

Form No.J(2)
SB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

MAT 951 of 2024
with
IA No. CAN 1 of 2024

Sekandar Rabidas
Versus
The State of West Bengal & Ors.

For the appellant : Mr. Biswaroop Bhattacharyya, adv.
Mr. Vivekananda Bose, adv.
Mr. Nilanjan Bhattacharya, adv.
Mr. Ratikanta Pal, adv.

For the State : Mr. Supriyo Chattopadhyaya, adv.
Ms. Sayantanee Bhattacharjee, adv.

For the WBBSE : Ms. Koyeli Bhattacharyya, adv.
Mr. Bibek Dutta, adv.

For respondent
Nos. 8 to 11 : Mr. Satyam Mukherjee, Adv.
Ms. Sayani Ahmed, adv.

Heard on : 9th July, 2024

Judgment on : **9th July, 2024.**

Harish Tandon , J:

A beleaguered litigant having resources get the services of the legal expert to thwart the proceedings contemplated against him and all the nuances of law whether applicable or not in the context of the facts involved in the case are cited before the Bench.

The law and the ratio has to be understood in the perspective of the facts or the context in which it is used and should not apply in an abstract manner. The host of decisions rendered by the Apex Court are cited at the behest of the appellant in pursuit of getting rid of the disciplinary proceedings contemplated against the appellant on the basis of the serious charges which has a large impact on the modesty and dignity of a female employee at the work place. It was envisioned several decades ago that some protection must be extended to the female at the work place and an exhaustive legislation should be enacted not only to prevent any recurrence of sexual assault at work place but also to protect the women being exploited or subjected to a sexual harassment at work place.

After the Bisakha Guidelines, a Rule was introduced i.e., the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the Parliament within an avowed object of providing protection against the sexual

harassment of a women at the workplace and the redressal of their complaints or the matters connected and/or related thereto. The said Act contained an exhaustive provision not only relating to penal consequences but the modalities and the procedures to be undertaken before an ultimate decision is taken by the competent authority.

In the instant case, an approach was made immediately after the Article of charges or in other words the charge-sheet was served upon the appellant raising various issues, some of which touches upon the merit of the complaints, some on technicalities with certainty in mind that the competent authority may proceed to render justice to the complainant who has raised serious allegations against the appellant.

The procedural hassles, the procedurals impropriety, the procedurals infractions are projected affront with one object that the competent authority may not continue with the proceedings and to bring it to its logical conclusions at an earliest.

A plea is taken at the Bar that the manner of enquiry on the complaint provided in Rule 7 of Sexual Harassment of Women At Workplace (Prevention, Prohibition, Redressal) Rules, 2013 have been done away with and no opportunity was ever given to the appellant to deal with such allegations as contemplated under the aforesaid provisions. Despite having taken such plea, the attention of the Bench was drawn to an

enquiry report enclosed with the application for stay wherein a *prima facie* opinion was expressed on the serious charges made against the appellant. It is sought to be contended that such enquiry was lopsided having done in absence of the appellant but it would reveal therefrom that the appellant was served with the notice to participate in such enquiry yet he did not appear.

Spontaneous reaction came at the Bar that the authorities were proceeding with the predetermined mind and even a postponement of the enquiry was sought, the same was rejected and, therefore, it would be evident that the authorities proceeded in haste. We are not concerned at this stage over the genuinity and legality of the said enquiry. The moment this Court finds that there has been a compliance of the statutory provisions, it should not be proper to interfere but leave it to the authority to decide if such points are taken before it.

Several Judgments are cited in support of the contention that the moment the criminal charges and the charges in a disciplinary proceedings are found to be similar or based upon the same set of facts or to be decided on the same evidence, it is advisable that the disciplinary proceeding should rest a while until the criminal proceeding is finally determined. The Judgment of the Apex Court in case of **Kusheshwar Dubey vs. M/s Bharat Coking Coal Ltd. & ors. reported in (1988)4 SCC 319** is cited to buttress the aforesaid submission. The ratio of

the Judgment is to be culled out in juxtaposition with the facts involved in the said given case. Application of the Judgment in adjunct manner without assimilating the facts should be eschewed. In the said Judgment, the Apex Court has categorically held that there is no legal bar in continuing the simultaneous proceedings i.e., the criminal proceedings as well as disciplinary proceedings but the Court after taking into account the similarity in the facts, evidence to be adduced may stay the disciplinary proceeding until the criminal action is brought to its logical end.

The ratio of the said Judgment is not applicable in the instant case for simple reason that the investigation in the criminal proceedings has not resulted into a final report to be filed before Jurisdictional Magistrate. The matter is still travelling at the periphery of the investigation and the Investigating Officer has not arrived at a *prima facie* conclusion on the genuineness, truthfulness and the authenticity of the complaints lodged by the women. None of the Judgments as cited before us suggest that the disciplinary proceedings should await till the investigation is completed by an Investigating Officer. The reason being obvious that until the final report is submitted in the form of a charge-sheet before the Jurisdictional Magistrate, the evidence so relied upon remains aloof and does not see the light of the day. The desperate attempt made at the behest of the appellant to stay the

disciplinary proceeding shall have a cascading effect and may at times open a pandora box for all and the sundry taking advantage of the law that the moment the criminal case as well as disciplinary proceeding are launched simultaneously, the stay of the disciplinary proceeding is the virtue.

We are not unmindful of the proposition of law that in a disciplinary proceeding, the delinquent has a right to get all the documents sought to be relied upon and disclosed in the charge-sheet as any infraction would invite the violation of the principles of natural justice, which is inhered as a fundamental rights in every citizen of the country. Though we find the attempt of the appellant being dillydally i.e., at one point of time it is submitted that no documents have been handed over but at the same breath the documents annexed to the petitions are relied upon yet we feel that once a statement is made at Bar that the documents were in fact not accompanying the charge-sheet, it is the duty of the competent authority to forward those documents to the appellant. In fact the learned Single Judge in the impugned order have extended the time for giving the reply which cannot be said to be unreasonable, infirm and/or irrational.

The Constitution does not invite any discrimination on gender basis. A male employee is also entitled to be treated in a respectful and/or descent manner and must defend the allegation made against him. The allegation as to sexual

harassment at the workplace has a negative impact in one's life and, therefore, the authorities are expected to be more vigilant and circumspect in initiating the proceeding keeping in mind the rights of both the delinquent as well as complainant so as to impart just and fair justice to them.

We, therefore, do not find any grounds warranting interference with the impugned order but we feel that the order needs a modification to the extent that the authority shall provide all the documents which they intend to rely in a disciplinary proceeding to the petitioner/appellant within two weeks from date.

The petitioner/ appellant is given a chance to give reply within two weeks therefrom and it goes without saying that all the points available to the petitioner including the points raised in the instant mandamus appeal if taken before the authority, the same shall be decided independently and on its merit without being influenced by any observations made hereinabove.

We except that the authorities shall bring the issue to its logical end within three months from date in accordance with law.

Accordingly the appeal being MAT 951 of 2024 is disposed of and the connected application being CAN 1 of 2024 is also disposed of.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)