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A F R

Reserved on : 13.02.2024

Delivered on : 23.02.2024

Court No. - 92

Case :- APPLICATION U/S 8=482 No. - 38781 of 2016

Applicant :- Manmohan Krishna

Opposite Party :- State of U.P. and another

Counsel for Applicant :- Ashok Kumar Nigam (Ea), Brijesh Sahai

Counsel for Respondent :- G.A., A.P. Singh, Ashok Kumar Nigam

Hon'ble Prashant Kumar,J.

1. Heard Sri Vinay Saran and Sri G.S. Chaturvedi, Senior Advocates assisted by Ms. Katyayini and Sri P.K. Mishra, learned counsel for the applicant, Sri Aishwarya Pratap Singh, learned counsel for O.P. No.2 and Sri S.D. Pandey and Sri S.K. Chandraul, learned A.G.A.s for the State-O.P. No.1.

2. This is a case where a Professor had to pay a very heavy price for asking an Assistant Professor to take classes and teach properly. He was made an accused and had to face trial for at least eight years, and further had to face humiliation, stigma, for no fault of his own, and on the other hand, the complainant, by misusing the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the S.C./S.T. Act'), had virtually threatened the other seniors from taking any action against her.

3. The instant application under Section 482 Cr.P.C. has been preferred by the applicant praying for quashing charge sheet dated 08.10.2016 including the entire proceeding in Case No.689 of 2013, under Section 354C, 504, 506 of IPC and under Section 3(2)(va) of the S.C./S.T. Act, (S.T. No.127 of 2016) Police Station-Colonelganj, District-Allahabad pending in the Court of Special judge, SC/ST Act, Allahabad.

FACTUAL MATRIX

4. The facts of the case in brief are that O.P. no.2 namely, Deep Shikha Sonkar was appointed as Assistant Professor in Department of Economics in University of Allahabad, and she joined in July, 2013 and at the time of her joining, Professor Jagdish Narain Purwar was the Head of Department. Prof. Jagdish Narain found working of the complainant unsatisfactory during her probation period and gave negative entry to her along with certain other Assistant Professors. Thereafter, Prof. Prahlad Kumar became the Head of Department of Economics on 15.02.2014, who also during the course of time evaluated the complainant and gave a negative report about her working.

1st Complaint

5. Expressing her annoyance and out of the grudge, because of the negative report, she filed a complaint to the Women's Advisory Board against Professor Prahlad Kumar and two other lady professors namely Dr. Swati Jain and Dr. Rekha Gupta, which was received on 14.01.2016.

2nd Complaint

6. Not being satisfied with this, a second complaint dated 19.01.2016 was sent to the Vice Chancellor of the Allahabad University by the complainant against Professor Jagdish Naranin Purwar and Professor Prahlad Kumar, which was delivered on the same day.

3rd Complaint

7. Yet another complaint was made on 13.02.2016 to the Committee for Complaints Against Sexual Harassment (hereinafter referred as 'CCASH').

8. All the aforesaid complaints were assigned to a six member Committee for Complaints Against Sexual Harassment (CCASH) for its report by the then Vice Chancellor of the Allahabad University.

9. In the meantime, the applicant took charge as the Head of Department, Economics, University of Allahabad on 16.02.2016 and hence, the aforesaid Committee in its wisdom thought it proper to enquire the facts of the case from his also and thus the applicant clarified and provided certain documentary evidence regarding the allocation of rooms etc to the CCASH.

10. The aforesaid response of the applicant to the CCASH also weighed against the complaints of the respondent complainant and the Committee on 16.03.2016 resolved that all the allegations made by the respondent complainant in her three complaints against Prof. Prahlad Kumar, Prof. J.N. Purwar, Asst. Prof. Dr. Swati Jain and Asst. Prof. Dr. Rekha Gupta were false and were malafidely motivated.

11. On 23.02.2016, the then Dean, Faculty of Arts, Professor Jagdish Narain, to whom complaints were made by a number of students about competence of O.P. no.2/complainant as well as her absence from the classes, wrote an official letter to Head of Department (Professor Man Mohan Krishna) to take action against O.P. No.2 and Professor D.N. Oraon for their absence from the class. Over the leaf of the said letter, Professor Man Mohan Krishna marked the said letter to O.P. no.2 with the note, "To meet me to discuss the issue.", which annoyed/irked her extremely.

4th Complaint

12. O.P. no.2 yet made another complaint on 24.2.2016 against the Dean to Vice Chancellor mentioning wherein that she is being harassed because she belongs to Scheduled Caste Community.

