

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 851 of 2022

DEEPAK SINGH @ DIPAK SINGH
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Rajdeep Mazumder, Sr. Adv.
Mr. Pritam Roy,
Ms. Triparna Roy.

For the State : Mr. Antarikhya Basu.

For the Opposite Party No.2 : Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Debanjan Ghosh,
Ms. Chitrani Roy Chowdhury.

Hearing concluded on : 12.12.2024

Judgment on : 09.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the criminal proceeding being GR case no.1527 of 2021 arising out of Haldia PS case no.106 of 2021 dated **17.08.2021** under Sections 354, 354A, 354C, 354D and 509 of the Indian Penal Code, 1860 corresponding to zero FIR lodged at Navi, Mumbai being CR no.0231 of 2021 dated 21.07.2021 giving rise to chargesheet being no.01 of 2022 dated 05.01.2022

under Sections 354, 354A, 354C, 354D and 509 of the Indian Penal Code, 1860, pending before the learned Additional Chief Judicial Magistrate at Haldia, Purba Medinipur.

2. The petitioner's case is as follows:-

- a. He is the commandant of Coast Guard, Haldia. He has a long service carrier of 21 years and during his tenure as Commanding Officer there were four male and two female Officers under him.*
- b. On **8th day of December, 2019** when the petitioner was on sanctioned leave at home station Dhanbad with entire family, he got a call from unit that the then Assistant Commandant i.e., the present opposite party no. 2 has disobeyed the lawful command of officiating Commanding Officer and refused to go on patrolling plant for Maritime Border Security and due to her denial to go for sailing / patrolling security routine was compromised. The officiating Commanding Officer recommended for disciplinary action to headquarters after detail enquiry it was decided by headquarters to constitute a disciplinary action against the opposite party number 2 as earlier also there was report against the opposite party number 2 of misconduct.*

- c.** *In order to divert the attention from the incident of 8th December, 2019, the opposite party no. 2 put a false charge of sexual harassment against the petitioner on **19th day of December, 2019.***
- d.** *On the basis of the complaint of the opposite party no. 2, the headquarter constituted an internal complaint committee as per Vishakha Guidelines by the Hon'ble Apex Court.*
- e.** ***The committee carried out detail/exhaustive enquiry against the petitioner and come to the conclusion that the opposite party has put false allegation against the petitioner and he has been exonerated from all the false charges and the committee decided to close the case.***
- f.** *The opposite party no. 2 filed an appeal challenging the order passed by the committee but the said appeal was dismissed.*
- g.** *All the male Officers and another female Officer viz., Sneha Khatayat had given a written complaint against the opposite party no. 2 for indiscipline, misconduct and abnormal behaviour.*

- h. The opposite party no. 2 was then transferred to Mumbai and she lodged the complaint at Navi, Mumbai which was treated as zero FIR and the same was sent to Haldia Police Station and the same was registered as Haldia Police Station Case No. 106 dated 17/08/2021 under Sections 354/354A/354C/354D/509 of the Indian Penal Code.*
 - i. After completion of investigation Police submitted Charge Sheet being number 01 of 2022 dated 05/01/2022 under sections 354/354A/354C/354D/509 of the Indian Penal Code against the petitioner.*
- 3.** The petitioner further states that on the basis of self same allegation the petitioner has been exonerated by the internal committee and therefore the instant case has been lodged against the petitioner with mala fide intention, hence the prayer for quashing.
- 4. The written complaint of the de facto complainant runs into 52 pages.**
- 5.** Supplementary affidavit dated 1st April, 2022 has been filed by the petitioner annexing the entire documents relating to the proceedings before the Internal Complaints Committee (for short “ICC”) and also the documents related to the appeal against the said order by the de facto complainant.

