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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 3251/2023 & CRL.M.A. 30227/2023**
ARCHIT ASHWANIPetitioner

Through: Mr. Prakash Gautam, Advocate.

versus

STATE OF NCT OF DELHI & ANR.Respondents
Through: Mr. Sanjeev Bhandari, ASC
(Criminal) with Mr. Arjit Sharma and
Mr. Nikunj Bindal, Advocate for
State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
10.01.2025

1. The present petition under Article 226 of the Constitution of India, 1950, seeks quashing of FIR No. 594/2018 dated 1st December, 2018 under Sections 354(A) and 506 of the Indian Penal Code, 1860¹ registered at P.S. Vasant Kunj (North) District South West, New Delhi.
2. The aforementioned FIR was recorded on the basis of a complaint made by Respondent No. 2.
3. The aforementioned FIR named the Petitioner and two other accused namely Ashish Chauhan and Surajit Chatterjee. Both Ashish Chauhan and Surajit Chatterjee, filed the writ petitions [W.P.(CRL) 2802/2019 and W.P.(CRL) 3005/2019] before this Court seeking quashing of the FIR. This Court, in the said petitions after examining the facts of the case, by way of a



detailed judgment dated 25th January, 2023 quashed the FIR *qua* Ashish Chauhan and Surajit Chatterjee. The relevant portion of the said decision, reads as follows:

“6. Mr. Vikas Pahwa, learned Senior Counsel for the petitioner in W.P.(CRL) 2802/2019 advanced arguments and also submitted the written arguments. It is primarily argued that the criminal prosecution cannot be continued on the same allegations after independent Statutory Committee has exonerated the petitioner. The respondent no.2 did not cooperate with the Internal Complaints Committee despite several reminders and follow ups and sole purpose of the respondent no. 2 was to harass the petitioner in connivance with others employees/ex-employees of the company. No *prima facie* case is made out against the petitioner. The reliance is placed on **Ashoo Surendranath Tewari V CBI & another**, (2020) 9 SCC 636, **Radheshyam Kejriwal V State of W. Bengal & another**, (2011) 3 SCC 58 and **P.S. Rajya V. State of Bihar**, (1996) 9 SCC 1.

7. Ms. Sonal Chauhan, counsel for the petitioner in W.P.(CRL) 3005/2019 argued that Internal Complaints Committee after a thorough investigation exonerated the petitioner/Surajit Chatterjee from charges made by the respondent no. 2 and stated that, ICC could not establish any forceful behavior from the petitioner towards the respondent no. 2. The only allegation that was made against the petitioner was that at the office the respondent no. 2 was sexually assaulted by one Surajit Chatterjee i.e. the petitioner. The respondent no. 2 has only mentioned the name of the petitioner/Surajit Chatterjee and has not described any incident and mere mentioning of sexual harassment without substantiating the allegations does not result in sexual harassment under section 354A IPC. The counsel further argued that during the internship, the respondent no.2 never complained about unwelcoming behavior from the petitioner/Surajit Chatterjee and only after six months of leaving the company, FIR was lodged. The respondent no.2 used to sit on third floor and the petitioner/Surajit Chatterjee used to sit on the first floor. MSIL follows an open office system where there are no cubicles or cabins and every corner of the office is covered by CCTV.

7.1 The respondent no.2 did not co-operate with Internal Complaints Committee and did not produce any witnesses in favor of her complaint. There is no incriminating evidence that can prove sexual harassment or criminal intimidation by the petitioner. FIR is belated, after thought, motivated and malicious and is filed to abuse the process of law. The counsel for the petitioner has placed reliance upon the judgments of

¹ [‘IPC’]



Hon'ble Supreme Court and High Courts. It is argued that FIR be quashed.