5th Complaint

13. In addition to it, she also lodged a complaint against the Dean on the same day to the police alleging the same incident. However, this complaint lodged with the police was withdrawn by her after six days.

6th Complaint

14. The dismissal of all her three complaints by the CCASH caused annoyance to the complainant and she in order to teach a lesson started picking up petty arguments with seniors on some or the pretext like allotment of a chamber of her choice etc. and finally she on the insistence of her political supporters lodged the impugned FIR on 04.08.2016 against the applicant Prof. Manmoha Krishna along with Prof. Prahlad Kumar and one Prof. Javed Akhtar, which was registered as Case Crime No.701 of 2016 under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act..The translated version of the FIR is as follows :

“Complainant/O.P. no.2 is an Assistant Professor in the Economics Department of University of Allahabad against whom, Prof. Prahlad and some other senior professors, had personal grudge from the very beginning as she belongs to Scheduled Caste and unfortunately, they used to harass her in various ways. Being aggrieved, she had lodged complaints against them before the University, Commission for the Scheduled Castes and Scheduled Tribes as well as National Women Commission, and since then Prof. Prahlad Kumar and present Head of Department Man Mohan Krishna have been insulting and harassing her. On 04.08.2016 at about 12.45 P.M., she was called upon by the Head of Department (Man Mohan Krishna) in his chamber and when she entered his chamber, she found that along with Prof. Man Mohan Krishna, Prof. Prahlad and Prof. Javed Akhtar were sitting there. Prof. Man Mohan Krishna using words relating to her caste scolded her, kept her standing for an hour and kept on gazing her and also used filthy words in between. The complainant asked to leave again and again, but she was not permitted to leave and she was threatened by saying that as she belonged to the scheduled caste, she should stay within her limits. With the aforesaid incident, the complainant felt herself extremely humiliated, victimized and insecured. Since the date when the complainant has lodged complaint against her harassment, Prof. Prahlad Kumar, Prof. Man Mohan Krishna and Javed Akhtar have been pressuring her to withdraw the complaint and they used to send many anti-social elements before her and are harassing her in various ways.”

7th Complaint

15. Simultaneously, on 04.08.2016, the complainant respondent in regard to the same alleged incident sent another complaint against the applicant and others to the Vice Chancellor of the Allahabad University (though mentioned as 05.08.2016).

16. The said complaint was also assigned to the CCASH as per the law which enquired into the matter and on 05.10.2016 came to the conclusion that the allegations were false and were made without malafide reasons to tarnish the image of the Economics Department. The findings of the report dated 05.10.2016 is being quoted below :-

“

Findings

In the light of her failure to respond to the questionnaire sent by the CCASH and the responses given by the eight members of the department to the queries by the CCASH, which ran contrary to the allegations made by Ms. Sonkar in her complaint. The committee is led to conclude:

That Ms. Sonkar has no evidence to substantiate her allegations.

That the reported incident has taken place in full public view so the evidence of those present becomes very crucial in verifying and finding about the truth of the incident.

That Ms. Sonkar neither responded nor led any evidence. All the persons examined by the CCASH have strongly denied the contents of the complaint.

That the said complaint by Ms. Sonkar is entirely frivolous. In fact her own conduct in the department, where she fails to cooperate with the Head and comply with his various orders reflects an attitude of insubordination and creates serious issues of defiance of authority.

In response to the question about the general behavior of these three professors all the persons who responded to the questionnaire have in substance written that the behaviour of these three Professors is courteous, cooperative, polite and very good. No previous incident of any misconduct or rude behavior of these three professors was brought to the notice of the CCASH except the earlier complaint by Ms. Sonkar against Professor Prahlad Kumar which was found to be frivolous and false.

It is pertinent to mention that as reported by the HOD Prof. M.M. Krishna that soon after she left his room he received a call from mobile number 8423857510 by one Sri Rajesh Tripathi, subscriber of the said number using un-parliamentary language, and threatening him and later the said Sri Tripathi visited the department along with 4-5 unknown persons and threatened Professor Javed Akhtar and Professor Prahlad Kumar saying, “ in case any harm comes to Ms. Sonkar the consequences will be dire....” This act and conduct of Ms. Sonkar was highly condemnable.

In the light of her such continuous subversive behavior and her inability to substantiate her allegations on the three named professors, the CCASH also concludes that her complaint is merely an attempt to malign the high reputation and impeccable image of the concerned Professors.

Such frivolous complaints not only malign the reputation of the department in particular but also of the institution, the University of Allahabad at large.”

17. Both these reports of CCASH dated 16.03.2016 and 05.10.2016 were later accepted by the Executive Council of the University of Allahabad.

