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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 565/2023 & CRL.M.A. 13521/2023**

MS. KT

.....Petitioner

Through: Mr. Ajay Verma, Dr.
Alana Golmei, Mr. Samuel
Khobung & Mr. Vaishnav
Kirti, Advocates.

versus

GNCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State.
Mr. Anant Kumar Hajelay,
Advocate for R-2.
SI Naveen Yadav (P.S.
New Friends Colony).

+ **CRL.REV.P. 566/2023 & CRL.M.A. 13523/2023**

MS. LC

.....Petitioner

Through: Mr. Ajay Verma, Dr.
Alana Golmei, Mr. Samuel
Khobung & Mr. Vaishnav
Kirti, Advocates.

versus

GNCT OF DELHI & ANR.

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Through: Mr. Sunil Kumar Gautam,
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Mr. Anant Kumar Hajelay,
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SI Naveen Yadav (P.S.
New Friends Colony).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

27.08.2024

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1. The present petitions have been filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the separate judgments dated 12.10.2022 (hereafter '**the impugned judgments**'), passed by the learned Appellate Court, in CA No. 173/2019 and CA No. 174/2019 respectively.



2. The learned Appellate Court, by the impugned judgments, had upheld the separate judgments dated 30.08.2018, passed by the learned Trial Court, in FIR No.113/2015 and 114/2015, both registered at Police Station New Friends Colony, whereby Respondent No.2 had been acquitted.

3. The present FIRs, that is, FIR No.113/2015 was registered for offences under Sections 354/506/509 of the Indian Penal Code, 1860 ('IPC') at the instance of victim 'LC' and FIR No. 114/2015 was registered for offences under Sections 354/506 of the IPC at the instance of victim 'KT'. It was alleged that the victims were separately interviewed for the position of Spa Therapist at the Surya Hotel. It was alleged that the accused, who was a Manager at the Health Club at the same hotel, had taken the trial of the victims. It was alleged that the accused came naked in front of the victims and asked them to massage him inappropriately. It was also alleged that the accused touched the victims inappropriately on many occasions. It was alleged that the accused threatened the victims of dire consequences. The victims allegedly bore the harassment as they were the sole bread earners in their family. It was alleged that the accused looked down upon the petitioners due to their North Eastern heritage. It was alleged that the accused found out that the victims had spoken about the incidents with their colleagues and consequently, on 10.03.2015, the victims were forced to sign their resignations by the HR on the pretext of bad performance.

4. It was also alleged by victim 'LC' that the accused made her wait and did not let her leave while he took a shower after an hour of massage at the time of her trial. After taking a shower, the accused again stood naked in front of the victim 'LC' after wiping his body and asked her to apply body cream on his body



against her wishes.

5. It was also alleged by victim 'KT' that the accused took various nude massages from the victim and refused to cover himself despite the repeated requests of the victim.

6. The prosecution examined five witnesses in the case arising out of FIR No. 113/2015. PW1 was the victim 'LC' herself. She reiterated her case and also stated that the accused had called her to his office on 10.01.2015. She alleged that the accused had shouted on her that day and made a complaint against her to the HR. She stated that she had not made any complaint earlier as she was on probation and facing financial constraints. She alleged that the accused had informed other hotels to not hire her or the victim 'KT'. PW4 (Tejpal Singh), who was the Assistant Manager of the Hotel, was also examined. He produced some documents like the employee data form, letter of appointment, copy of acceptance letter of resignation, etc. PW 2, PW3 and PW5 were official witnesses.

7. The prosecution examined four witnesses in the case arising out of FIR No. 114/2015. PW1 was the victim 'KT' herself who supported the case of the prosecution. PW 2 to PW4 were official witnesses.

8. The accused examined himself as DW1 in both the matters. He stated that almost 24-25 people were working under his supervision. He stated that he had joined the Hotel on 11.08.2014. He stated that he had interviewed the victims, whereafter, they were hired, however, he found them to be indisciplined and he cautioned them about the same. He stated that they used to sleep on duty, come late and leave early. He stated that due to the conduct of the victims, he gave a negative appraisal to the HR. Pursuant to the same, the victims resigned



from the Hotel. He denied having taken any naked massages from the victims. He stated that he had been given a clean chit in the Internal Complaints Committee proceedings and stated that the allegations were false. The accused also examined DW2 (Preeti Parihar), Assistant Manager of the Hotel, who was summoned to place on record the entire inquiry record of the Internal Complaints Committee.

9. The learned Trial Court, in the judgments dated 30.08.2018, after carefully perusing the evidence on record, acquitted the accused after observing that the allegations regarding sexual harassment were vague in nature as there was no mention of any particulars of the alleged date of the incidents, there was an undue delay in registration of the FIR and there was no independent corroboration of the allegations by any colleagues.

