



2024:DHC:9732



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

% **Date of order: 17th December, 2024**

+ **CRL.M.C. 2906/2023 & CrI.M.A. 10919/2023**

PRABHA AGGARWAL

.....Petitioner

Through: Mr. Aditya Kumar Choudhary, Mr. Sandeep Pandey, Mr. Aditya Anand Singh and Mr. Anurag Yadav Advocates (Through VC).

versus

STATE NCT OF DELHI ANR.

.....Respondents

Through: Mr. Satish Kumar, APP for the State. Mr. Kuldeep Kumar with Ms. Syed Nilofar Akhtar, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the Bharatiya Nagraik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking setting aside of the order dated 3rd September, 2022 in Cr. Rev. no. 824/2019 passed by the learned ASJ-04 & Special Judge (NDPS), South East District, Saket Court, New Delhi and setting aside of the order dated 14th March, 2023 passed in the application for recall of the order dated 3rd September, 2022 as

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well as quashing of all the other criminal proceedings against the petitioner.

2. The brief facts that led to the filing of the instant petition as stated by the petitioner are as follows:

- a. The petitioner, who was the Principal of the Hemnani School, received complaints regarding some deficiencies in the working of the respondent no. 2/complainant. Thus, while discharging her official duties, the petitioner served a show cause notice dated 18th November, 2015 upon the respondent no. 2 on behalf of the school.
- b. It is stated that on the same day, an incident took place in the school premises and the respondent no. 2 filed a complaint dated 18th November, 2015 with the Police Station - Lagpat Nagar, Delhi, thereby, alleging that when the husband of the complainant came to pick her up from school, he started talking to the two school officials namely Mr. Shambu Premchand Jaisinhani and Mr. Lachman Pardasaini, as they were known to him, being of the Sindhi community and soon, both the aforesaid persons started using cheap derogatory remarks against her in front of her husband and further they said, they have seen her with the Manager in a closed room in wrong position and they threatened to destroy her career.
- c. Further, in her complaint, she mentioned that even the petitioner Smt. Prabha Aggarwal also came there and she



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started arguing with her husband and when things escalated, they left from there. Based on the said complaint, FIR No. 968/2015 was recorded and subsequently, statements of the respondent No.2 and her husband under Section 164 and 161 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”) were recorded.

- d. However, there was no case made out against the petitioner in the original chargesheet filed on 22nd April, 2016. Accordingly, the respondent no. 2 filed a protest petition against the non-inclusion of the petitioner in the chargesheet and the learned Trial Court, vide order dated 27th September, 2016, directed the investigating officer (hereinafter “IO”) to investigate and ascertain the role of the petitioner herein and file the supplementary chargesheet. Moreover, the learned Trial Court, upon dissatisfied with the investigation, transferred the matter to DIU/SED unit for investigation following which the statement of eye witness namely Sh. Ajay Kumar was recorded under Section 161 of the CrPC on 29th May, 2017.
- e. Thereafter, the supplementary statements of the respondent no. 2 and her husband were recorded under Section 161 of the CrPC on 24th June, 2017 wherein she stated that the petitioner was also involved in leveling the derogatory remarks against her.



- f. Subsequently, supplementary chargesheet was filed on 9th August, 2017 based on the further investigation. On 24th May, 2018, the learned Trial Court summoned the petitioner on the basis of the said chargesheet.
- g. Thereafter, vide order dated 9th September, 2019, the learned Trial Court framed charges against the accused persons except the petitioner who was discharged while holding that no *prima facie* evidence is present against the petitioner. Being aggrieved by the same, the respondent no. 2 filed a criminal revision petition which was allowed vide order dated 3rd September, 2022 by the learned ASJ, thereby, setting aside the order dated 9th September, 2019 *qua* the petitioner and further directed the learned Trial Court to record framing of charges under Section 509 of the Indian Penal Code, 1860 (hereinafter “IPC”).
- h. Being aggrieved by the same, the petitioner herein filed an application seeking recall of the order dated 3rd September, 2022 and the learned ASJ dismissed the said application vide order dated 14th March, 2023. Hence, the petitioner has filed the instant petition.
3. Learned counsel appearing on behalf of petitioner submitted that the impugned order dated 3rd September, 2022 is bad in law as the same has been passed on the basis of false and frivolous statements made by the respondent no. 2.