18. Thereafter, the Investigating Officer recorded the statement of O.P. no.2 under Section 161 Cr.P.C.on 05.08.2016. The relevant portion of the statement reads as under:-

“Prof. Javed Akhtar, Prof. Man Mohan Krishna and Prof. Prahlad Kumar have been harassing the complainant since 2013. All the three of them, stared her and made her standing for an hour. They said that she belongs to Scheduled Caste and she can’t do anything. She could not sit along with them and she would be beaten by chappal. She is not even worth talking them. All the three of them told her, “I am your Head, I will not let you do the job and you will not be able to stay here”. Prior to this, she had lodged an FIR in 2015, despite this, all the three of them have been harassing her and she is feeling unsecured. They always use filthy words against her and say that she is elusive, lodges false FIRs and her character is not good.”

19. On 14.09.2016, the statement of O.P. no.2 was recorded under Section 164 Cr.P.C. in which she stated as follows:

“On 04.08.2016 at about 12.45 P.M. when she was doing enrollment work in the University, a peon informed her that the Head was calling

her in his room. At 1.00 P.M. she went there, where Man Mohan Sir, Prahlad Sir and Javed Sir were sitting. When she started sitting, they asked her to keep standing. They further said that when will she understand as she had been told for the last five months and what should be done with her to make her understand. They further asked her that why she is not withdrawing the case. Prof. Javed said that hadn't she belonged to Scheduled Caste, she would not have been selected. Prof. Prahlad said that she had forgotten her limits and she is very fond of court affairs. Prof. Man Mohan said that what else can be expected from the people of her caste, no one would listen to her as she has been there for only three years and what is her status, he will ruin her character. She had been selected on the basis of her looks and would she be able to do the service. He further said that if she does not behave, he would not let her to stay there. He also said that she is despicable and had picked articles of enrollment from his room. He further said that she will sit in the room of Prof. Javed and do her work there. She further stated that she had earlier lodged FIR against them and they were asking her to withdraw the same."

20. The I.O. submitted charge-sheet against the applicant and others under Sections 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act. On 18.11.2016, the trial court has taken cognizance in the matter.

21. Thereafter, the reports of the Committee against the sexual harassment of women dated 16.03.2016 and 5.10.2016 was put up before the Executive Council, who vide Resolution No.08/42 dated 16.12.2016 conferred its approval. The relevant portion of the resolution dated 16.12.2016 is quote below:-

"The Council unanimously accepted the CCASH Report. Some members also questioned as to why some action has not been recommended for bringing a case or disciplinary action against Deepshikha Sonker who has been levelling false and fictitious allegations against senior and reputed teachers of the Economics Department and university functionaries including then Head and such an act by the lady teacher is bringing disrepute to the Department and to the University. Honorable Vice-Chancellor on this informed the Council that as the present case is under consideration in the honorable High Court, it would not be proper to taken any decision till the case is finally decided there."

22. The applicant by means of present application has challenged the cognizance/summoning order dated 18.11.2016 passed by Special Judge, S.C./S.T. Act, Allahabad on charge-sheet dated 8.10.2016 submitted under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act in Case Crime No.701 of 2016, Police Station-Colonelganj, District-Allahabad.

ARGUMENTS ON BEHALF OF THE APPLICANT

1st Argument

23. Learned counsel for the applicant submitted that the trial Court has taken cognizance of the matter directly without any committal order. He submitted that Section 193 Cr.P.C. lays down that except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. There is no provision in the S.C./S.T. Act which empowers the Court to take cognizance directly without the accused being committed to it for trial.

24. To buttress this argument, he has placed reliance on paragraphs 11 and 16 of the judgment passed in **Gangula Ashok and another vs. State of Andhra Pradesh**¹, wherein the Court has held as under :

“11. Neither in the Code nor in the Act there is any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straightway be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal Courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities

1 AIR 2000 SC 740

which magistrates have to do until the case is committed to the Court of Session.

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16. Hence we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straightway be laid before the Special Court under the Act.”

25. Further reliance has also been placed on paragraph 26 of the judgment passed by the Hon’ble Supreme Court in the matter of **Pradeep S. Wodeyar vs. The State of Karnataka**² wherein the Court has held as under :

“26. Consequently, it was held that a Special Court under the SC and ST Act is essentially a court of Sessions and it cannot take cognizance of the offence without the case being committed to it by the Magistrate in accordance with the provisions of the CrPC. In other words, the complaint or a chargesheet would not straightway be laid down before the Special Court. In this backdrop, this Court upheld the view of the High Court setting aside the proceedings initiated by the Special Court.”

