

(2017) 02 AHC CK 0036
In the Allahabad High Court
Case No : Special Appeal No. 73 of 2017

Indian Institute of Technology

APPELLANT

Vs

Rishabh Jha

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 11, Section 16, Section 9(1)

Citation : (2017) 4 ADJ 715 : (2017) 4 ALLJ 51

Hon'ble Judges : V.K. Shukla and Mrs. Sangeeta Chandra, JJ.

Bench : Division Bench

Advocate : Rohan Gupta, Advocate, for the Appellant; C.S.C., Shyam Singh Sengar and Vijay Kumar Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mrs. Sangeeta Chandra, J— Heard Mr S.D. Singh, learned Senior Advocate assisted by Mr Rohan Gupta, learned counsel for the appellant-Institute and the learned counsel for the respondent represented by Shri G.K. Singh, Senior Advocate.

2. This appeal has been filed by the Indian Institute of Technology, Kanpur Nagar challenging the judgment and order dated 21st of December, 2016 passed by the Hon"ble Single Judge in Writ C No. 30472 of 2016 (Rishabh Jha v. Union of India and others), wherein even while affirming the finding of the Inquiry Committee and the recommendation made by the Inquiry Committee contained in paragraph 33 (b) to (f), the Hon"ble Single Judge has set aside the decision taken by the appellant-Institute dated 30th of March, 2016 notified vide letter dated 7th of April, 2016 and also the order passed in appeal dated 23rd of May, 2016 communicated to Respondent No. 1 vide letter dated 27th of May, 2016 terminating the respondent"s academic programme and also debarring him from entering campus and prohibiting him further to have any contact with the

complainant.

3. The Hon"ble Single Judge has limited the punishment to the respondent-petitioners submitting a written apology to the Institute and directed the Institute to declare the result and give the degree to him as he had already given the final year examination in terms of interim order granted by this Court.

4. The facts as mentioned in the writ petition and the counter affidavit filed on behalf of the appellant-Institute and as have become evident from the arguments made by the learned counsel for the parties are that the Respondent No. 1 was final year student in the department of Physics and had been admitted in four year programme in July, 2012. On 27.11.2015, a brief letter was received by the Women's Cell of the appellant-Institute by one girl student (herein after referred to as the "complainant"), in which she made allegation of sexual harassment at the hands of respondent No. 1. Accordingly, the Chairperson of the Women's Cell sent a letter dated 27th of November, 2015 asking respondent No. 1 to appear before the Women's Cell on 28th of November, 2015 to prima facie satisfy itself whether there was any need or any cause to proceed with a formal inquiry.

5. The respondent No. 1 appeared before the Women's Cell and answered certain questions on the basis of which Women's Cell submitted its recommendation that a formal inquiry was needed in the matter and Internal Complaint Committee (herein-after referred to as the "ICC") was constituted to inquire into the matter. A detailed complaint was filed by the complainant on 05.01.2016 and in this complaint, various charges of verbal, emotional and sexual abuse were levelled against respondent No. 1 citing instances from February, 2014 onwards till September, 2015. Accordingly, on 06.01.2016 respondent No. 1 was called and given a copy of the complaint and his response was sought. The respondent No. 1 filed a detailed reply to the complaint on 14.01.2016 along with list of witnesses and various documents comprising "whatsapp" messages and E-mail etc. to allege that the complainant had willingly accepted respondent No. 1 as her mentor and he had helped her being her senior and they was never in any sexual relationship, consensual or otherwise between him and the complainant and the entire complaint had been filed in a malafide manner.

6. After the reply of the respondent No. 1 was analysed by the ICC, he was asked to appear along with his defence witnesses on 02.02.2016 and statements were recorded. The complainant's statement as well as statement of prosecution witnesses were not recorded in the presence of respondent No. 1 and he was not given opportunity to cross examine. A report was submitted by the ICC on 18.02.2016, which was subsequently placed before Senate Students Affairs Committee (herein-after referred to as the "SSAC") on 30th March, 2016, which after considering the said report discussed the same and placed it before the Academic Senate on 05.04.2016. The Academic Senate took note of the report of the ICC as well as the recommendation of the SSAC, according to which a high degree of harassment was caused to the complainant. It agreed with the

recommendation of the ICC that the Academic Programme of the respondent No. 1 be terminated. The respondent No. 1 was asked to leave the campus with immediate effect in order to secure safety of the complainant and he was also asked to refrain from contacting the complainant in any manner either directly or indirectly.