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4. It is submitted that the petitioner has been implicated by the respondent no. 2 in the present case with the intention to take revenge against her as the respondent no. 2 was served with a show cause notice for the deficiency in her services.

5. It is submitted that there have been grave procedural lapses and the order dated 3rd September, 2022 was passed by the learned ASJ while it was being misled by the respondent no.2 and her lawyer who made false statements at the bar that no supplementary statement of the respondent no.2 under Section 161 of the CrPC was recorded and instead, aspersions were casted upon the learned Trial Court which discharged the petitioner while examining all the documents available on record and thereafter finding no prima facie case against the petitioner, as the supplementary statements made by the respondent no.2 were all contradictory and the said respondent was hell bent on the petitioner to implicate her at any cost.

6. It is submitted that the learned Trial Court rightfully arrived at the conclusion of discharging the petitioner because it had the advantage of the complete record whereas the learned ASJ got swayed away by erroneous and misleading statements made by the counsel for the respondent no.2 and by conveniently annexing the supplementary statements recorded as an afterthought.

7. It is submitted that the impugned orders dated 3rd September, 2022 and 14th March, 2023 which are sought to be quashed by way of the present petition suffers from various infirmities which have been caused only due to the blasphemous conduct of the respondent no.2 and her lawyer and thus,



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has resulted in causing grave prejudice to the present petitioner who now is constrained to suffer the rigors of criminal trial on the basis of selective documents and allegations which inspires no confidence even for establishes a *prima facie* case.

8. It is submitted that the impugned order dated 3rd September, 2022 is liable to be quashed being perverse, as the lacuna in the complaint filed by the respondent no.2 on 18th November, 2015 was tried to be filled up with the supplementary statements recorded which were merely an afterthought by the respondent no. 2 and her husband. Further, the statement of Mr. Ajay Kumar cannot be relied upon as he was already expelled from the school in the year 2016 based on a disciplinary action instituted against him. It is further submitted that by conveniently hiding the original statements recorded under Sections 164 and 161 of the CrPC on 5th December, 2015 and 18th February, 2016 respectively, the respondent no. 2 is trying to *mala fide* strengthen her case. Moreover, the learned ASJ committed a grave procedural error by not summoning the trial court record.

9. It is submitted that the learned ASJ has committed grave error of law in setting aside the order of discharge based on the supplementary chargesheet, supplementary statements of the respondent no. 2, her husband and Mr. Ajay Kumar which were given as an afterthought after two years of the incident.

10. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

11. *Per Contra*, the learned APP appearing on behalf of the State



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vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit. It is submitted that the impugned orders have been passed in accordance with the law and there is no illegality of any kind thereto.

12. Thereafter, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the learned ASJ rightly passed the impugned orders after taking into consideration the entire facts and circumstances of the case.

13. It is submitted that there is a concurrent finding, after thorough investigation that the petitioner is an accused and should be charged sheeted along with other accused persons.

14. It is submitted that on the basis of complaint made by the respondent no.2, the aforesaid FIR was registered under Sections 509/34 of the IPC against the accused persons including the petitioner herein. The investigation was handed over to the IO SI Devender who did not perform the investigation in a proper, fair and impartial manner, and filed the chargesheet by deleting the name of the petitioner from the chargesheet.

15. It is submitted that pursuant to the same, the respondent no. 2 filed a protest petition challenging the final report filed under Section 173 of the CrPC which was allowed as the learned Trial Court was of the opinion that the IO has failed to give reasonable explanation as to why he did not investigate the role of the petitioner, and ordered for further direction. It is further submitted that despite the order of further investigation, the learned Trial Court had to transfer the investigation to DIU.



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16. It is submitted that impugned order dated 3rd September, 2022 has been passed after considering the contents of the complaint, the motive behind outraging the modesty of a woman and the evidences of various independent persons were recorded by the investigating agency (DIU Cell) and only on those basis, the chargesheet was filed and after hearing both the parties at length by the learned ASJ, the said order was passed as the petitioner was also present there and all the ingredients of Section 509 of the IPC have been attracted.

17. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

18. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

19. The petitioner has challenged the order dated 3rd September, 2022 where the learned ASJ, while setting the discharge order, has directed the learned Trial Court to frame charges against the petitioner. Thereafter, the petitioner had filed an application before the learned ASJ for recall of the aforesaid order, however, the said application was dismissed by the learned ASJ vide order dated 14th March, 2023 which is also under challenge before this Court.

20. In view of the submissions made hereinabove, the issue before this Court is to decide whether the learned ASJ rightly set aside the order of the learned Trial Court by virtue of which the petitioner was discharged?

21. The relevant extracts of the impugned order dated 3rd September, 2022 are as under:



“..1. Vide this order, this Court shall adjudicate the Criminal Revision petition, whereby the Revisionist has assailed the impugned order dated 09.09.2019 whereby the Ld. Trial Court discharged the respondent no.2 namely Prabha Aggarwal herein, for the offences u/s 509/34 IPC.

FACTS

2. The facts of the case are hereby succinctly recapitulated: It was alleged that the on 18.11.2015 at Hamnani Public School, Lajpat Nagar, New Delhi, accused Shambhu Premchand Jaisinhani, Lachaman Pardasaini and Prabha Aggarwal, stated to the husband of the complainant in the presence of the complainant Ms Ipsa Gurnani that they have seen the complainant with the previous manager in a locked room in wrong/compromising position and abused her in filthy language with intention to insult the modesty of the complaint through spoken words intended to be heard by her, and thus the present FIR came to be registered.

FINDINGS

3. After hearing the contentions of both sides, the Ld. Trial Court held that there no such allegations were made by the complainant against the accused Prabha Aggarwal in her complaint, statement recorded u/s 164 Cr.PC and statement recorded u/s 161 Cr.PC and the complainant had only made the allegations against the accused Prabha Aggarwal qua the offence punishable u/s 509 IPC in her supplementary statement. It was further held by Ld. Trial Court that the said allegations are an afterthought against the accused Prabha Aggarwal and there is no prima facie evidence on record to charge the accused Prabha Aggarwal for offence u/s 509 IPC and thus the Ld. Trial Court discharged the Prabha Aggarwal from the offence punishable u/s 509 IPC.



CONTENTIONS

4. Arguments from both sides were heard in extenso, the gist whereof is as hereunder:

5. It was argued by the Ld. Counsel for revisionist that Ld. Trial Court has grossly failed to consider the material on record, which, prima facie, make out the case u/s 509 IPC against the accused Prabha Aggarwal and has wrongly evaluated that the allegations against the accused Prabha Aggarwal qua the offence u/s 509 IPC is the supplementary statement of complainant, which shows that the said allegations are afterthoughts against the accused Prabha Aggarwal and there is no prima facie evidence on record to charge the accused. It was further submitted that as per the Statement of complainant u/s 161 and 164 Cr.PC, the statement was supported by the statements of the husband of complainant and other employees of the school. Ld. Counsel for revisionist further contended that even while recording of statement of the witnesses u/s 161 Cr.PC by the IO, witnesses stated that on the day of alleged incident accused Prabha Aggarwal with other co-accused persons used filthy and abusive language and objectionable comments, thereby outraging the modesty of the complainant. It was further submitted that the eye witness Mr. Ajay Kumar PGT Computer Science, in his statement u/s 161 Cr.PC stated that on the day of alleged incident i.e. 18.11.2015, he was present in the school and that in his presence accused along with other co-accused talked to the husband of complainant that the accused persons uttered filthy insulting words for the complainant Ipsa Gurnani and they had seen her in objectionable condition with Sh. G.L Asrani Ex Manager in a room and called a loose character lady.

6. Per contra, Ld Addl PP for State along with Ld.



Counsel for complainant vehemently contended that the perusal of record would reveal that a show cause notice was issued to complainant by Principal Prabha Aggarwal and thus the present case is a counter blast to that particular show cause. Thus, Ld. Counsel for respondent has attributed the motives to the complainant to falsely implicate the Prabha Aggarwal. Further, Ld. Counsel invited the Court's attention to initial complaint filed by the complainant, to contend that the allegations have been levelled only against two co-accused persons Shambhu Premchand Jaisinhani, Lachaman Pardasaini and not against Prabha Aggarwal.

DECISION

7. Perusal of record reveals that investigation qua the respondent Prabha Aggarwal was ordered by Ld. Trial Court whereafter, supplementary charge sheet was filed implicating respondent Prabha Aggarwal. The said supplementary charge sheet spells out the role of Prabha Aggarwal. A perusal of order dated 09.09.2019 passed by Ld Trial Court reveals that the Ld. Trial Court had observed that there were no allegations made by the complainant against the accused Prabha Aggarwal in her complaint, statement recording u/s 164 Cr.PC and statement recorded u/s 161 Cr.PC. 8 In the perception of this Court, the Ld. Trial Court has erred in arriving at the above conclusion. Perusal of a complaint dated 18.11.2015 made by complainant Ipsa Gurnani, to SHO PS Lajpat Nagar, reveals that respondent Prabha Aggarwal was also involved in the commission of alleged offence. At this juncture, it would be apt to peruse the following extracts of complaint.

“When it was around 2.15PM my husband was waiting for me outside to receive me. There Mr. Shambh Vice



President and Mr. Pardasani Treasurer started taking to my husband as my husband was also known to them, being of the same community, both these persons had used such a derogatory and defamatory words for myself that they have seen me with the previous Manager in a locked room and even they had seen us in the wrong position. They leveled all other cheap and defamatory allegations and even their intentions and gestures were very wrong. Their way of talking and their body language was totally indecent and the language was filthy. It was very difficult for me to stand in the public and more particularly in front of my husband. I was threatened in the morning by all these persons that they will ruin my career and defame myself and in pursuance of their misdeed, they have said so many things to my husband. Mrs Prabha Aggarwal had also joined them.

In the morning all these persons had threatened me that they will harm my reputation and the same thing has been done them by leveling the cheap derogatory, demoralized and defamatory allegations which covered under the Sexual Harassment of Women at Workplace Act, 2013 and other provisions of Indian Penal Code.”

9. The above makes it explicit that the allegations were levelled by the complainant against the respondent/accused Prabha Aggarwal also. Further, even in her statement u/ 161 Cr.PC, the complainant has categorically averred that Prabha Aggarwal had called her a characterless lady. Further, even a perusal of a statement made u/s 161 of Cr.PC of the husband of complainant reveals that Prabha Aggarwal was also involved in calling the complainant a characterless lady.

10. Further, statement u/s 161 Cr.PC of eye witness



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namely Ajay Kumar is also to the effect that Prabha Aggarwal alongwith other coaccused had stated that the complainant was found in a compromising position with one Mr G.L Israni. It is to be remembered that at the stage of charge, only a prima facie case is to be established by the prosecution. In the present case, the prosecution has made out a prima facie case against accused/respondent no.2 herein, Prabha Aggarwal also.

CONCLUSION

11. Ergo, in view of the aforesaid discussion, part of the order dated 09.09.2019, passed by Ld. MM, South-East, Saket Courts New Delhi, whereby the accused Prabha Aggarwal was discharged, is hereby set aside. Ld. Trial Court shall frame the charges u/s 509 IPC against accused/respondent no.2 Prabha Aggarwal.

12. TCR, if any, alongwith copy of this order be sent to Ld. Trial Court for necessary information/compliance.

13. File of the revision petition be consigned to record room after due compliance...”

22. Perusal of the aforesaid order shows that the learned Trial Court had discharged the petitioner herein vide order dated 9th September, 2019 by observing that no allegations were made by the complainant/respondent no. 2 herein against the accused petitioner in her complaint and her statements recorded under Sections 164 and 161 of the CrPC.

23. The learned ASJ, while adjudicating the criminal revision petition referred to the complaint dated 18th November, 2015, made by the respondent no. 2, her statements recorded under Section 164 and 161 CrPC,



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statement of an eye witness namely Mr. Ajay Kumar. While referring to the said material available on its record, the learned ASJ arrived at the conclusion that the learned Trial Court erred in discharging the petitioner and accordingly, the order dated 9th September, 2019 was set aside and the learned Trial Court was directed to frame charge under Section 509 of the IPC against the petitioner herein.