6. It is further stated by the petitioner along with documents in support thereof that the de facto complainant herein lodged another complaint against Sk. Vaidya (D.I.G. Coast Guard) and A.D.G. Rajan Bargartra in connection with physical and mental harassment at the workplace at Trombay Police Station, Mumbai but after investigation it was found that no sexual harassment has been done with the applicant and the allegations were baseless.
7. It is further stated that from the report of Psychological Examination of the de facto complainant that she is mentally disturbed officer due to old disciplinary issues and domestic issues and the officer is a risk to the organization. The disciplinary action was initiated on 27.12.2019 against the de facto complainant for the incident on 08.12.2019 by the Deputy Inspector General. There were series of misconduct by Asst. Commandant / the opposite party no.2 herein for which she was cautioned by the petitioner and he recommended for appropriate disciplinary action against the officer.
8. Another supplementary affidavit has been filed by the petitioner annexing the judgment of this **High Court dated 24.04.2024 passed in WPA 26677 of 2023** filed by the opposite party no.2 herein. The said writ petition had been preferred against the

decision of the ICC. The Court on considering the materials on record held as follows :

*“...57. Moreover, the writ courts, in judicial review, have to be careful so as not to substitute their own opinions for those of the adjudicating authorities unless there is any patent unreasonableness, arbitrariness, mala fides, perversity and/or illegality evident on the face of the record. **I do not find any bias operating in the minds of the ICC or reflected in the impugned decision. Rather, the ICC complied with all principles of natural justice by giving adequate opportunity of hearing and carefully assessing the entire body of evidence before dismissing the complaint of the petitioner. Thus, the principles of natural justice were adhered to and there was no flaw whatsoever in the decision-making process adopted.***

58. Hence, there is no scope of interference whatsoever with the impugned decision of the ICC.”

9. A combined affidavit-in-opposition has been filed by the private opposite party / de facto complainant denying the case of the petitioner.
10. Written note of argument has been filed by the petitioner.

11. The learned counsel for the State has placed the case diary along with the memo of evidence. It appears from the statement recorded under Section 164 of Cr.P.C. that the de facto complainant herein has reiterated whatever has been stated by her in her written complaint.
12. Learned counsel for the State has also placed the report of the ICC wherein it appears that the Ms. Srishti Sharma, Assistant Commandant, Dist Logistics Officer for Commander (WB) has submitted the findings with the final opinion that the allegation does not fall within the category of sexual harassment of women at workplace. From the said report of the ICC, in the said complaint before the ICC, the complainant has alleged as follows:-

“a. Allegation : *“During my detachment in Frazerganj with Comdt Deepak Singh from 15 Aug 19 to 21 Aug 19 on various occasions whenever steward was not around in wardroom of ICGS Frazerganj, I have observed him staring at me in an objectionable manner, which made me feel highly uncomfortable. There have been attempts by him to peep in my room and keeping track of my movements in and out of wardroom, during lunch breakfast and leisure time, at times has led me to avoid using the wardroom altogether. So much so that travelling together in the vehicle used for conveyance to Hoverport have been extremely uncomfortable.”*

Findings : *“Therefore, ICC concludes that the allegations remain inconclusive in absence of evidence and witness.*

- b. Allegation :** *“On sorties carried out from 17 to 20 Aug 19, on many occasions when I was operating from Pilot seat with Comdt Deepak Singh as Co-pilot instead of giving details and guiding me to operate, he blocked the inclinometer and was staring at me continuously making me feel highly uncomfortable while I struggled to control the craft. I had to order my craft crew to come to cockpit for giving the desirable inputs and in order to have their presence around me.”*

Findings : *“The allegation remains inconclusive in absence of evidence.”*

- c. Allegation :** *“Comdt Deepak Singh held my hand and tried to put his arm around my shoulder in his cabin when I got emotional while handing over my ACR in Dec 2018. I was emotional because of the discussions on the Letter of Caution which was issued to me in Oct 18. I was hesitant to report it then as my family was considering alliances for my marriage.”*

Findings : *“The allegation remains inconclusive in absence of evidence.”*

- d. Allegation :** *“While carrying duties of Staff Officer for Comdt Deepak Singh in Aug 18 he inappropriately addressed me as 'baby', 'sweety' and attempted to justify it by quoting field Marshal Sam Manekshaw, PV, PB, MC's*

example which was unacceptable to me. He subsequently tried to justify it again but it was not acceptable to me.”

