
(2022) 12 CAL CK 0050
In the Calcutta High Court
Case No : Criminal Revision No. 56 Of 2020

Professor Dr. Tapan Kumar Biswas & Anr. APPELLANT
Vs
State Of West Bengal & Anr. RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 354, 376, 376A, 376B, 376C, 376D, 504, 509
Code Of Criminal Procedure, 1973 — Section 173(2), 173(8), 190, 209, 216, 217,
227, 228, 327, 482
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 2(n)

Citation : (2022) 12 CAL CK 0050

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Sibaji Das, Prasun Kumar Datta, Md. Kutubuddin, S. Deb Roy

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The present revision is against an order dated 18.02.2019 passed by the learned Additional Chief Judicial Magistrate-2, Kalyani, Nadia in G.R. Case No. 614 of 2018 with a prayer for quashing of the chargesheet in Kalyani P.S. Case No. 288 of 2018 for offence punishable under Section 354/506/509/34 IPC. