dealing/ dealt with the matter, did not made any efforts to arrest Respondent No. 2 & 3 till date granting them adequate liberty</i>

<i>sections of IPC, The Petitioner / Complainant named the Accused persons along with evidence in addition to her testimony under section 164 Cr P C. recorded on 08.03.2018, nothing has been done. The Respondents / Accused persons have not been arrested. On the contrary the FIR filed on soft and selective IPC sections under minor charge provider and himself without sender, recipient, date and time of response email from Airtel service provider.</i>	<i>to destroy/ manipulate/ fabricate essential/ crucial material evidence and witnesses.</i> <i>E. Because the Petitioner is living under fear of Respondent No.2 &3 in connivance with Respondent No.1, 4 - 10 destroyed the material evidences against them, Respondent No. 1 - 10, tortuously pressurized the Petitioner to withdraw the case and after her denial faced the unemployment on false grounds to impair Petitioner deprived of finance which financially impaired the Petitioner paralyzing her to proceed litigation due to financial crunch.</i>
<i>R. The purpose, motive and intention for not registering the FIR and further delay in filing charge sheet clearly indicates that Police itself is instrumental in destruction of evidence in the form of call log / CDR and protection of the Accused. Both accused are roaming scot free who have acquired ample opportunity and time to influence</i>	<i>M. Because Respondent no. 4 - 6 did not attempted to collect / secure the CDR of Respondent no. 2 to assist / corroborate with the allegations in investigation. IOs did not carry out any investigation and no explanation has been given by him for not doing so. Respondent no. 5 step-a-head by producing fabricated printout of</i>

witnesses, destruct evidences and is threat to the life of the Complainant. The Complainant has been candid enough to state in no uncertain terms, that though the evidence was galore against the Accused No.1 & 2 in the commission of Sexual harassment, outraging modesty of women, etc., yet conscious and intentional steps were taken by IGI Airport Police to shield them due to political and other influence wielded by them. Police also attempted to efface the evidences in the form of call records available during October 2012 enquiry.	email before the Ld. Trial Court the contents of which did not mention the mobile number of Respondent no.2 rather 04 unidentified numbers and mobile number of Petitioner CDR. This act of Respondent No.5 clearly indicates that how casual and protective he was with the accused. While dealing with suspicious role of the 10, the Hon'ble Supreme Court of India in judgment titled as Dayal Singh and others Vs. State of Uttaranchal (2012)8 SCC263 held that: "a default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable (or the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did
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	<i>not cause prejudice to the case of the prosecution.”</i>
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18. In Writ Petition (Crl.) 112/2019, this court vide order dated 17.12.2020 has observed as under:

“The prayer clause in relation thereto a submission has been made by the petitioner in person that the investigation that has been conducted has not been conducted properly and that further investigation is required. Apparently, in relation thereto, it would be open to the petitioner to seek redressal in accordance with law.

In as much as the averments in the instant petition sought transfer of investigation in relation to FIR No.80/2018, Police Station IGI Airport under Section 509 read with 34 of the Indian Penal Code, 1860, qua which the investigation now already stands concluded by institution of the charge sheet.

.....

As regards the prayer that has been made on behalf of the petitioner seeking further investigation, it would be open to the petitioner seeking redressal in accordance with law.”

19. This court in W.P. (Crl.) 112/2019 vide order 17.12.2020 did not accede to the prayer seeking transfer of investigation to CBI. The same cannot be reagitated before this court in a fresh writ petition.
20. In terms of the liberty granted vide order dated 17.12.2020, the petitioner has the option to approach the learned MM seeking further investigation/re-investigation and if and when approached, the MM shall adjudicate upon the same in accordance with law. However, this court in the same order has rejected the prayer for transfer of investigation to CBI noting that

investigation is complete and chargesheet has been filed. Hence, the said prayer cannot be reagitated.

21. Even on merits, transfer of investigation is a serious affair. The Hon'ble Supreme Court in a recent judgment of ***Himanshu Kumar And Others v. State Of Chhattisgarh And Others*** WRIT PETITION (CRIMINAL) NO. 103 OF 2009 has outlined the parameters for transferring investigation to CBI wherein the relevant paras read as under:

“44. It is now settled law that if a citizen, who is a de facto complainant in a criminal case alleging commission of cognizable offence affecting violation of his legal or fundamental rights against high Government officials or influential persons, prays before a Court for a direction of investigation of the said alleged offence by the CBI, such prayer should not be granted on mere asking

...

47. The extraordinary power of the Constitutional Courts under Articles 32 and 226 respectively of the Constitution of India qua the issuance of directions to the CBI to conduct investigation must be exercised with great caution as underlined by this Court in the case of Committee for Protection of Democratic Rights, West Bengal (supra) as adverted to herein above, observing that although no inflexible guidelines can be laid down in this regard, yet it was highlighted that such an order cannot be passed as a matter of routine or merely because the parties have levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instill confidence in the investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the

fundamental rights. We are conscious of the fact that though a satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge sheet ipso facto or the pendency of the trial can, by no means, be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.”
(emphasis supplied)

22. An order for transferring investigation to CBI cannot be passed merely because the litigant feels she is being unfairly prejudiced as the decision is not in her favour. There is nothing placed on record that has shaken the conscience of this court with respect to the investigation conducted by the police.
23. I am satisfied with the investigation carried out in FIR 80/2018 for which the chargesheet has already been filed. The concerned authorities have dealt with each and every allegation of the petitioner in a fair and just manner.
24. *Vide* order dated 17.12.2020, this Court permitted the petitioner to take appropriate remedies as far as prayer seeking further investigation is concerned. The appropriate remedy is not to file another Writ Petition on the same cause of action but to approach the Magistrate in accordance with the CrPC and make out a case on facts and law before the Magistrate for further investigation.