Findings : *“ICC found that the allegation brought in was already resolved at unit level and DHQ-8 level. Moreover, the address by name 'baby' & 'sweety' even though inappropriate form of address at workplace, but those words do not have a sexual connotation to it.”*

- e. Allegation :** *"On 25 Nov 19 Commanding Officer attempted to recall me from leave applied for marriage stating administrative and operational requirements. Whereas it is found that such requirements never existed and this was done to willfully to harass me".*

Findings : *“ICC is of the opinion that, the allegation falls under the purview of "conditions of the service" & "service requirement" and does not constitute "Sexual Harassment of Women at Workplace.”*

- f. Allegation :** *“02 May 19 on the day of my birthday malicious attempts were made to recall me from the planned leave applied for my engagement function and court marriage formalities. Conduct of COC board as reason given for recall on 09 May 19 coincided with my court marriage, whereas as per the existing CTM the board was already planned few days later.”*

Findings : *“The allegation does not fall into the category of “Sexual Harassment of Women at Workplace”.*

g. Allegation : *“Conduct of COC board without any promulgated guidelines by CGHQ was done, wherein Commanding Officer was the Board President. Such board was never conducted for other Officers prior to me for other officers this even shows improper intensions to hinder my professional growth and later I was cleared for launching the craft as COC without conducting Board.”*

Findings : *“ICC is of the opinion that Asst Comdt Shruti MJ had to perform as per job standard and clear exam/ assessment put to her and earned COC like other Officers. The point of contention is related to job performance and thus the allegation does not fall into the purview of “Sexual Harassment of Women at Workplace”.*

h. Allegation : *“Improper planning on detachments days and untimely intimation of movements has always been done in this squadron. This uncertainty has affected my personal life including my aged parents staying at Haldia. I have faced difficulty to fulfill their important requirements of medical checkups even. On many occasions I was rarely intimated about detachment or my duties in advance. Considering all this I feel I was targeted and slotted for longer detachments right from the day I joined this squadron. No proper detachment roster is maintained till date and this grey area is exploited for harassment. No consideration to my planned leave applied well in advance, willful delay in processing leave applications and no proper intimations of detachments periods are example of attempts to cause mental harassment especially when I was in phase of planning my marriage.”*

Findings : *“The Complaint comes under the purview of conditions of work and does not fall into the category of "Sexual Harassment of women at workplace" in an organization.”*

- j. Allegation :** *“Hugging the Coast” comment- Aug 18- Post qualifying the ACV Aptitude test I was posted to squadron on 07 Jun 18 and I was transferred to Squadron for undertaking my basic and advance ACV training from Haldia. Post COMCG visit during first week of Aug 18 at Frazerganj, I was in one of the ACV sortie as a trainee officer with Comdt Deepak Singh and Dy Comat Ravi Kumar as the Pilots, I was made to operate the craft under supervision. While handling the craft my intention for navigation was asked by Comdt Deepak Singh for which I replied by saying I will move the craft by "Hugging the Coast" which I was able to see nearby. On hearing this Comdt Deepak Singh repeated the navigational terminology with an improper tone conjoining with the sentence "she wants to hug the coast and move". However Comdt Deepak twisted it that time; also I felt offended and uncomfortable however being on controls of craft and undergoing the training I kept quiet and momentarily could not understand the double meaning he was indicating to me. I confronted Comdt Deepak Singh the same day later over whatsapp messages by requesting him to avoid such talks in my presence, as I was uncomfortable and embarrassing the only lady on the craft.”*