24. The petitioner then filed an application seeking recall of the order dated 3rd September, 2022 and the said which was dismissed by the learned ASJ vide order dated 14th March, 2023, relevant extracts of which are as under:

“..1. Ld. Counsel for applicant has moved an application for advancement of date of hearing. It was submitted by Ld. Counsel that the next date of hearing before the Ld. Trial Court is 27 .04.2023 and thus there is an urgency in listing the matter before the next date of hearing before the Ld, Trial Court.

2. This Court deems it fit to not only allow the application for preponment, but shall also hear the applicant today itself qua her application for recalling of order dated 03 .09 .2022, passed by this Court.

3. Ld. Counsel for applicant submitted that in case of procedural error/lapse, this court is within its jurisdiction to recall/review its own order dated 03.09.2022 whereby the Ld. Trial Court was directed to frame the charge u/s 509 IPC qua accused/respondent no.2 Smt Prabha Aggarwal. To fortify his submission, Ld. Counsel placed reliance on Ganesh Patel Vs Uma kant Rajoria SLP (Cr/) no 9313 of 2021.

4. He further contended that the revision petition of the



complainant/revisionist was passed without summoning and perusing the Trial Court Record. It was further submitted that revisionist in the present case filed certain selective documents and omitted to file other relevant documents and thereby mislead this Court, in arriving at the conclusion whereby the order dated 03.09.2022 came to be passed.

5. It was further submitted that a wrong aspersion was cast by the revisionist on the Ld. Trial Court that all the documents were not perused by Ld Trial Court before it passed the impugned order. Thus, it was submitted that this Court ought to recall its order dated 03.09.2022.

6. Per contra, Ld. Addl PP for State contended that as per Section 397 of Cr.PC the Sessions Court may call for examine the record of any proceedings before any inferior Criminal Court. Thus, Ld. Addl PP for State submitted that it is not mandatory to call for Trial Court Records especially in light of the fact that during arguments on the Revision Petition documents were read over by both parties before the Court and nothing relevant was concealed from this Court. It was further submitted that this Court cannot review/recall its own order and the remedy for the applicant is to file appropriate petition before the Hon'ble High Court of Delhi.

7. Submissions heard.

*8. At the very outset, reliance placed by Ld. Counsel for applicant on **Ganesh Patel (surpa)** is misconceived inasmuch as in that case the Hon'ble Supreme Court upheld the right of Hon'ble High Court to recall its order. Such a recourse is not available with the Sessions Court. Further, Ld. Counsel for applicant could not demonstrate any provision of law whereby this Court can review/recall its own order. At this juncture, Ld, Counsel for application submitted that Section 397 Cr.PC gives*



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that power. However, upon a perusal of Section 397 Cr.PC, the submissions of Ld. Counsel for applicant cannot be countenanced.

9. Be that as it may, order dated 03.09.2022 is a detailed order whereby relevant statements of witnesses were perused. This Court has stated its opinion and thoroughly explained the reasoning, so it would be an act of supererogation to further delve on the same issue.

10. Under these circumstances, the present application filed by the applicant is hereby dismissed.

Copy of this order be given dasti.

File be again consigned to record room..."

25. Perusal of the aforesaid order reveals that the said application filed by the petitioner before the learned ASJ was dismissed being misconceived due to the reason that the said Court does not have the jurisdiction to recall its order. It was observed by the learned ASJ that there is no provision under the CrPC, whereby, a Sessions Court could recall or review its own order. The learned ASJ further observed that the order dated 3rd September, 2022 is anyway a detailed order which was passed after thorough examination of relevant statements of witnesses.