7. Aggrieved by the said decision of the SSAC dated 30.03.2016, the respondent No. 1 filed a Civil Misc. Writ Petition No. 16515 of 2015. At the time of hearing of the aforesaid writ petition on 07.04.2016, the Court was informed that the decision of the Academic Senate to terminate the academic programme of the respondent No. 1 had been notified vide order dated 07.04.2016, which was not challenged. The writ petition was withdrawn with liberty to file a fresh writ petition.

8. The respondent No. 1 thereafter filed an appeal before the Senate as provided under Ordinance 9.10 of the Institute and simultaneously also filed Writ Petition No. 17635 of 2016 challenging the communication dated 07.04.2016 issued by the Senior Deputy Registrar (Academic) IIT, Kanpur of the decision taken by the Senate terminating his academic programme of M.Sc. (Physics). On 13.04.2016, the Court passed an interim order permitting the respondent No. 1 to appear in the final year examination while declaration of his result was to abide by the decision rendered in the writ petition. The Court thereafter directed that the appeal already filed before the Senate should be considered on merits and disposed of writ petition on 16.05.2016.

9. In the meantime, the appeal filed by the respondent No. 1 was dismissed by the Senate of the Institute in its meeting dated 05.05.2016 and it had re-affirmed the decision taken earlier.

10. The decision dated 05.05.2016 as communicated to the respondent No. 1 on 27th of May, 2016, was challenged by filing Writ Petition No. 30472 of 2016 by the respondent No. 1. After exchange of affidavits, the writ petition came to be finally heard and decided by the Hon''ble Single Judge on 21.12.2016 this judgment has been challenged before us.

11. Learned counsel for the appellant- Institute pointed out from the judgment impugned that although the Hon''ble Single Judge had affirmed the finding of the ICC in its report and the recommendation made by the SSAC thereafter, that the complainant was a victim of abusive relationship and was scared enough of the respondent No. 1 not to discuss the relationship with any body prior to September, 2015 and the extent of harassment made out to the complainant in the abusive physical relationship can be construed as sexual harassment as defined under section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the charge against respondent No. 1 had been established, the Hon''ble Single Judge interfered with the decision taken by the Senate thereafter that the academic programme of respondent No. 1 be terminated with immediate effect.

12. Learned counsel for the appellant- Institute pointed out that although the appellant- Institute had constituted the Women's Cell in pursuance of the judgment rendered by the Supreme Court in the case of Vishaka and others v. State of Rajasthan and others, AIR 1997 Supreme Court 3011 and which Women's Cell was instrumental in conducting the detailed inquiry and scrupulously complied with the procedure prescribed in the Hand-Book on Sexual Harassment of Women at Workplace issued by the Government of India, Ministry of Women and Child Development and the provisions of the Act of 2013 and Rules made thereunder, Hon''ble Single Judge has made various observations, which cast aspersions on the conduct of inquiry by the ICC and on the conduct of the complainant, which were completely uncalled for and these observations needed to be expunged.

13. It has been pointed out that the appellant-Institute is one of the premier Institute of the Technology in the country and it has Senate around to 200 members, who are experts in various fields and this Senate included various distinguished and honoured academicians in their fields. The Senate being the highest body in the Institute was empowered under the Ordinance of IIT, Kanpur to take decision regarding the academic programmes of the students in the Institute and it had while approving the finding of the ICC and the SSAC taken a decision to terminate the academic programme of the petitioner-respondent.

14. In the facts and circumstances of the case, since the finding of the Inquiry Committee have not been disturbed and have been affirmed by the Hon''ble Single Judge, interfering in the punishment imposed by such a high authority of reputed academicians should not have been made lightly and the reasons given by the Hon''ble Single Judge for interfering in the decision taken by the Senate is that the Hon''ble Single Judge has found that the procedure for arriving at the impugned decision, is not immune from challenge made on account of violation of principles of natural justice.

15. In the judgment impugned, it has been observed that the complaint dated 27th November, 2015 on the basis of which inquiry was instituted against respondent No. 1 had not been placed on record and that its contents ought to have been disclosed to the petitioner and this complaint has not even been placed before the Court. This complaint according to Hon''ble Single Judge assumed significance inasmuch as under section 9 of the Act of 2013, there is a limitation permitting taking of cognizance within a period of three months from the date of last incident, where series of incidents are alleged. It has been observed by the Hon''ble Single Judge that only complaint, which has been brought on record is 5th of January, 2016, although the last incident took place in September, 2015. This complaint according to Hon''ble Single Judge was beyond the period of three months of the last alleged incident and if the said complaint was to be relied upon by the Committee, reasons had to be recorded in writing for extending the period of limitation, which was not given.