10. The learned Appellate Court, by the impugned judgments, dismissed the respective appeals filed by the victims and upheld the finding of acquittal.

11. The learned counsel for the petitioners submits that the Internal Complaint's Committee ("ICC") suffered from jurisdictional errors, despite which, the findings in the same were considered by the Courts below.

12. He submits that the applications preferred by the petitioners under Section 391 of the CrPC for leading additional evidence were dismissed by the learned Appellate Court by separate orders dated 20.07.2022 without appreciating that the additional documents mostly pertained to the parallel proceedings against the same accused.

13. He submits that it was wrongly adjudged that the testimony of victim 'LC' suffers from material improvements.



He submits that the victims had substantially supported the case of the prosecution and the allegations levelled were not vague.

14. He submits that the sexual assaults continued over a period of time and it was difficult for the victims to keep track of the exact dates and time of the harassment.

15. He submits that the delay in registration of the FIR was due to the stigma attached to the offences and due to the illegal plot deployed by the accused in collaboration with his associates to cover-up his mis-deeds by tainting the character of the petitioners.

16. *Per contra*, the counsel for the accused submits that the accused conducted the interview of the petitioners for the post of therapist as per the directions of the HR and further denied that he ever took massages including naked massages and the complaint filed by the complainant is false in nature.

17. He submits that during the tenure of the complainants in the Hotel, he found them to be undisciplined. He submits that the FIRs were registered as a counter blast as the accused gave a negative appraisal regarding the complainants. He further submits that the ICC concluded the proceedings for the offence of sexual harassment in favour of the accused.

ANALYSIS

18. In the present case, the victims had preferred appeals under Section 372 of the CrPC before the learned Appellate Court. The present petitions have been filed under Sections 397/401 of the CrPC. The statutory provisions make it clear that this Court cannot overturn a finding of acquittal into one of conviction in exercise of revisional jurisdiction. However, it is open to this Court to give its findings and remit the matter to either the



learned Trial Court for retrial or the learned Appellate Court to rehear the appeal and consider the findings so recorded. Without laying too much emphasis on the nomenclature of the challenge, this Court deems it appropriate to adjudge the matters on merits.

19. It is trite law that this Court must exercise caution and should only interfere against an order of acquittal where there are substantial and compelling reasons to do so specially when the order of acquittal is affirmed on concurrent findings on facts by two Courts.

20. In the present cases, the allegations are sought to be proved essentially on the basis of the statement of the victims. The same are not corroborated by any cogent independent evidence.

21. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by ***Nirmal Premkumar v. State : 2024 SCC OnLine SC 260***. The Hon'ble Apex Court in the said case was dealing with allegations of sexual harassment of a minor. The relevant portion of the same is produced hereunder:

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

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*14. In **Krishan Kumar Malik v. State of Haryana**⁶, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae....*



15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

(emphasis supplied)

22. In the present cases, there are subsequent findings of acquittal in favour of the accused. The learned Appellate Court carefully appreciated the evidence of the witnesses, including the victims. The learned Appellate Court pointed out that the complaints and the evidence of the witnesses were silent on multiple material factors, including, why the victims gave a massage to the accused despite not being under any compulsion, why the victims did not inform other staff members about the misconduct, on which dates the accused took nude massages from the victims, what force was used to make the victims resign, who were the colleagues to whom the victims had talked about the harassment, etc.

23. In CA No. 173/2019, arising out of FIR No. 114/2015, it was observed that the victim ‘KT’ was not trustworthy or reliable. It was rightly noted that unlike a reasonable prudent person, the victim had not informed the higher ups about the misconduct of the accused. It was also observed that the last drawn salary of the victim was not very different from the salary she drew from the Hotel whereby the Court failed to understand as to why the victim was so keen to join the Hotel despite the



alleged misconduct of accused. It was observed that the victim had stated that she resigned on 10.03.2015 and then corrected herself that she had been made to resign by HR. The learned Appellate Court also noted that the victim did not give categorical answers regarding her date of interview, the officials who forced her to resign, etc. It was also observed that PW4 (Investigating Officer) issued no notice to any public persons, including officials, at the Hotel.

24. Similarly, in CA No. 174/2019, arising out of FIR No. FIR No. 113/2015, it was observed that doubt was created about the version of the victim 'LC' as she had not intimated any higher ups. It was also rightly observed that the victim had stated that she had left her previous job as she was not granted permission to attend the Golden Jubilee of her parents which was attended by 100 guests. The same belied the contention that the victim was the sole bread earner in her family whereby her explanation for keeping mum did not seem probable.