26. This Court has meticulously perused the impugned orders, the contents made in the instant petition, reply/status report, contents of the FIR, statements of the respondent no. 2, her husband and Mr. Ajay Kumar. The extracts of the same have been reproduced herein below for reference:



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Statement of the respondent no. 2/complainant recorded under
Section 161 of the CrPC-

*“..Statement of Mrs. IPSA Gurnani w/o umesh Gurnani R/o
H.no. 107, G.F. Lajpat Nagar, Delhi (U/s 161 CrPC)*

*Stated that I confirm my earlier statement and state that I am
working as Vice Principal in Hemnani Public School and on
18. 11. 2015 approx. At 2:15 pm my husband was standing near
the school gate to pick me up, who started talking to the Vice
President of our school Mr. Shambhu and Mr. Lachman. They
both started saying derogatory and defamatory words about me
to my husband and said that they had seen me with the manager
in wrong position in his room and were doing dirty acts and
both were making wrong gestures towards me. So, it was
difficult for me to stand there. Then the Principal Mrs. Prabha
Agarwal also came there, and she also started arguing with my
husband, so we both left from there. You wrote my statement
and heard it properly...”*

Statement of the respondent no. 2/complainant recorded under
Section 164 of the CrPC-

*“..It is a matter of 18/11/15 I want to tell something in advance
I work as Vice Principal in HEMNANI SCHOOL LAJPAT
NAGAR. I JOIN THIS SCHOOL 6 YEARS AGO, THIS IS 7TH
YEAR WHEN I JOIN THIS SCHOOL. Sindhi Education Society
makes this school, for the last 6 years the principal of the
school, Mrs. Prabha aggrawal, tortures me a lot and harasses
me on one or the other issue.*

*Principal madam's tussle with the management started 2 years
ago because she took off her AC from the school room and took
it to her home. She used to collect fine from school children
who used to come late at the school gate 10 Rs, 50 Rs, Class*



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fund, school fund. She used to take from the children through the teachers, the management collected Rs 51000 from the children and put the money in the bank Chairman Sh. Vijay hemchandni, KR Mainjani Secretary Appointed a manager Sh GL Irrani who got us to work as Vice Principal The work was done by one person, Got AC painted, Installed lights in the whole school and got a lot of work done for the children of the school Tuition teachers got the tuition class closed

The managment had a fight with Mr GL Isarni over the donation money, then asked us to forcefully say that GL israni is a thief and be a witness. Mr shambhu, Mrs Parbha Aggarwal, chairman, the secretary forced us to say all this and told me that, despite I was the Vice Principal, that I should take class 6,7,8 then on 21-10- 15 theytook resignation from GL issarni forcefully. since then they took my room snatched away all my furniture and took my name plate with me. Shambhu Vice president and Mrs Prabha Aggarwal threatened to suspend me. secretary --- also gave and said - That we will take action on you, they gave me another memo on 18-11-15 and was being harassed since morning to take small c lasses. It was around 2.15 pm, my husband used to drop me to school in the morning and pick me up in the afternoon. I was leaving the society room with this memo at 2.15. Being Sindhi, my husband knew everyone I told husband that he will have to answer this memo, what he is saying in Sindhi I can't understand .Then Shambu jai Singhani, Laxman pardasani told to my husband that they saw manager GL Irrani Saw with Vice Principal IPSA Gumnani in closed room in wrong state and levelled cheap allegations and remarks.

When I heard this, I dragged my husband outside, then they started convincing my husband with wrong eyes and expressions and dirty intentions and said that close the gate, do not let them come inside when my The husband angrily said Bloody Bustard "Then the principal came out and said talk carefully. Guard minek, Suresh driver and Computer teacher



Ajay also were also there, then they all started speaking loudly to my husband, only then I dragged my husband out and said that we will call the police, don't come from this gate, then we went to file the complaint in police ,me and my husband were insulted a lot in front of people, school children and they took away all my school powers, threatened me a lot, threatened to get me fired from job... ”

Statement of the husband of the respondent no. 2/complainant recorded under Section 161 of the CrPC-

“..Statement of Umesh Gurnani s/o T.D. Grunani R/o H.No. 107, G.F. Lajpat Nagar, Delhi (U/s 161 CrPC)