Findings : *“Hugging the Coast” is a navigational terminology. This does not fall into the category of “Sexual Harassment of Women at Workplace”.*

k. Allegations :-

- i. *I was posted in 88 ACV Sqn since 7th Jun 2018. I reported to the unit well in time and I was accompanied by my aged parents who have been staying with me since 2017. Being the first such kind of posting to such field unit I was not exactly aware of the functioning of the base and took some time to understand it. Meanwhile I was given the duties of Staff Officer to the CO from Jul 18 however the official allocation of this duty was done in Aug 18 along with few other duties such as Regulating Officer, CGWWA Coordinator & Oic H-188 also my basic ACV training was underway.*
- ii. *I have experience of handling the duties of staff officer to senior officers for brief durations in my previous postings however I found little variation in the tasks I was being assigned during the course of my tenure. Apart from the assistance in the official works and correspondence of the CO like recharging his Tata sky, paying of postpaid bills, booking train tickets, ordering cakes for Mrs Deepak Singh, managing maid, online payment of school fees of CO's children from her account (Though CO subsequently reimbursed her). On being detailed as a staff officer I came to know that Comdt Deepak Singh has been directing other officers also to do his personal chores like recharging his tata sky. I came to know about this since unit officers used to approach me to remind Comdt Deepak Singh to return their money. However, on reminding he has been repaying the money to them. I have been carrying out all the duties whether personal or official sincerely however, such*

personal duties were rarely given to me in my previous units.

- iii. *Comdt Deepak Singh was in the habit of humiliating me publically as well as when alone by passing sarcastic remarks like "shammer" etc, causing mental harassment to me. On one occasion I was SIQ for 24 hrs for throat infection yet he had called me in the office for some work."*

Findings : "The allegation does not fall into the category of "Sexual Harassment of Women at Workplace"

- 13. The proceedings in the present case is under Sections 354, 354A, 354C, 354D and 509 of IPC.**
- 14. The Supreme Court in the case of *Tarkeshwar Sahu vs State of Bihar (Now Jharkhand), Appeal (Crl.) 1036 of 2005, on 29.09.2006*, laid down the ingredients required to prove charge under Section 354 IPC. The Bench of Justice S. B. Sinha and Justice Dalveer Bhandari, held:-**

"Section 354 IPC reads as under:-

"354. Assault or criminal force to woman with intent to outrage her modesty.- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

So far as the offence under Section 354 IPC is concerned, intention to outrage the modesty of the women or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence.

The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex.

'Modesty' is given as "womanly propriety of behaviour, scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman. A person slapping on the posterior of a woman in full public glare would amount to outraging her modesty for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady.

The word 'modesty' is not to be interpreted with reference to the particular victim of the act, but as an attribute associated with female human beings as a class. It is a virtue which attaches to a female on account of her sex.

We deem it appropriate to reproduce the cases of various Courts indicating circumstances in which the Court convicted the accused under Section 354 IPC.

In State of Kerala v. Hamsa, it was stated as under:-

"What the legislature had in mind when it used the word modesty in Sections 354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of

universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society."

A well known author Kenny in his book "Outlines of Criminal Law" has dealt with the aspect of indecent assault upon a female. The relevant passage reads as under:-

"In England by the Sexual Offences Act, 1956, an indecent assault upon a female (of any age) is made a misdemeanour and on a charge for indecent assault upon a child or young person under the age of sixteen it is no defence that she (or he) consented to the act of indecency."

In the case of State of Punjab v. Major Singh, a three-Judge Bench of this Court considered the question whether modesty of a female child of 7 months can also be outraged. The majority view was in affirmative. Bachawat, J., on behalf of majority, opined as under: "The offence punishable under section 354 is an assault on or use of criminal force to a woman the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define, "modesty". What then is a woman's modesty?

The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.

A female of tender age stands on a somewhat different footing. Here body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not

yet developed a sense of shame and has no awareness of sex. Nevertheless from her very birth she possesses the modesty which is the attribute of her sex."

In Kanhu Charan Patra v. State , the Orissa High Court stated as under:-

"The accused entered the house and broke open the door which two girls of growing age had closed from inside and molested them but they could do nothing more as the girls made good their escape. On being prosecuted it was held that the act of accused was of grave nature and they had committed the same in a dare devil manner. As such, their conviction u/s 354/34 was held proper."

The High Court of Delhi in the case of Jai Chand v. State observed as under:-

"The accused in another case had forcibly laid the prosecutrix on the bed and broken her pyzama's string but made no attempt to undress himself and when prosecutrix pushed him away, he did make no efforts to grab her again. It was held that it was not attempt to rape but only outraging of the modesty of a woman and conviction u/s 354 was proper."