16. It has been pointed out by the learned counsel for the appellant-Institute

that Institute had remained closed for winter vacations and the complaint dated 5th January, 2015 was filed detailing the instances from January, 2014 onwards till September, 2015 and it was not necessary for the appellant-Institute to bring the said complaint dated 27th November, 2015 on record as the complaint dated 27th November, 2015 was not made part of the regular fact finding inquiry, but was only the basis for the preliminary inquiry held by the ICC to ascertain whether prima facie any case was made out for conducting regular detailed inquiry.

17. After having gone through the Act of 2013 and the Rule framed thereunder and the Hand-Book issued by the Ministry of Women and Child Development, this Court is of the view that it is not necessary that a copy of the complaint detailing instances of harassment be brought on record. It was sufficient that respondent No. 1 was given a copy of the detailed complaint made on 5th January, 2016 and this indeed was given to respondent as is evident from the reply that has been submitted by the respondent No. 1 to the same, which has been filed by the respondent petitioner himself as annexure-3 at page 45 to 59 of the writ petition.

18. The Rules of natural justice on which the Hon"ble Single Judge has laid great emphasis in the judgment impugned are not inflexible and immutable principles that have to be mandatorily followed in each case. In *Union of India and another v. Tulsiram Patel*, 1985 (3) Supreme Court Cases 398, the Supreme Court has observed as follows:

"Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are none the less not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the Constitution of the Tribunal which has to decide particular matter and the rules by which such Tribunal is governed. There is no difference in this respect between the law in England and in India. It is unnecessary to refer to various English decisions which have held so. It will suffice to reproduce what Ormond, L.J., said in *Norwest Holst Ltd. v. Secretary of State for Trade and others* L.R. [1978]1 Ch.201 (at page 227):

"The House of Lords and this Court have repeatedly emphasised that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case. One of the most important of these circumstances, as has been said throughout the argument, is, of course, the provisions of the Act in question, in this case sections 164 and 165 of the 1948 Act."

In India, in *Suresh Koshy George v. The University of Kerala and others*, (1969)

1 SCR 317, this Court observed (at page 322):

"The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions."

After referring to this case, in *A.K. Kraipak and others etc. v. Union of India and others* [1970] 1 S.C.R. 457, Hegde, J., observed (at page 469):

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

"Again in *Union of India v. Col. J.N. Sinha and another* [1971] 1 S.C.R. 791, it was said (at page 794-5):

"As observed by this Court in *A.K. Kraipak and Ors. v. Union of India* the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

" Here, we must not forget the warning given by Megarry, J., in *Houslow London Borough Council v. Tickenhan Garden Developments Ltd.* LR (1971) Ch 233, that the principles of natural justice must be confined within their proper limits and not allowed to run wild. The concept of natural justice is a magnificent thoroughbred on which this nation gallops forwards towards its proclaimed and, let us pray, its destined goal of "JUSTICE, social, economic and political." This thoroughbred must not be allowed to turn into a wild and unruly horse, careering off where it lists, unsaddling its rider, and bursting into fields where the sign "no pasaran" is put up."

19. The Act of 2013 and the Rule framed thereunder on which reliance has been placed by the ICC do not require that the statement of complainant be recorded in presence of the accused. It also does not require that the finding returned by the Inquiry Committee be made available to the accused. Only requirement under the Act and the Rules and the Hand-book issued thereunder by the Government of India, Ministry of Women and Child Development is that the complainant's statement be recorded as well as statement of the accused and the witnesses, if any, relied upon by both the parties. It is not necessary that opportunity of cross-examination be given.

20. Also, from perusal of the report of the ICC, which has been filed as annexure-2 to the paper book, the proceedings show that the Committee had talked to the complainant on 27.11.2015 and to the accused on 28.11.2015. Then again the Committee had talked to the complainant on 5th January, 2016 and it met the accused on 06.01.2016 to handover the complainant's detailed complaint and had asked him to submit his response to the same. Again the Committee had met on 21.01.2016 when the complainant as well as complainant's witnesses were examined and their statements taken and on 02.02.2016, respondent No. 1 was summoned and his statement taken.