2nd Argument

26. Learned counsel for the applicant further submitted that Section 354C of IPC under which the applicant had been charged with, is not attracted as necessary ingredients to attract the said section is completely missing in the entire material collected by the Investigating Officer. Section 354C of IPC is being quoted below for ready reference:

“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

2 2021 SCC OnLine SC 1140

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.

27. He contended that a plain reading of Section 354C of IPC exhibits that the allegations levelled by the complainant against the applicant, in the FIR and in the statements under Sections 161 and 164 Cr.P.C., do not fall under the ambit of this Section as there is no allegation of the applicant watching or taking her image in a private act, where she would usually have the expectation of not being observed or was disseminating such image.

3rd Argument

28. He further submitted that the allegations made against the applicant under Section 504 IPC is not made out as to attract the provisions of Section 504 IPC. The relevant provision of Section 504 IPC is quoted herein for ready reference:

“504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

29. The necessary ingredients for invocation of Section 504 are-(a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break public peace or to commit any other offence, in such a situation the ingredients of section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the

complainant, as such, is not sufficient by itself to warrant a conviction under Section 504.

30. To buttress this argument, he has placed reliance on paragraph 13 of a judgment passed by Hon'ble the Supreme Court in the matter of **Fiona Shrikhande vs. State of Maharashtra and another**³, which read as under :-

“Section 504 comprises of the following ingredients, viz., (a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break public peace or to commit any other offence, in such a situation the ingredients of section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504.”

4th Argument

31. Learned counsel for the applicant further submitted that applicant had been charged for the offence under Section 506 IPC, but the same is not attracted in the present case. Section 506 IPC is quoted hereunder for ready reference:

“506. Punishment for criminal intimidation.-Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall

3 AIR 2014 SC 957

be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

32. He further submitted that there are three ingredients to attract Section 506 IPC. Firstly, there must be an act of threatening another person. Secondly, of causing injury to the person’s reputation; or property of the persons threatened or to the person in whom the “threatened person is interested and Thirdly, the threat must be with the intent to cause alarm to the persons threatened or it must be to do any act, which is not legally bound to do or omit to do an act, which he is legally entitled to do.

33. To buttress this argument, he has placed reliance on paragraphs 13, 14 and 15 of a judgment passed by the Hon’ble Supreme Court in the matter of **Manik Taneja and another vs. State of Karnataka and another**⁴, which reads as under :

“13. Section 506 IPC prescribes punishment for the offence of criminal intimidation. “Criminal intimidation” as defined in Section 503 IPC is as under:-

“503. Criminal Intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that persons is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

14. A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

15. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the

4 (2015)7 SCC 423

second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

5th Argument

34. Learned counsel for the applicant further contended that the reports of the CCASH and the Executive Council of the University are documents of unimpeachable character, and they go to the root of the controversy showing that the complainant is habitual in filing frivolous and vexatious complaints and the Hon'ble Court may take note of the said facts and reports. The instant proceedings which arise from the vexatious FIR is nothing but gross abuse of process of the Court, hence, is liable to be quashed.

35. In support of his submission, he has placed reliance on paragraph 12 of the judgment passed by the Hon'ble Supreme Court in the matter of **Mahmood Ali and others vs. State of U.P. and others**⁵, which reads as under:

"12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly

⁵ Criminal Appeal No.2341 of 2023 (Arising out of S.L.P. (Criminal) No.12459 of 2022 decided on August 08, 2023

frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc, then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the state of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.....”

6th Argument

36. He further submitted that at the time of alleged incident the applicant was the Head of Department of Economics, University of Allahabad and was above 61 years of age and the nature of allegations levelled are patently unbelievable and improbable and the allegations of sexual harassment are patently false and grossly misused. The applicant has now demitted his office after reaching the age of superannuation. The present prosecution is nothing but gross harassment caused by false allegations of sexual harassment and for this reason alone, the charge sheet and the proceedings of the case are liable to be quashed.

37. To buttress this argument, he has placed reliance on paragraph 6 of the judgment passed by Delhi High Court in the matter of **Saurabh Aggarwal and another vs. State and another**⁶, which is as follows:

6 Crl. M.C. No.163 of 2022 decided on 12.01.2022

“6. This Court is pained to note that there is an alarming increase of cases under Section 354, 354A, 354B, 354C and 354D only to arm-twist the accused and make them succumb to the demands of the complainant. The time spent by the police in investigating these false cases and in Court proceedings hinders them from spending time in investigation of serious offences. As a result cases which are required proper investigation get compromised and accused in those cases end up going scot-free due to the shoddy investigation. Valuable judicial time is also spent in hearing cases where false allegations are made and is consequently an abuse of the process of law.”