In Raja v. State of Rajasthan , it was stated as under:-

"The accused took the minor to solitary place but could not commit rape. The conviction of accused was altered from Section 376/511 to one u/s 354."

The Court in State of Karnataka v. Khaleel stated as follows:

"The parents reached the sugarcane field when accused was in process of attempting molestation and immediately he ran away from the place. There was no evidence in support of allegation of rape and accused was acquitted of charge u/s 376 but he was held liable for conviction under section 354/511 IPC."

The Court in Nuna v. Emperor stated as follows:-

"The accused took off a girl's clothes, threw her on the ground and then sat down beside her. He said nothing to her nor did he do anything more. It is held that the accused committed an offence under Section

354 IPC and was not guilty of an attempt to commit rape."

The Court in *Bishewhwar Murmu v. State* stated as under:-

"The evidence showed that accused caught hold hand of informant/victim and when one of the prosecution witnesses came there hearing alarm of victim, offence u/s 376/511 was not made out and conviction was converted into one u/s 354 for outraging modesty of victim."

The Court in *Keshab Padhan v. State of Orissa* stated as under:-

"The test of outrage of modesty is whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In the instant case, the girl was 15 years of age and in the midnight while she was coming back with her mother the sudden appearance of the petitioner from a lane and dragging her towards that side sufficiently established the ingredients of Section 354."

The Court in *Ram Mehar v. State of Haryana* stated as under:-

"The accused caught hold of the prosecutrix, lifted her and then took her to a bajra field where he felled her down and tried to open her salwar but could not do so as in order to make the accused powerless the prosecutrix had injured him by giving a blow of the sickle. The accused failed to give his blood sample with the result it could be presumed that his innocence was doubtful. Ocular evidence of prosecutrix was also corroborated by other evidence. It was held that conviction of accused u/s 354, 376/511 was proper but taking the lenient view only two years RI and a fine of Rs.1000/- was imposed on him."

In the case of *Rameshwar v. State of Haryana*, the Court observed as follows:-

"Whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependant on the nature of the offence and the steps necessary to take in order to commit it. The

difference between mere preparation and actual attempt to commit an offence consists chiefly in the greater degree of determination. For an offence of an attempt to commit rape, the prosecution must establish that it has gone beyond the stage of preparation."

The Court in Shokut v. State of Rajasthan stated as follows:-

"The accused took the prosecutrix nurse for the purpose of attending a patient but on way he tried to molest her and beat her also. The accused was held guilty u/s 354/366 IPC as he by deceitful means had taken the prosecutrix from her house and had then outraged her modesty."

15. Section 354 of IPC, lays down:-

"354. Assault or criminal force to woman with intent to outrage her modesty.—*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.*

Ingredients of offence. *-The essential ingredients of the offence under sec. 354 are as follows:-*

(1) A woman was assaulted or subjected to use of assault criminal force on her; and

(2) The intention of the accused was to outrage her modesty.

(3) The accused knew that her modesty will be outraged thereby.

the apex court has laid down the essential ingredients of offence under sec. 354 as under:-

(a) that the assault must be on woman;

(b) that the accused must have used criminal force on her; and

(c) that the criminal force must have been used on the woman intending thereby to outrage her modesty or

knowing that his acts would likely to outrage her modesty.”

16. Section 354A of IPC, lays down:-

“Section 354A Sexual Harassment and punishment for sexual harassment:

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Scope and Ingredients: *A new offence called “sexual harassment” has been created by introducing sec. 354A by the amending Act of 2013. The dictionary meaning of “Sexual Harassment” is “as type of employment discrimination, includes sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature prohibited” by law—see Black’s Law Dictionary, 6th Ed. In terms of sec. 354A, the following acts shall be treated as sexual harassment:*

i) Physical contact and advances involving unwelcome and explicit sexual overtures; or

ii) A demand or request for sexual favours; or

iii) Showing pornography against will of a woman; or

iv) Making sexually coloured remarks.

