



2024:DHC:3726



\$~22

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 29.04.2024*+ **CRL.M.C. 3371/2022**

STATE

..... Petitioner

Through: Mr. Shoaib Haider, APP with
SI Amit Verma, PS Hari Nagar.

versus

MUNISH KUMAR GAUR

..... Respondent

Through: Mr.Sanjeev Kumar Dubey, Sr.
Adv. with Mr.Umesh Sharma
and Ms.Pushpam Arya, Advs.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 9202/2024**

1. This application has been filed by the respondent seeking preponement of the date of hearing.
2. As the matter is taken up for hearing today, the application is disposed of having been rendered infructuous.

CRL.M.C. 3371/2022

3. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 13.12.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Principal District and

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 08.05.2024
20:25:22

CRL.M.C. 3371/2022

Page 1 of 14



2024:DHC:3726



Sessions Judge, West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'PD&SJ') in Revision petition, being Criminal Revision No. 82/2020, titled ***Munish Kumar Gaur v. State & Anr.***, setting aside the Order dated 18.01.2020 passed by the learned Metropolitan Magistrate (Mahila Court-02), West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') and discharging the respondent herein in the proceedings emanating from the FIR No. 200/2018 under Sections 354A/506/509 of the Indian Penal Code, 1860 (in short, 'IPC') registered at Police Station: Hari Nagar, West District, Delhi.

4. The said Revision Petition had been filed by the petitioner herein, challenging the Order dated 18.01.2020 passed by the learned Trial Court framing Charge under Sections 354A/506/509 of the IPC against the respondent herein in proceedings emanating from the abovementioned FIR.

Factual Matrix:

5. It is the case of the prosecution that the complainant had filed a complaint with the SHO, stating that she was working as a contractual staff with the Delhi Building and Other Construction Workers Welfare Board (for short, 'DBOCWWB') and was doing the job of renewal of construction workers. The complainant alleges that she was harassed several times by two senior officers, including the respondent herein who was posted as the Joint Labour



2024:DHC:3726



Commissioner. It is further alleged that the respondent had also used abusive language and made threats to the complainant. Thereafter, on the basis of the abovementioned complaint, a preliminary inquiry was conducted and the subject FIR got registered. After completion of the investigation, the chargesheet was filed.

6. As noted hereinabove, the learned Trial Court, by its Order dated 18.01.2020, framed Charge against the respondent herein for the offence under Sections 354A/506/509 of the IPC.
7. Aggrieved of the said Order on Charge, the respondent challenged the same by way of the abovementioned Revision Petition. By the Impugned Order, the learned PD&SJ has allowed the said Revision Petition and has set aside the Order dated 18.01.2020 of the learned Trial Court, thereby discharging the respondent herein.
8. Aggrieved of the said Order of the learned PD&SJ, the petitioner has filed the present petition.

Submissions of the learned APP on behalf of the Petitioner/State:

9. The learned APP, at the outset, submits that the learned PD&SJ has failed to appreciate that a *prima facie* case was made against the respondent. The learned PD&SJ has, therefore, wrongly discharged the respondent.
10. Placing reliance on the judgment of the Supreme Court in ***Vishaka v. State of Rajasthan*** (1997) 6 SCC 241, he submits



that the social menace of sexual harassment of women at the workplace is grave in nature and should be dealt with an iron hand. He submits that in the present case, the respondent was also a person in authority over the complainant, and such allegations made by the complainant cannot be brushed away at this stage.

11. He submits that the learned PD&SJ has erred in not considering that when the victim/complainant was instructed to cancel the renewal cards of the construction worker, the respondent had threatened the complainant, while she was only wanting to work as per the rules and regulations.
12. He submits that the learned PD&SJ has failed to consider that in the statement of the complainant under Section 164 of the Cr.P.C., she completely supported the complaint/case of the prosecution as mentioned in the FIR.