38. Further reliance has also been placed on a judgment passed by the Madras High Court in the matter of **C.S. Usha vs. Madras Refineries Limited, Chennai and others**⁷ wherein the Court has held as under :

“No doubt, it is true that the women work at work places and also at home with more strain. It is not an exaggeration to state that working women are kept engaged most of the time of both mental and physically not only at home but at working places also and thus play a dual role. It is also not in dispute that various laws including Constitution gave so many safeguards to Women particularly to the women at work places to work with human dignity. The Apex Court in the landmark judgment in Vishaka v. State of Rajasthan (1997 Lab IC 2890) had prescribed guidelines. There will be no second opinion that the wrong doer should not be allowed to go scot-free. At the same time, the employer, who is supposed to keep a vigilant eye on the victim and the delinquent, is not expected to allow the women to use the shield so presented by the Apex Court as a weapon to wreak vengeance. It is true that we are bound by the directions of the Apex Court, but that does not mean that they can be allowed to be interpreted to suit the convenience of the woman like the petitioner, for personal gain. The Court must also be careful to ensure that the process of the Court is not sought to be abused by woman like the petitioner, who desires to persist with the point of view, almost carrying it to the point of obstinacy. Keeping all these aspects, in mind, we are of the considered opinion, that what the Apex Court has held in Vishaka’s case (1997 Lab IC)(cited supra) has to be construed as a double edged weapon to shield the women at working place from sexual harassment. At the same time, it should not be take that all complaints by women should be presumed to be correct without referring to the Committee. If it is presumed so before investigation,

⁷ (2001) 1 LLJ 148

then the very object will be defeated. Mere averment will not carry much weight. Averment should be supported and supplemented by unassailed proof, both oral and documentary.”

7th Argument

39. He further submitted that the alleged incident is said to have taken place within the closed corners of a room and there was no public view of the incident, hence, no offence under the S.C./S.T. Act is made out against the applicant.

40. To buttress this argument, reliance has been placed on paragraph 34 of the judgment passed by the Hon’ble Supreme Court in the matter of **Swaran Singh vs. State through Standing Counsel & Ors**⁸, wherein the Court has held as under:

“35. However, a perusal of the F.I.R. shows that Swaran Sing did not use these offensive words in the public view. There is nothing in the F.I.R. to show that any member of the public was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against applicant no.1.”

41. In support of aforesaid argument, further reliance has been placed on paragraph 14 of the judgment passed by Hon’ble Supreme Court in the matter of **Hitesh Verma vs. State of Uttarakhand and another**⁹, wherein the Court has observed as under :

“14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh and Ors. v. State through Standing Counsel and Ors. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by some from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made

8 (2008) 8 SCC 435

9 Criminal Appeal No.707 of 2020 (Arising out of SLP (Criminal) No.3585 of 2020 decided on November 5, 2020

inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view.”

ARGUMENTS ON BEHALF OF OPPOSITE PARTY NO.2

42. Per contra, Sri A.P. Singh, learned counsel for O.P. no.2 submitted that the present FIR is placed on different set of facts and it should not be seen in the background of previous complaints. He further submitted that the report in which O.P. no.2's work was found to be less satisfactory, which was not solely against her and it reflected details of other Professors too. He further contended that it has been observed by the Hon'ble Apex Court in catena of judgments that FIR is not an encyclopaedia. It has been observed that the FIR need not contain all the facts. To buttress his argument, he has placed reliance on judgments passed by the Hon'ble Supreme Court in the matters of **Ranjit Singh and others vs. State of Madhya Pradesh**¹⁰, **State of Uttar Pradesh vs. Naresh and others**¹¹.

43. He further submitted that the Hon'ble Apex Court in catena of judgments has strictly observed that the High Court should exercise its inherent power only in rarest of rare case to prevent abuse of the processes. The Hon'ble Apex Court has further observed that inherent power should only be used sparingly and since the present case does not fall under rarest category therefore this Hon'ble Court should not exercise its inherent powers.

44. In support of aforesaid submission, he has placed reliance on judgments passed in the matters of **Mrs. R.D. Bajaj Vs. KPS Gill and another**¹², **State of Himanchal Pradesh vs. Shri Pirthi Chand and another**¹³ and **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra**¹⁴.

45. Learned counsel for O.P. no.2 further submitted that the applicant had included O.P. no.2 in the Organizing Committee of an International Seminar.

¹⁰ (2011) 4 SCC 336

¹¹ (2011) 4 SCC 324

¹² AIR 1996 SC 309

¹³ AIR 2006 SC 977

¹⁴ Criminal Appeal no.330 of 2021

Thereafter, on various occasions he tried to allure her by extending undue favour and unwarranted gestures.