The above are really the ingredients of the offence and commission of one or more of the above acts shall attract sec. 354A."

From the materials in the case diary, there is no prima facie case to show that the petitioner herein had either assaulted or used criminal force to the complainant thereby outraging her modesty.

17. Section 354C of IPC, lays down:-

"Section 354C. Voyeurism:- Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation:

- 1. For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.*
- 2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is*

disseminated, such dissemination shall be considered an offence under this section.

Ingredients of the offence:-

- 1) The accused watched a woman.*
- 2) That woman was at that time engaged in a private act and while doing such act, she had no expectation of being seen or observed by the accused or by any other person at the behest of the accused or the accused captured the image of woman while she was engaged in a private act without any expectation of being watched by any person at that time and the accused disseminated such image.”*

There is also no materials to show that the petitioner watched or captured image of the complainant when engaged in a private act as explained in explanations to Section 354C of IPC.

18. Section 354D of IPC, lays down:-

“Section 354D. Stalking:-

- (1) Any man who—*
 - (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or*
 - (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;*

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or*

- (ii) *it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or*
- (iii) *in the particular circumstances such conduct was reasonable and justified.*

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ingredients of offences:-

- (1) Accused followed a woman and contacted, or attempted to contact her to foster personal interaction repeatedly despite showing clear disinterest by the said woman, or*
- (2) Accused monitored the use by the woman of the internet, email or any other form of electronic communication.”*

No prima facie materials is on record to show that the petitioner has committed the offence under Section 354D IPC as there is nothing to show that the petitioner either followed or contacted the complainant (stalked) as required under Section 354D.

19. Section 509 of the Indian Penal Code, lays down:-

“509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term

which may extend to three years, and also with fine].

Ingredients of offence.- *The essential ingredients of the offence under Section 509 are as follows:-*

- (1) The accused uttered some words, or made some sounds or gesture or exhibited any object or intruded upon the privacy of a woman;*
- (2) The accused must have intended that the words so uttered or the sound or gesture so made or the object so exhibited should be heard or seen respectively by the woman;*
- (3) The accused thereby intended to insult the modesty of the woman.”*

- 20.** No such materials to prima facie show that the petitioner intending to insult the modesty of the complainant uttered any word, made any sound or gesture or exhibited any object intended that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intruded upon the privacy of such woman.
- 21. So the ultimate test to ascertain if the modesty of a woman has been outraged, is that the action of the offender should be such that it may be perceived as one which is capable of shocking the sense of decency of a woman.**
- 22.** In the present case there is absolutely **no such action** on the part of the petitioner which could be perceived as one which is capable of shocking the sense of decency of a woman.

23. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka v. L. Muniswamy (1977) 2 SCC 699** held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the

proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. *Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of*

Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 24.** Considering the materials on record, guidelines 5 and 7 of para 102 in **State of Haryana vs Bhajan Lal and Ors. (Supra)** become applicable in this case. Permitting this case to proceed against the petitioner in such facts and circumstances will be an abuse of the process of law/court and thus against the interest of justice.
- 25.** None of the ingredients being prima facie present against the petitioner herein, in respect of the offences alleged, the proceeding is thus liable to quashed.
- 26. CRR 851 of 2022 is allowed.**
- 27.** The proceeding in GR case no.1527 of 2021 arising out of Haldia PS case no.106 of 2021 dated 17.08.2021 under Sections 354, 354A, 354C, 354D and 509 of the Indian Penal Code, 1860 corresponding to zero FIR lodged at Navi, Mumbai being CR no.0231 of 2021 dated 21.07.2021 giving rise to chargesheet

being no.1 of 2022 dated 05.01.2022 under Sections 354, 354A, 354C, 354D and 509 of the Indian Penal Code, 1860, pending before the learned Additional Chief Judicial Magistrate at Haldia, Purba Medinipur, **is hereby quashed in respect of the petitioner namely Deepak Singh @ Dipak Singh.**

- 28.** All connected applications, if any, stand disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 31.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]