Stated that I live at the above address, and I am an astrologer, so I went to pick up my wife Ipsa from her school on 18.11.2015, then there her Vice President Mr. Shambu and Mr. Lachman said wrong things about my wife. They made dirty gestures and cheap actions while looking at my wife, then we had a fight there, then the principal also came there, so when the fight escalated, we left from there. You wrote my statement and heard it. 18.02.2016Statement of Umesh Gurnani s/o T.D. Grunani R/o H.No. 107, G.F. Lajpat Nagar, Delhi (U/s 161 CrPC) Stated that I live at the above address, and I am an astrologer, so I went to pick up my wife Ipsa from her school on 18.11.2015, then there her Vice President Mr. Shambu and Mr. Lachman said wrong things about my wife. They made dirty gestures and cheap actions while looking at my wife, then we had a fight there, then the principal also came there, so when the fight escalated, we left from there. You wrote my statement and heard it..”

Supplementary Statement of the Mr. Ajay Kumar recorded under Section 161 of the CrPC-



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“..Supplementary statement of Mr. Ajay Kumar s/o Sh. Pant Lal, R/o A-63, Gali No. 3, Number daar colony, Shakti Vihar, Badarpur, New Delhi

Statement U/s 161 CrPC

Stated that I reside at the above address with my family and I worked as a head teacher computer, science teacher at Hemnani Public School, Lajpat Nagar, New Delhi from 02.06.2013 to 28.02.2016. At around 2 pm on 18.11.2015, I was standing near the school gate ready to leave for home, at the same time Smt. Prabha Aggarwal, Principal, Hemnani Public School came near the gate and Premchand Jaisinghani (Vice President) and Lachman Pardasani (Treasurer) who were already standing near the gate and Husband of Mrs.Ipsa Gurnani (Vice Principal) was standing near the gate and Smt. Prabha Agwal Principal, Mr. Shambhu Premchand Jaisinghani (Vice President) and Lachman Pardasani (Treasurer) started talking to the Husband of Ipsa Gurnani (Vice Principal) and Started saying derogatory words about Mrs.Ipsa Gurnani and further said, they have seen Mrs. Ipsa Gurnani and Shri G.L. Israni (Manager) in a closed room in wrong Position and called Mrs. Ipsa Gurnani a characterless lady and thus, they sexually harassed Smt. Ipsa Gurnani. Due to the aforesaid allegations, things escalated between Prabha Agarwal Principal, Mr. Shambhu Premchand Jaisinghani, Laxman Pardasani and the husband of IPSA Gurnani and they all hurled abuses at each other. Thus, Smt. Prabha Aggarwal (Principal), Premchand Jaisinghani (Vice President) and Lachman Pardasani (Treasurer) had seen IPSA Gurnani and G.L. Israni in the wrong position in a closed room and further Harrassed her by calling her a characterless lady. And the whole incidence happened in front of me. At that time Suresh Kumar and other staff of the school were also standing and



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there was a lot of public standing outside. After that, Mrs. IPSA Gurnani left in the car with her husband and the others left too. You wrote my statement and heard it properly...”

Supplementary statement of the husband of the respondent no. 2/complainant recorded under Section 161 of the CrPC-

“..Supplementary statement of Umesh Gurnani s/o T.D. Gurnani R/o H.No. 107, G.F. Lajpat Nagar, Delhi (U/s 161 CrPC)

Stated that I reside at the above address with my family and I am an Astrologer. So, on 18.11.2015, I went to pick up my wife Ipsa from her school Hemnani Public School, Lajpat Nagar. And there, Vice President Mr. Shambhu jaisinhani, Mr. Lachman pardasnani (Treasurer) and Principal Mrs. Prabha Aggarwal spoke wrong things about my wife and made dirty gestures and actions while looking at my wife and called my wife a characterless lady and did a lot of sexual harassment! So we had a fight, So we left from there afterwards. You wrote my statement and heard it properly...”

27. Taking into consideration the aforesaid, it is observed by this Court that in terms of the contents made in the complaint dated 18th November, 2015, the petitioner alleged that the accused persons namely Mr. Shambu Premchand Jaisinhani, Mr. Lachman Pardasaini including the petitioner addressed the respondent no. 2 in an indecent and obscene manner.

28. The said accused persons are alleged to have made statements in front of the complainant's husband as well as the public that the complainant is a characterless ready who was found in a compromising position with one of



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the managers of the school where all the parties to the instant dispute work. Additionally, the accused persons levelled cheap and derogatory remarks along with hurling filthy languages and gestures with the intention to defame and harass her.