On being questioned, as to why O.P. no.2 did not refuse from becoming part of the International Seminal, learned counsel for O.P. no.2 replied that it would have amounted to insubordination and also that O.P. no.2 was not aware about the future intentions of the applicant.

46. He further submitted that Assistant Professor/Staff Members have supported her story but unfortunately, the incident happened in closed corners of the room, so they could not be the independent eye witnesses.

47. He further submitted that Section 227 Cr.P.C. provides that in case if there are no evidences against the accused person, then can very well move a discharge application at an appropriate stage and get themselves discharged. Merely because the applicants belong to higher strata of the society, therefore, adjustment in the Criminal Procedure Code cannot be made just to accommodate the applicant, who is trying to twist and turn the provision according to their own whims and fancies. Moreover, the High Court under 482 jurisdiction cannot and should not perform the task of the trial court and weigh evidences.

48. In support of aforesaid submission, he has placed reliance on judgments passed in the matters of **State of M.P. vs. S.B. Johri and others**¹⁵ and **State of Bihar vs. Ramesh Singh**¹⁶.

49. Learned counsel for O.P. no.2 submitted that in case the present application is allowed, it will directly be in the teeth of Article 14 of the Constitution of India, since a process that has been enshrined in the Criminal Procedure Code has to be adopted and followed by each and every individual without there being any differentiation. It is further submitted that just in order to accommodate highly esteemed professors the procedure and process

15 2000(2) SCC 57

16 AIR 1977 SC 2018

cannot be changed or diverted which will be contrary to the criminal justice system and will thus lead to the abuse of the process of the court.

50. At last, learned counsel for O.P. no.2 submitted that the instant application may be dismissed and they may be directed to appear and face trial, otherwise the complainant will suffer irreparable loss.

CONCLUSION

51. Before adverting to the merits of the matter, this Court would like to see whether the allegations made in the FIR against the applicant and the statements given by the complainant when read together, discloses the commission of offence or whether prima facie no case is made out against the applicant.

52. However, in the charge-sheet the applicant was charged under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act.

53. The allegation levelled against the present applicant in the FIR was as under:

“Professor Man Mohan Krishna along with Professor Javed Akhtar and Professor Prahlad Kumar had put pressure on her to withdraw the complaint as well as used to send unsocial element before her and also used to harass her in various ways.”

54. In the statement under Section 161 Cr.P.C. against the applicant as well as others she has only stated as follows:

“All the three of them, stared at her and kept her standing for an hour. They said that she belongs to Scheduled Caste and she can’t do anything. She could not sit along with them and she would be beaten by chappal. She is not even worth talking to them. All the three of them told her, “I am your Head, I will not let you do the job and you will not be able to stay here”. Prior to this, she had lodged an FIR in 2015, despite this, all the three of them have been harassing her and she is feeling unsecured. They always use filthy words against her and say that she is elusive, lodges false FIRs and her character is not good.”

55. Further in her statement under Section 164 Cr.P.C. against the applicant she only stated as follows:

“Professor Manmohan Krishna said that what else should be expected from the people of her caste, no one would listen to her as she has been there for only three years and what is her status, he will ruin her character. She had been selected because of her looks and would she be able to do the service. He further said that if she does not agree, he would not let her to stay there. He also said that she is despicable and picked articles of enrollment from his room. He further said that she will sit in the room of Prof. Javed and do her work from there.”

56. From the bare perusal of the contents of the FIR, and the statements under Section 161 and 164 CrP.C., it is quite apparent that there is no such allegation against the applicant that fortifies invoking of Section 354C of IPC against him. The ingredients of Section 354C of IPC of voyeurism is only applicable if an accused captures the image of a woman engaging in private act, in circumstances where she would usually have the expectations of not being observed either by the perpetrator or by any other person. In this case, the allegations levelled against the applicant does not fall within the category of the offence and hence, no offence is made out against him under Section 354C of IPC.

57. Hon’ble Delhi High Court in the matter of **Saurabh Aggarwal (supra)** has held that there had been alarming increase of cases under Section 354 (Section 354A to 354D) only to arm-twist and ensure that the accused succumbs to the demands of the complainant. Court also noted the fact that the police spends a lot of time investigating in these frivolous cases and also the precious time of the Court is wasted in dealing with such kind of cases. Since, the valuable judicial time is also spent in hearing such frivolous cases, consequently, such proceedings are apparently abuse of process of law.