25. It was also noted that there were significant improvements in the version of the victim which made her testimony doubtful. It was noted that while the victim had named HR Tejpal in her examination in chief as the person who forced her to resign on the promise of a good relieving letter, however, she hadn't stated so in her complaint. Some arguments have been made that the evidence of victim 'LC' does not suffer from material improvements. As rightly noted by the learned Appellate Court, when the victim admitted that the accused had no role to play in offering of her appointment letter, then it is unclear as to why she succumbed to the demand of the accused. The dates of the incident were not mentioned and the allegations were vague. It was noted that if the spa doors were not locked as admitted, then



it did not seem probable that the accused had taken naked massages.

26. While the observations have been contested by the petitioners, on a bare perusal of the record, this Court finds no infirmity in the overall appreciation of the evidence by the learned Trial Court. While the victims cannot be precluded from substantiating their statements, the improvement in the stance as in the case of victim 'LC' casts a doubt on the veracity of the prosecution.

27. There is evident delay in the registration of the FIRs. The FIRs were registered on 19.03.2015, that is, 9 days after the victims were forced to resign on 10.03.2015. Moreover, the first incident of harassment by both victims is claimed to be in the months of December, 2014 (for victim 'KT') and October, 2014 (for victim 'LC') respectively, when the victims were interviewed by the accused. Thus, there was a delay of at least four months and six months from the date of the first alleged incident in registration of the FIR. It cannot be denied that the victims had ample opportunity to report the same to higher authorities. It is contended that the victims were sole bread earners in their family and did not report the harassment out of fear for their job, however, as noted above, there is no cogent explanation as to why the victims decided to take the position. As noted above, the job did not offer a better pay than what victim 'KT' was earning in her previous job and victim 'LC' also did not seem to be the sole bread earner in her family which belies the possibility of her joining or continuing the job due to financial constraints.

28. Evidently, there is also a flagrant lack of particulars about the particulars of the incidents of harassment. The learned Trial



Court also noted that there was a material contradiction regarding the date of the incident in the evidence of the victim 'LC'.

29. As also noted by the learned Trial Court, the victim 'LC' in her deposition agreed that she was short tempered and the accused had caught her smoking. Insofar as victim 'KT' is concerned, even she deposed in her cross-examination that she had been counselled by the accused to be properly groomed at work and that the accused had caught her taking tea at the spa. It was noted that testimony of DW1/accused and DW2 corroborated that the victim 'KT' was not performing well. Such factors lend credence to the contention of the accused that he had given a negative appraisal of the victims on the basis of their performance and not because he found out that they had disclosed about the offence to colleagues.

30. The learned Courts below also laid emphasis on the lack of independent corroboration from the colleagues of the victims even though the incidents of harassments allegedly happened in spa rooms at the Hotel.

31. It was in light of all these factors that the testimonies of the victims were found to be doubtful. This Court finds no infirmity in the said findings.

32. Insofar as the dismissal of the victims applications to bring on record additional documents by the learned Appellate Court by separate orders dated 20.07.2022 is concerned, the learned Appellate Court had rightly noted that the power should not be invoked to give a second chance to the prosecution to prove its case. As rightly noted, adequate opportunity was given to the victim to adduce any additional evidence. It was noted that the documents pertained to the year 2015, despite which, they were not produced during the trial. It is argued that the additional



material formed part of a parallel prosecution, that is, the prosecution instituted by the other victim, and the same could thus not be brought on record in both the cases. The learned Appellate Court was of the view that the applications were an attempt to cover up lacunae in the version of the prosecution. It was also noted that the petitioners were also seeking to examine themselves further for the purpose of bringing the said evidence on record. As noted by the learned Appellate Court, the petitioners were not able to furnish any credible reason as to why they were unable to depose regarding the said factors during the trial. It is relevant to note that the said order was not challenged until after the learned Appellate Court passed final judgments in the matters. I find no infirmity or perversity in the observations of the learned Appellate Court. The victims are stated to have been colleagues. It is not their case that they were not aware of the parallel prosecutions until the time when the applications were preferred.

33. Having noted that the testimony of the victims is in doubt and that there is no cogent independent corroboration, this Court is of the opinion that the prosecution has not been able to establish a case in its favour beyond reasonable doubt and no credible ground has been raised to interfere with the impugned judgments or to remit the matter for fresh appreciation before the learned Trial Court or the learned Appellate Court.

34. This Court finds no merits in the present petitions and the same are dismissed in the aforesaid terms.

35. A copy of this order be placed in both the matter.

AMIT MAHAJAN, J

AUGUST 27, 2024/ 'Aman'