8. *The Additional Standing Counsel for the respondent no. 1 argued on the basis of contents of the Status Report. It is argued that both the petitioners have caused sexual harrasment to the respondent no.2 at her workplace. The findings given by the Internal Complaints Committee do not affect in any manner prosecution arising out of FIR bearing no.594/2018. It was argued that both the petitions be dismissed.*

9. *It is reflecting that the respondent no. 2 is a lawyer by profession. The respondent no. 2 was introduced as an intern/trainee in Legal Department-2 (litigation team) at the instance of Surender Kumar, Advisor, Legal Department-2. The respondent no. 2 sent an e-mail along with her resume to the petitioner/Ashish Chauhan on 06.09.2017 for joining as an intern in MSIL and was asked to join the training w.e.f. 18.09.2017 vide email dated 07.09.2017. The petitioner/Ashish Chauhan was working as an in-house Counsel (Manager-Legal and Special Projects). The petitioner/Surajit Chatterjee joined MSIL as a Deputy Manager in Legal Department on 07.11.2014 and left MSIL on 20.06.2018.*

9.1 *The respondent no. 2 joined MSIL on 18.09.2017 and was attached with the petitioner/Surajit Chatterjee to assist in labour/industrial disputes. The respondent no. 2 remained attached with the petitioner/Surajit Chatterjee during the period w.e.f. November, 2017 to February, 2018. The respondent no. 2 never remained under or attached with the petitioner/Ashish Chauhan. The respondent no. 2 concluded her training/internship with MSIL in the month of August, 2018 and was issued Training Completion Certificate dated 31.08.2018 by the Litigation Head of Legal Department-2.*

9.2 *An anonymous complaint was filed on 20.10.2018 at National Commission of Women against the petitioner/Ashish Chauhan and petitioner/Surajit Chatterjee and others regarding the alleged sexual harassment caused to the respondent no. 2. The Chairman, MSIL also received similar complaint through e-mail on 20.10.2018. Thereafter the respondent no. 2 got registered the present FIR bearing no. 594/2018 dated 01.12.2018 wherein petitioners and others were implicated. The Internal Complaints Committee was constituted under Sexual Harassment for Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 wherein the respondent no. 2 appeared on 10.01.2019. The respondent no. 2 vide e-mail sent on 07.05.2019 stated that she did not wish to pursue her complaint with Internal Complaints Committee and requested to withdraw the complaint. However, Internal Complaints*



Committee proceeded with the enquiry and exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee after conclusion of the proceedings vide Final Report dated 19.08.2019.

10. The learned Senior Counsel for the petitioner/Ashish Chauhan and the learned counsel for the petitioner/Surajit Chatterjee primarily argued that the criminal prosecution cannot continue on the same allegation particularly after Internal Complaints Committee constituted under the statute has exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee vide Final Report dated 19.08.2019 and relied upon judgments as referred hereinabove. They also argued that the present FIR has been registered only to harass the petitioners in connivance with other employees/ex-employees of MSIL and no offence is made out from FIR against the petitioners or any of the petitioners and argued that the present petitions be allowed.

11. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 deals with constitution of Internal Complaints Committee and provides that every employer of a workplace shall constitute a Committee to be known as the Internal Complaints Committee. MSIL on the basis of FIR bearing no.594/2018, constituted Internal Complaints Committee which conducted detailed enquiry and exonerated the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee vide Final Report dated 19.08.2019. The legal issue which requires judicial consideration and assessment is that whether after exoneration vide Final Report dated 19.08.2019, the petitioner/Ashish Chauhan and the petitioner/Surajit Chatterjee are still liable to face prosecution arising out of present FIR bearing no. 594/2018.

*11.1 It was observed by the Supreme Court in **Ashoo Surendranath Tewari V CBI & another**, (2020) 9 SCC 636 that the standard of proof in a departmental proceeding being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. The Supreme Court referred **P.S. Rajya V State of Bihar**, (1996) 9 SCC 1 wherein the question before the Court was as under:-*

3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an



identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.

It was held as under:-

17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.

23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.

11.1.1 The Supreme Court in Ashoo Surender Nath Tewari also referred Radheshyam Kejriwal V State of West Bengal and another, (2011) 3 SCC 581 wherein it was held as under:-

26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be



evident from the following passage of the said judgment: (AIR p. 27)

“... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.”

29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

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.

The Supreme Court after referring to various judgments culled out the ratio of those decisions in paragraph 38 as under:-

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.

11.1.2 The Supreme Court after relying on above referred judgment held as under:-

8. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.12.2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.

11.2 The relevant conclusion of Final Report dated 19.08.2019 is reproduced as under:-

CONCLUSION

The members of the Committee have perused the entire statements of the Complainant, Witnesses and Respondents along with the materials placed on records by the respective parties.