58. Further, the applicant had been charged under Section 504 of IPC. The ingredients of Section 504 of IPC are (a) intentional insult, (b) insult may be

such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence. In the allegations levelled in this FIR supported by the statements of O.P. no.2 under Sections 161 and 164 Cr.P.C., the insult alleged is not of a degree that would provoke a person to break public peace or to commit any other offence, and hence, the ingredients of Section 504 of IPC are not satisfied and the same offence could not have been levelled against the applicant.

59. Further, the applicant had been charged under Section 506 IPC. As per the ingredients of Section 506 IPC, which are firstly, there must be an act of threatening another person; secondly, of causing injury to the person's reputation; or property of the persons threatened or to the person in whom the "threatened person is interested; and thirdly, the threat must be with the intent to cause alarm to the persons threatened or it must be to do any act, which is not legally bound to do or omit to do an act, which he is legally entitled to do. In this case, the allegations levelled in the FIR and the statements of the complainant under Sections 161 and 164 Cr.P.C., prima facie does not fall in the ambit of criminal intimidation.

60. Similarly, the offence under Section 506 of IPC is not said to be made out as there is no criminal intimidation done by the applicant, even if the contents of the FIR and the statements of complainant/O.P. no.2 under Sections 161 and 164 Cr.P.C. are taken as a gospel truth, still, prima facie, it does not show any offence is made out against the applicant.

61. Even if the allegations made in the FIR are taken to be true and accepted in its entirety, they do not prima facie constitute any offence against the applicant. Further, a bare perusal of the allegations levelled against the applicant in the FIR as well as the statements under Sections 161 and 164 Cr.P.C. do not disclose commission of offence as suggested by the prosecution and no case is made out against the applicant. The entire criminal

proceeding is manifestly attended with malafides and the same has been carried out just to wreak vengeance against the Head of Department, who had asked her to carry out her duties diligently. The entire proceedings initiated by her was with an ulterior motive for wreaking vengeance with a view to spite the applicant for the personal grudge, which she had against him.

62. The Hon'ble Supreme Court in the matter of **State of Haryana and others vs. Ch. Bhajan Lal and others**¹⁷ has laid down the guidelines under which the High Court should exercise the inherent powers granted under Section 482 Cr.P.C. Paragraph 102 of the aforesaid judgment is quoted below:-

“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 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,

17 1992 Suppl (1) SCC 335

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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(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."

63. The instant case is squarely covered by Guidelines (1), (3) and (7) of **Bhajan Lal's case(supra)**. The complainant, whenever she had been admonished by her seniors, she would go and file complaints in all possible forum to wreak vengeance with ulterior motive. Further the plain reading of the FIR and the statements of the complainant under Sections 161 and 164 Cr.P.C. clearly shows that the allegations levelled against the applicant, does not comes under the ambit of Sections 354C, 504 and 506 IPC. Since, the offences does not fall within the ambit of these sections, in the result Section 3(2)(va) of the S.C./S.T. Act is also not attracted in the instant case as to attract Section 3(2)(va) of the S.C./S.T. Act, offences under Sections 354C and 506 IPC are to be made out.

64. Apparently, O.P. no.2 is in habit of making complaints to all possible authorities. It is hard to believe that all the three Professors, who took over as the Head of Department, had personal grudge against her and are harassing her. Which Head of Department in his senses would do that when it is known to everyone that O.P. no.2 is in a habit of lodging complaints, and she will not even think twice before using the S.C./S.T. Act as a weapon to enmesh them in criminal cases. If such kind of activities are not nipped in the bud, it will

set a precedent where other members of the S.C. or the S.T. community will open start insubordination and the Head of Department will not be in a position to do anything, and if warning is given them; cases under the S.C./S.T. Act will be foisted against them.

65. The alleged incident is said to have been committed within four corners of a room and the allegations could not be substantiated by any eye witness. In fact, the Hon'ble Supreme Court in the matter of **Swaran Singh (supra)** and **Hitesh Verma (supra)** has categorically made distinction between the "public place" and in "any place within public view". The Court further held that if the remark is made inside a building or in a place which is not in public view then it would not be an offence.

66. Since, prima facie, no case is made out and the Court deems it fit to quash the entire proceedings initiated in this case, as such there is no need to advert to the argument advanced under Section 193 Cr.P.C.

67. In view of aforesaid facts and circumstances, this is a fit case to exercise inherent powers under Section 482 Cr.P.C. and quash the criminal proceedings initiated by the complainant/O.P. no.2 against the present applicant.