Submissions of the learned Senior Counsel for the Respondent:

13. The learned senior counsel for the respondent at the outset submits that the Impugned Order suffers from no illegality and the respondent was rightly discharged by the learned PD&SJ by taking note of the findings of the Committee for Prevention of Sexual Harassment of Working Women at Work Place (hereinafter referred to as the 'ICC').
14. Placing reliance on the judgment of this Court in ***Hari Kishen Sharma v. State & Anr.***, 2018:DHC: 6144, and of the Bombay



2024:DHC:3726



High Court in *Bharat v. State of Maharashtra &Anr.*, 2019 SCC OnLine Bombay 1602, he submits that the order of the learned Trial Court was against the mandate of Sections 211 and 212 of the Cr.P.C.. He submits that no allegations were made by the complainant in the complaint to invoke the charge of sexual harassment, leave alone any evidence/proof in support of the above charge being submitted. He submits that the learned PD&SJ has also, and rightly so, observed that there is no specific date, time, and place mentioned in the complaint relating to the alleged offence.

15. He submits that there were several complaints against the complainant alleging bribery and incompetency, and based on these complaints, the Reporting Officer has also mentioned about her poor performance in the appraisal report, thereby not recommending the extension of the contractual appointment of the complainant. He submits that subsequently, the complainant attempted to contact the respondent to protest against the Reporting Officer's report, but the respondent ignored her requests and therefore, the subject complaint was filed as a retaliatory response to her unfavourable appraisal report.
16. He submits that the allegations are completely baseless and only to harass the respondent, who has completed 40 years of unblemished service as a government official.



2024:DHC:3726



17. He submits that the subject complaint and the other complaints are retaliatory in nature against the officials, including the respondent herein, who have taken some administrative action against her due to some misconduct or otherwise, while performing their duties in accordance with law.
18. He submits that there are contradictions in the statements and versions given by the complainant on 04.04.2018, on the portal of the Government of NCT of Delhi and on 16.04.2018, given to the SHO concerned.
19. He submits that in view of the allegations raised by the complainant, ICC was constituted vide order dated 02.05.2018 by the Government of NCT of Delhi, consisting of independent and impartial members. He submits that the said Committee examined as many as eight witnesses in its quasi-judicial capacities and ultimately, the ICC vide detailed report dated 07.12.2018, rejected all the allegations made by the complainant herein and ordered that none of the four charges are sustainable. He submits that the findings of the ICC, being a quasi-judicial body, are very specific and clear on the allegations made by the complainant against the respondent and cannot be ignored.
20. He further submits that during the proceedings before the ICC, the complainant withdrew all her complaints/allegations against the co-accused, who was posted as the Assistant Labour



2024:DHC:3726



Commissioner, and the contents of the FIR and chargesheet were also changed in the interregnum.

21. He submits that the complainant has, till date, not filed an appeal against the findings of the ICC and the said report/observations of the committee have now attained finality.
22. Placing reliance on the judgment of the Supreme Court in ***Radheshyam Kejriwal v. State of West Bengal & Anr.*** (2011) 3 SCC 581, he submits that as the respondent has been exonerated by the ICC on merits, this Court in the exercise of its powers under Section 482 of the Cr.P.C. should not allow a criminal complaint filed on the same set of facts to continue. He also places reliance on the judgment of this Court in ***Shiv Hari v. State (NCT of Delhi)***, 2023:DHC:560 in support of the above submission.

Analysis & Findings:

23. In spite of service of notice, none has appeared for the Complainant.
24. I have considered the submissions made by the learned Counsels for the parties.
25. At the outset, the Court is cognizant of the test to be applied at the stage of framing of a charge/discharging an accused, which is to find out as to whether the prosecution has been able to make out a case on a strong suspicion that the accused has committed an offence, which, if put to trial, would prove him



guilty. The final test of guilt is not to be applied at this stage. However, at the same time, the court is not to act as a mere post office or a mouth piece of the prosecution, but has to consider broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, and any basic infirmity appearing in the case, and other relevant material. If two views are possible and one of them gives rise to suspicion only, as distinguishable from grave suspicion, the Trial Judge will be empowered to discharge the accused.