Since the Complainant has not informed any date of incidents; as such, it was not viable for IC to get the CCTV footage to examine the same. Also, video footage has a specified storage time, after which it is automatically deleted from the system. It may be noted that in the open workspace culture, any wrong behaviour could possibly



have been seen by other employees or she could have informed or discussed with anyone at the workplace.

Four witnesses i.e. Mr. Brijesh Chaudhry, Mr. U.K. Sharma, Mr. R.K. Sharma and Mr. Gaurav Kaushik supported the Complainant's version as the Complainant had made similar statements to them as well. However, they had not witnessed any of the incidents, so it is hearsay.

Six witnesses i.e. Ms. Aakriti, Ms. Jayashree, Ms. Devyani, Mr. Surinder Kataria, Mr. Lokesh Pandey and Ms. Manjaree Chaudhary denied that the Complainant had told them anything. The other witnesses were not aware of any issue and could not corroborate her statement.

Hence IC could not establish any instance of physical touching or advances. However, the IC believes that there were two very clearly demarcated groups in the Legal-2 team and atmosphere was not cordial and decorum was not maintained. IC also felt that many witnesses and Respondents were aggressive with even the IC. However, with respect to the conspiracy as alleged by Respondents and few witnesses by the ex-employees i.e. Mr. Surinder Kataria and Mr. Brijesh Choudhary along with Mr. R.K. Shanna, Gaurav Kaushik and the Complainant herself, IC was provided with no evidence to prove the same.

There seems to be a high probability that the Complainant felt pressurized and constrained as there was caucus and lack of team work, trust, and cordial relations in the Division. All Legal Department witnesses stated that there is only professional interaction and there is no personal interaction, which seems strange in such a compact group. All witnesses also stated that none of them discussed the case with each other, even though there was no advisory given to them by the IC till then. That seems to be improbable lie and implies an atmosphere of constraint.

The final conclusions are as follows:

1. The IC, after evaluating the facts placed on record and no cross-examination, has not been able to establish any case of Sexual Harassment against Respondent no, 1, 2 & 3 due to the lack of evidences available. Since the Complainant has already withdrawn her complaint and is no more willing to co operate and further participate in the proceedings, IC could not make out a clear conclusion with respect to Sexual Harassment.



2. The IC also feels that the employee grievance redressal mechanism could have been better. As alleged by the Complainant also, if this matter had been handled with more discretion and sensitivity by the seniors at an early stage, it would not have escalated the way it did.

3. The IC also observed that there were major administrative issues in respect of a formal HR process of engaging or confirming a trainee/ intern in Legal Division. Further, IC found that no mechanism existed there to impart training, fix stipend or provide feedback to interns.

11.3 The perusal of Final Report dated 19.08.2019 reflects that the Internal Complaints Committee was constituted as per the mandate of section 4 of the Act on the basis of FIR bearing no.594/2018. During the enquiry, the statements of the respondent no.2, the petitioner/Ashish Chauhan, the petitioner/Surajit Chatterjee, and more than 20 witnesses were recorded. The proceedings were conducted in camera. The Internal Complaints Committee also received an e-mail from the respondent no. 2 on 07.05.2019 that she did not want to pursue with the complaint and it also appeared that e-mail dated 07.05.2019 was written without any force, fear and coercion. The Internal Complaints Committee despite the e-mail dated 07.05.2019 preferred to proceed with the enquiry arising out of the FIR bearing no.594/2018 and gave the Final Report dated 19.08.2019 on merits although the respondent no.2 did not produce herself for cross-examination due to the reasons best known to her. The Final Report dated 19.08.2019 was given on merits and in the said enquiry, all the facts as mentioned in the FIR were investigated and enquired into. The issues in the proceedings conducted by the Internal Complaints Committee and in present criminal prosecution are identical and in conduction of enquiry/investigation by the Internal Complaints Committee, the provisions of the Act were duly complied with and have not been contravened. In these circumstances, there is a force in the arguments advanced by the learned Senior Counsel/counsel of the petitioners that the criminal proceedings/prosecution arising out of FIR bearing no. 594/2018 cannot be continued particularly, when the petitioners were exonerated by the Internal Complaints Committee vide Final Report dated 19.08.2019. The proceedings arising in pursuance of FIR bearing no.594/2018 cannot be sustained in the law. If the investigation/prosecution in pursuance of FIR bearing no. 594/2018 is allowed to be continued then it shall be an abuse of process of law.