21. It is clear that a detailed complaint amounting to "complaint" under the Act of 2013 was only filed by the complainant on 05.01.2016. Earlier deliberation of the ICC were mainly for the purpose of ascertaining whether prima facie a complaint mediated a detailed investigation. In the analysis of statements made by the complainant and her witnesses and the respondent and his witnesses, it has come on record that the respondent could not explain the money that was frequently transferred from the account of the complainant to the account of the respondent and from a perusal of the evidence on record, the Committee had found that the complainant's statement and testimony had been consistent from the very beginning and it inspired confidence and her statement was trustworthy and credible, and as against her statement the respondent's statements were full of sheer lies and inconsistencies.

22. Under section 11 of the Act of 2013 and the Rules framed thereunder specially Rule 7(4), which has been referred to in the judgment impugned, the only requirement was that the complainant Committee should make an inquiry into the complaint in accordance with principles of natural justice.

23. Even in the Hand-book issued on the subject by the Ministry of Women and Child Development, it has been stated that in case of fear of intimidation from the respondent, the complainant's statements can be recorded in the absence of respondent and the interviews are meant to obtain information that is relevant to the complaint from other individuals as well. The interviews should be conducted separately and in confidence. The complainant and the respondent should not be brought face to face with each other. It is only where both the parties are employees and regular disciplinary proceedings are being conducted before finalizing the finding, ICC shall share its finding with both the parties and provide

them an opportunity to make representation against it before the Committee.

24. The principles of natural justice have been explained with reference to cases on sexual harassment by the Supreme Court itself.

25. In *Avinash Nagra v. Novodya Vidyalaya Samiti & Others*, 1997(2) SCC 534, the Supreme Court had held that dispensing with a regular enquiry under the rules and denial of cross-examination did not vitiate inquiry on the ground of violation of principles of natural justice.

26. In the case of *Hira Nath Mishra & Others v. The Principal, Rajendra Medical College, Ranchi and another*, (1973)1 SCC 805, the statements of girl students had not been recorded in the presence of the male students. After the necessary enquiry, the Committee had found that the male students were guilty of grave misconduct and recommended that they should be expelled. Acting on this report, the Principal passed the order of expulsion. The Supreme Court held that in such circumstances, the requirement of natural justice was fulfilled and the relevant observations made by the court. Paragraphs 10 and 11 of the said judgment are being quoted herein below.

"10. We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In *Board of Education v. Rice* 1911 AC 179 Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. More recently in *Russell v. Duke of Norfolk* 1949 1 All ER 109 Tucker, L.J. observed: "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the

person concerned should have a reasonable opportunity of presenting his case." More recently in *Byrne v. Kinematograph Renters Society Ltd.* 1958 2 All ER 579 Harman, J. observed "what, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

"11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavory the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

27. In this case, although the appellant- Institute has constituted a Women's Cell and extracted an internal complaints Committee in pursuance of the guidelines issued by the Hon'ble Supreme Court in the case of *Vishaka* (supra) and in consonance with the Act of 2013 and the Rules framed thereunder, it cannot be said by any stretch of imagination that the respondent petitioner was an employee or that the complainant, also the student of Physics M.Sc. course in the Institute was an employee and Section 11 of the Act, which has been quoted by the Hon'ble Single Judge therefore, did not apply.

28. In this case, which is a case of two students studying in M.Sc. programme of IIT, Kanpur, strict procedure for conducting the disciplinary proceedings against the Government servant was not required to be followed.

29. Insofar as the detailed contents of the complaint filed on 5th January, 2016 not being filed before the Court is concerned, there is specific bar under section 16 of the Act to disclosing the identity of the complainant or the contents of the complaint. The Act prohibits the publication or making known the contents of complaint and inquiry proceedings. Any breach of confidentiality will result in

penalty under the relevant service rules.

30. The Act prohibits the disclosure of the contents of the complaint, identity and address of the complainant, respondent and witnesses, information pertaining to the inquiry proceedings or the recommendation of the ICC. In these circumstances, even the mention of the name of the complainant in the finding of the inquiry committee, which have been quoted by the Hon''ble Single Judge in his order impugned in this appeal are liable to be expunged.

31. It is settled law that under Article 226 of the Constitution of India, this Court is only exercising secondary review in cases where primary responsibility for taking a decision is on the administrative authorities. Even in cases where regular disciplinary proceedings are instituted against the Government servant, who are entitled to protection under Article 311 of the Constitution of India, the Supreme Court has held in several cases that if there is no procedural impropriety or illegality found in conducting the disciplinary proceedings, nor any extraneous material has been taken into consideration by the Disciplinary Authority, the decision taken by the Disciplinary Authority regarding the punishment to be imposed in proved cases of misconduct should not be lightly interfered with.