26. In ***Union of India v. Prafulla Kumar Samal & Anr***, (1979)3 SCC 4, the law relating to framing of charge/discharge of the accused under Sections 227 and 228 of the Cr.P.C., has been elaborately discussed and summarized by the Supreme Court as under:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however



if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

27. The above principles have been reiterated by the Supreme Court in ***Dilawar Balu Kurane v. State of Maharashtra***, (2002) 2 SCC 135; ***Sajjan Kumar v. CBI***, (2010) 9 SCC 368; ***P. Vijayan v. State of Kerela & Anr.***, (2010) 2 SCC 398; and, ***State of Rajasthan v. Ashok Kumar Kashyap***, (2021) 11 SCC 191.
28. In the present case, FIR and the Charge-Sheet lack the particulars of the allegations raised by the complainant. There is no detail of the dates, place, time or otherwise of the incidents alleged. The allegations are completely vague. In my opinion, the material placed before the learned Trial Court by the investigating authority/prosecution does not give rise to grave suspicion that would warrant framing of a Charge against the respondent.



29. In addition to the above, the ICC is a statutory body constituted under Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It is a matter of record that detailed proceedings were conducted before the ICC, which ultimately resulted in the dismissal of the complaint/allegations against the respondent, on merits. The ICC has concluded that the complainant had made false allegations of sexual harassment by way of an afterthought, which may be due to fear of losing her job since her performance report was not up to the mark. It was also observed by the ICC that the complaint was devoid of detailed factual statements/allegations against the respondent and specifics in relation to the date, time, and place of the incident.

30. In the Impugned Order, the learned PD&SJ has placed heavy reliance on the findings of the ICC in the Report dated 07.12.2018, which are reproduced as follows:

“Out of the four charges levelled against the respondent as per the Act, none of the charges is sustainable due to the following reasons:

- (i) The complaint seems to be an afterthought, may be due to fear of losing her job, since her performance report was not up to the mark.*
- (ii) On her complaint dated 04/03/2018 and 07/03/2018 she did not make any mention of sexual harassment by the respondent. Therefore, it seems to be afterthought.*
- (iii) As per rule the complainant should provide factual statements, date, time and place of incident in chronological order whether small of shameful to*



establish the sequence of incidents which affects the victim. She failed to mention the date and time, over and above that she could not prove about the phone calls of the respondent inviting her to meet outside the office, since she did not have his phone number in her mobile.

- (iv) *Regarding allegation of threat of acid throwing and rape, when questioned by the committee, her reply was that the respondent did not tell her directly but she overheard him talking to someone on the phone. This allegation also does not stand.*
- (v) *Regarding the lewd remarks made by the respondent to the aggrieved women, the committee unanimously felt that the circumstantial evidence does not prove any such situation or allegation.”*

31. In ***Radheshyam Kejriwal*** (Supra), the Supreme Court has reiterated that the effect of a favourable finding in an adjudication proceedings against a person facing a criminal prosecution on the same facts, depends upon the nature of the finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue, however, where the exoneration is on merits and where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases. In



such scenario, the trial of the person concerned shall be an abuse of the process of the court. It was held as under:

“31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.

xxxx

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not



sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

32. The above position in law has been followed and re-emphasized by the Supreme Court in ***Ashoo Surendranath Tewari v. CBI & Anr.***, (2020) 9 SCC 636; and by this Court in ***Johnson Jacob v. State***, 2022:DHC:2378; ***Shiv Hari*** (Supra); Judgment/Order dated 31.08.2023 in CrI.M.C. 1626/2023 titled ***Captain Arvind Kathpalia v. Govt. of NCT of Delhi & Anr.***
33. It is to be noted that while the findings of the ICC/adjudicating authority in the present case, may not have a binding effect on the criminal proceedings, at the same, in the peculiar circumstances of the present case, where the allegations made by the complainant have been found by the ICC to be completely not sustainable, the criminal proceedings premised on the same set of facts and circumstances, cannot continue. It would rather be an abuse of the criminal law process.
34. Keeping in view the above facts and principles of law, the Court finds no infirmity in the Impugned Order.



2024:DHC:3726



35. The petition is, accordingly, dismissed. There shall be no order as to costs.

APRIL 29, 2024/AS

NAVIN CHAWLA, J

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: SUNIL
Signing Date: 08.05.2022
20:25:22

RL.M.C. 3371/2022