12. The learned Senior Counsel/counsel for the petitioners also argued that the allegations as made in FIR bearing no. 594/2018 are false and even they are admitted to be correct then no offence under sections



354A/506 IPC is made out. Section 354A IPC deals with sexual harassment and punishment for sexual harassment. It reads as under:-

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.

Section 503 IPC defines criminal intimidation. Section 506 IPC provides punishment for criminal intimidation.

12.1 The perusal of FIR bearing no. 594/2018 reflects that it was got registered on 01.12.2018 while the respondent no.2 left MSIL in the month of August, 2018. It reflects that the FIR bearing no.594/2018 was got registered much after leaving of MSIL by the respondent no.2. The respondent no.2 has made only general allegations without any specific detail. The respondent no.2 mentioned that the petitioner/Ashish Chauhan used to stare her in sexually offending manner by making gestures at her and used to pass lewd comments about her dressing and physical aspects but these allegations are without any specification. The respondent no. 2 did not make any allegation in FIR bearing no. 594/2018 but as per the Status Report, the respondent no.2 made allegation against the petitioner/Surajit Chatterjee regarding the sexual harassment in statement recorded under section 164 of the Code. If all the allegations as made by the respondent no.2 are taken to be true even then, no offences under sections 354A/506 IPC are made out.

12.2. The Supreme Court in **State of Haryana V Ch. Bhajan Lal**, (1992) Supp 1 SCC 335 has laid down guidelines for the High Courts under which inherent powers under section 482 of the Code can be exercised which are as under:



8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.

13. The Supreme Court continuously observed that the extraordinary power under section 482 of the Code should be exercised sparingly and with great care and caution and can be used to prevent abuse of the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. Section 482 saves the inherent power of the High Court and reads as follows:-

Section. 482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers 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.

13.1 The Supreme Court in Sushil Suri V Central Bureau of Investigation and another ,(2011) 5 SCC 708, considered the scope and ambit of the inherent jurisdiction of the High Court and observed as under:-

16. Section 482 Code of Criminal Procedure itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under Code of Criminal Procedure; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the Court exists.

14. If the consequential proceedings arising out of FIR bearing no. 594/2018 are allowed to be continued, it will be misuse of power and exercise in futility. In view of above discussions, the present petitions are allowed and FIR bearing no. 594/2018 registered at P.S. Vasant Kunj (North) under sections 354A/506 IPC is quashed along with consequential proceedings including judicial proceedings qua the petitioner/Ashish Chauhan (petitioner in W.P.(CRL) 2802/2019 and the petitioner/Surajit Chatterjee (petitioner in W.P.(CRL) 3005/2019.

15. The petitions bearing no. W.P.(CRL) 2802/2019 and W.P.(CRL) 3005/2019 along with pending applications, if any, stand disposed of.”

4. The role of the Petitioner as ascribed in the FIR is identical to the



other two accused, at whose instance, the Court has quashed the FIR against them.

5. Further, pursuant to order dated 27th September, 2024, the Investigating Officer had made all attempts to serve Complainant/Respondent No. 2, however she was not reachable. The status report has been filed, indicating that despite best efforts, no contact numbers for Respondent No. 2 are available to reach her. An inquiry was conducted with the last known office staff of the complainant regarding her whereabouts, but no leads were found.

6. In light of the foregoing and considering that this Court has already taken a view on the FIR in light of the facts in case which have been discussed and the fact that the Petitioner's role is identical to the other two accused, the Court is inclined to allow the present petition.

7. Accordingly, the present petition is allowed. The FIR No. 594/ 2018 dated 1st December 2018 registered at Police Station Vasant Kunj (North), District: South- West Delhi and the proceedings emanating therefrom *qua* the Petitioner, stands quashed.

8. Copy of this order be sent to the concerned Court.

SANJEEV NARULA, J

JANUARY 10, 2025

as