32. In the case of *Vishaka v. State of Rajasthan* (supra), the Hon''ble Supreme Court of India laid down legally binding guidelines basing them on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These included:

- * A definition of sexual harassment
- * Shifting accountability from individuals to institutions
- * Prioritizing prevention
- * Provision of an innovative redress mechanism.

33. The Hon''ble Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.

34. The Hon''ble Court placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

35. The Court also directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The guidelines extended to all kinds of

employment, from paid to voluntary, across the public and private sectors.

36. Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

- * Prohibition

- * Prevention

- * Redress

37. In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act hereinafter). Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements.

38. It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse to both civil and criminal proceedings.

39. The Supreme Court in the case of Apparel Export Promotion Council v. A.K. Chopra, 1999 (1) SCC 759 has observed that the Courts are required to examine the broader probabilities of the case and not get swayed by insignificant discrepancies or narrow technicalities. The statement of the victim has to be appreciated in the background of the entire case, and when the evidence of the victim inspires confidence, the Courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity and sympathy to the accused is wholly misplaced and mercy has not relevance.

40. The Hon'ble Supreme Court while discussing the concept of proportionality as regards punishments as observed that a just punishment is the collective cry of the society. The punishment should not be disproportionately excessive, but at the same time neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. An offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the misconduct has been committed and other concomitant factors.

Undue sympathy to impose inadequate penalties would do more harm to the justice system to undermine the public confidence in the efficacy of law. This Court will be failing in its duty if appropriate penalty is not awarded for an offence which has been committed not only against the individual victim but also against the society. In the oft quoted words of Justice Benjamin N. Cardozo, "Justice,

though due to the accused, is due to the accuser too".

41. In this case, the ICC had found after taking statements of both the complainant and the respondent and also their witnesses that the complainant had been subjected to extreme harassment and the physical and sexual abuse which culminate in the last incident, which is said to have occurred in September, 2015 which almost amounted to rape of the complainant. In such cases, even if no criminal complaint was made the finding which impelled Senate to terminate the academic programme of respondent petitioner cannot be taken lightly, also because the Hon''ble Single Judge has affirmed the said finding. Undue sympathy to impose inadequate penalty would do more harm to the society and a common man would lose faith in the Court in such cases. Meagre punishments imposed solely on account of the fact that the respondent-petitioner was young and at the threshold of his career, without considering the degree of offence will be counter productive in the long run and encourage such misdemeanors to proliferate in the society.

42. Having gone through the judgment impugned in this appeal, this Court finds that the Hon''ble Single Judge has been swayed unnecessarily by sympathy for the respondent-petitioner. Sympathy has no role to play in such cases.

43. In paragraphs 34 and 35 of the impugned judgment the Hon''ble Single Judge has observed that the complainant should have lodged a formal police complaint in the matter as the allegations when found proved by the Committee would amount to commission of offence, which was required to have been dealt with in accordance with law and that the complainant may not have consented to lodging of FIR and on the basis of which the certain inferences have been drawn by the Hon''ble Single Judge which are totally uncalled for. Moreover, certain observations made by the Hon''ble Single Judge that the complainant had been "too kind to the petitioner" and the advances of the respondent petitioner "ought to have been objected at the threshold" and immediately after the first incident occurred in February, 2014, a protest ought to have been raised are manifestly erroneous.

44. One aspect of the impugned judgment that is specially disturbing is that the Hon''ble Single Judge has drawn inferences against the private respondent only because she was arrayed as a party to the writ petition and notice had been issued to her and she had failed to file a response. In the judgment also, the Hon''ble Single Judge has allowed the name of the complainant to appear although there is a specific bar under section 16 of the Act and the Rules framed thereunder that the complainant is not required to be either examined in front of the accused or to be named anywhere in the proceedings. The name of the private-respondent No. 5, which has appeared in the body of the impugned judgment should be expunged from the record and instead the complainant should be referred to Miss "X" at all times.

45. The Special Appeal is allowed. The impugned order dated 21.12.2016 is set

aside. Since it has been agreed upon by the learned counsel for the appellant-Institute that the petitioner-respondent may approach the Institute again through representation praying for reconsideration of the penalty imposed upon him by the Senate, liberty is given to the petitioner-respondent to approach the Senate for reconsideration of its order with regard to penalty imposed by it within ten days from the date of receipt of certified copy of this order and the Senate may consider the case of the petitioner thereafter, as permissible in law, and decide the same expeditiously within a period of one month thereafter.