68. The S.C./S.T. Act has been enacted with the objective that the underprivileged need to be protected against any atrocities to give effect to the constitutional ideals. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law should not result in caste hatred. The Preamble to the Constitution, which is the guiding star for interpretation, incorporates the values of liberty, equality and fraternity. This Court is not expected to adopt a passive or negative role and remain bystander or a spectator if

violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental right.

69. The instant case is a classic case where a subordinate Professor, whenever had been asked to teach properly and to go well prepared in the classes, she would go and file complaint against the Head of Department. The entire complaint filed by her is nothing but a pure abuse of process of law and misuse of the provisions of the S.C./S.T. Act.

70. The menace of filing false and frivolous cases under the S.C./S.T. Act is writ large. Various High Courts and the Hon'ble Supreme Court has taken very strict view of the same. This menace has been well considered by various High Courts and the Hon'ble Supreme Court.

71. Madras High Court in the matter of **Jones vs. State**¹⁸ has observed as follows:

“This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.”

72. The Hon'ble Supreme Court in the matter of **Subhash Kashinath Mahajan v. State of Maharashtra**¹⁹ has held as under :

“72.The underprivileged need to be protected against any atrocities to give effect to the constitutional ideals. The Atrocities

18 2004 Cri LJ 2755

19 (2018) 6 SCC 454

Act has been enacted with this objective. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any scrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions in decisions referred to above. Any harassment of an innocent, irrespective of case or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee . Law should not result in caste hatred.....”

73. Hon’ble the Supreme Court in the matter of **Chanchalpati Das vs. The State of West Bengal**²⁰ has held as under :

*“18. Before parting, a few observations made by this Court with regard to the misuse and abuse of the process of law by filing false and frivolous proceedings in the Courts need to be reproduced. In **Dalip Singh vs. State of Uttar Pradesh and others**²¹ it was observed that :*

“1. For many centuries Indian society cherished two basis values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral party of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.”

*19. In **Subrata Roy Sahara vs. Union of India and others**²² it was observed as under:*

“191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims.”

74. The Hon’ble Supreme Court and various High Courts had time and again dealt with problems where the litigant/complainant having filed false,

²⁰ 2023 SCC OnLine SC 650

²¹ (2010) 2 SCC 114

²² (2014) 8 SCC 470

frivolous and vexatious litigation to wreak vengeance and those have come out heavily to curb the serious problem.

75. There are other instances where the Supreme Court had passed order of exemplary costs. For reference :**Sivamoorthy vs. University of Madras**²³ and **State of Punjab v. Bhajan Singh**²⁴.

76. This is a case where there is pure abuse of process of law where the complainant, just to wreak the personal vengeance against the Head of Department, had tried to implicate him and his colleagues by filing false and frivolous cases. Whenever the Seniors/Head of Department/Professors asked her to teach properly and to take classes regularly, she would file a complaint against them. This is not one of the first case which happened. The complainant, who is a well educated lady, knows the provisions of law very well and she had been abusing the provisions of law for personal gain. The complaint filed by the complainant was nothing but a pure abuse of process of law.

77. Because of the filing of frivolous cases, the reputation and public image of the applicant and his colleagues, who are Professors and people with high morals and reputation, had been tarnished. They had to run from pillar to post, from Police Station to Court to save themselves. Evidently, this was false and frivolous case filed against the applicant only to wreak personal vengeance. Such kind of vexatious proceedings should not be allowed to continue and if anybody engages in doing so, such activities have to be curbed down. This is a perfect case where exemplary cost should be imposed on the complainant/O.P. no.2. The loss of reputation, public image and the financial loss caused to the applicant are far much more, but as a token a cost of Rs.5 lacs is imposed on O.P. no.2 for abusing the process of law by filing frivolous cases only for personal vengeance and personal gains. This amount should be

23 (2001) 10 SCC 483

24 (2001) 3 SCC 565.

given to the applicant forthwith after making deduction from the salary of O.P. no.2 as well as other benefits given by her employer.

78. Prima facie, on bare perusal of the FIR, the statements of O.P. no.2 under Sections 161 and 164 Cr.P.C., no offence for which the applicant has been charged, is made out.

79. This is a case where the Court if does not interferes and exercises the inherent powers under Section 482 Cr.P.C., it will fail in its duty. In exercise of inherent powers under Section 482 Cr.P.C., the instant application is allowed and charge sheet dated 08.10.2016 and the entire criminal proceedings of Case No.689 of 2013 (S.T. No.127 of 2016), Police Station-Colonelganj, District-Allahabad pending in the Court of Special Judge, S.C./S.T. Act, so far it relates to the present applicant, are hereby quashed.

80. With the aforesaid observations, the instant application stands **allowed**.

Order date : 23.02.2024
Manish Himwan