25. It is settled law that power to order further investigation rests with the Magistrate as has been held by the Apex Court in ***Vinubhai Haribhai Malviya & Ors v. State of Gujarat & Anr*** 2019 SCC OnLine SC 1346. The court hereheld that the correct course of action is to approach the Magistrate under section 156(3) CrPC who can order further investigation under section 173(8) CrPC even post-cognizance until trial commences. The relevant para of the three-judge bench judgment reads as under:

“25. It is thus clear that the Magistrate's power under Section 156(3) CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police—which such Magistrate is to supervise—Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) CrPC would, as per the definition of “investigation” under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) CrPC.”

26. The petitioner has relied on the aforesaid judgment in her pleadings, however, she, herself, has bypassed the procedure mandated in law.

27. The Petitioner's conduct indicates interference in the investigation process. The same is contrary to the ruling of the Supreme Court in ***P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24*** where it is observed as under:

*“66. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. **It must be left to the discretion of the investigating agency to decide the course of investigation.** If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. **It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.**”*
(emphasis supplied)

28. Additionally, further investigation of the case after filing of the charge sheet is a matter which entirely falls within the domain of the Investigating Agency and the competent court of law and for which provisions have been provided under the CrPC. The procedures prescribed under the said Code are to be followed scrupulously and no person has a right to seek further investigation in a case as a matter of right especially after filing of the charge sheet.
29. Hence, prayer ‘a’ is barred by *res judicata*. I further proceed to deal with the other prayers of the petitioner.
30. Prayer ‘b’ of the present writ petition reads as under:

“b) Direct the concerned agency to arrest/detain the Respondent No.2

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and 3 immediately for further investigation;”

31. As regards prayer (b), the chargesheet has been filed and charges have been framed against the Respondents upon completion of the investigation by IGI Airport Police. Respondent No.2 and 3 have been granted bail. As per the FIR and chargesheet, Respondent No. 2 and 3 are charged for offence under section 509 IPC, which is a bailable offence.
32. This Court in the present writ petition cannot cancel the bail and/or direct arrest of Respondent Nos. 2 and 3 in view of chargesheet having been filed and bail having been granted by the competent court.
33. Prayer ‘c’ of the present writ petition reads as under:

“c) Recommend Central Vigilance Commission and Commissioner of Police to take serious and effective action against the named DCPs and IOs who neglected the complaint of Petitioner to register as FIR and they made Petitioner to run from Pillar to Post for bringing criminal case into motion being recalcitrant, guilty of negligence not one but more than thrice, dereliction of duties, destruction of material evidence and failed to perform their duties which will send a strong message to entire Police Force that Law is above all and Judiciary is here to protect the justice;”

34. I am of the view that there is no dereliction of duties by Respondent Nos. 4 to 9, who are all police officials. The Respondent Nos. 4 to 9 have investigated the allegations of the petitioner, filed regular status reports and also filed the chargesheet after conducting investigation.
35. The Apex Court in ***Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage (2016) 6 SCC 277*** has held as under:

“2. This Court has held in *Sakiri Vasu v. State of U.P.*, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, **then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC.** If such an application under Section 156(3) CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in *Sakiri Vasu* case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. **Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if *prima facie* he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.**

4. In view of the settled position in *Sakiri Vasu* case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it

necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.” (emphasis supplied)

36. Petitioner relies upon the judgment of **Lalita Kumari** (*supra*) which lays down the guidelines for registration of FIR. In the present case, FIR has already been registered and thus, the judgment of **Lalita Kumari** (*supra*) is distinguishable in the facts of the present case.
37. In view of the above, prayer ‘c’ is declined.
38. As regards prayer ‘d’ of the petition, it reads as under:

“d) Impose heavy cost upon the Respondent No.1, 4 to 9 for contempt of the Hon'ble Apex Court's directions in Lalita Kumari vs. State of U.P, for realization of their fault and by this way a message would travel among the police officers not to be adamant and detrimental in case of cognizable offence;”

39. As already observed, I am of the view there is no dereliction of duty on the part of Respondent Nos. 4 to 9. Therefore, prayer ‘d’ is infructuous and declined.
40. As regards prayer ‘e’ of the petition, it reads as under:

“e) Direct the investigating Agency to seize the Official Desktop of the Petitioner, laptop of Respondent 2 & 3 in custody of Respondent no. 10;”

41. This relief can only be granted to the petitioner if and when further investigation is ordered by the Magistrate according to the procedures prescribed in CrPC. Invoking writ jurisdiction of this court to seek the above-mentioned relief is not in accordance with the correct procedure when effective remedies for the same are available with the petitioner under the CrPC.
42. Hence, the present Writ Petition is dismissed.
43. The documents handed over are taken on record.

APRIL 13th, 2023/jv

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)