29. As per the material placed and on record and which has also been quoted herein below for reference, the allegations levelled by the complainant have been constant and the same is supported by her statement recorded under Section 161 of the CrPC along with the statements of her husband and the eye witness Mr. Ajay Kumar. It is pertinent to note here that in his supplementary statement under Section 161 of the CrPC, Mr. Ajay Kumar has also stated that one Mr. Suresh Kumar (drive) and other school staff were also present when the accused persons, including the petitioner were insulting the respondent no. 2.

30. It can be seen that the allegations as alleged make out a case against the petitioner where it can be stated that *prima facie* the ingredients of the offence committed under Section 509 of the IPC exist. Thus, this Court is of the considered view that the learned ASJ rightly set aside the impugned order and directed the learned Trial Court to frame charges against the petitioner.

31. It has been argued by the petitioner that she had issued a show cause notice to the respondent no. 2 due to deficiency in services in the school and as a counter blast to the same, she filed a false complaint against the petitioner. However, as discussed hereinabove, it is *prima facie* apparent that the offence under Section 509 of the IPC is made out against the petitioner.



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Further, the assertions casted upon the petitioner are supported by the statements of the complainant, her husband and one eye witness as well as the contents of the FIR. Therefore, this Court is of the considered view that the petitioner's averments are disputed question of facts which can only be ascertained during trial.

32. It has been further argued on behalf of the petitioner that the learned ASJ had passed the order with a pre-determined mindset and without taking into consideration the record of the case as it did not call for the trial court record and passed the impugned order on the basis of the material placed by the respondent no. 2 in her revision petition. The petitioner submitted that in case the learned ASJ would have perused the trial court record, it would have found the inconsistencies in the statements on the basis of which the impugned order was passed by the learned ASJ. With regard to the same, this Court is of the considered view that the power to call for the trial Court record under Section 397 of the CrPC is a discretionary one and not mandatory as sub-clause (1) of Section 397 uses the word '*may*'. A bare reading of the said provision makes it clear that the petitioner's arguments *qua* the same are devoid of any merit.

33. The petitioner has also argued that there are discrepancies in the statements of the respondent no. 2, her husband and Mr. Ajay Kumar recorded under Section 161 of the CrPC which makes the impugned order illegal as the learned ASJ failed to address the same. With regard to the same, this Court is of the view that as per the material on record, charges have already been framed in the matter and thus, the petitioner's challenge to



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the veracity of the statements of the respondent no. 2, her husband and Mr. Ajay Kumar may be raised and disputed at the stage of trial and final arguments which shall be decided on its own merits.

34. Therefore, in view of the aforesaid discussions on law and factual matrix, this Court is of the opinion that the learned ASJ has rightly passed the impugned order, thereby, directing the learned Trial Court to frame charges against the petitioner and while passing the same, the learned ASJ has afforded proper reasoning which is in accordance with the law, and this Court does not find any illegality of any kind thereto.

35. At last, this Court has also taken into consideration the petitioner's arguments *qua* the impugned order dated 14th March, 2023 and is of the considered view that the learned ASJ rightly passed the same by stating that the Sessions Court does not have the power to recall/review its own order. The same is in line with the law laid down by the Hon'ble Supreme Court in the case of *Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338 as per which the CrPC does not provide for any review power or inherent power with the subordinate criminal Courts and the remedy lies in invoking Section 482 of the CrPC (now Section 528 of the BNSS). Thus, it is held that there is no illegality in the impugned order dated 14th March, 2023 and the petitioner's arguments thereto are rejected.

36. In view of the above facts and circumstances as well as the discussion on law, the impugned order dated 3rd September, 2022 passed in Cr. Rev. no. 824/2019 and the impugned order dated 14th March, 2023 passed in the application for recall of the order dated 3rd September, 2022 by the learned



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ASJ-04 & Special Judge (NDPS), South East District, Saket Court, New Delhi are hereby upheld.

37. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

**DECEMBER 17, 2024
RK/RYP/AV**

Click here to check corrigendum, if any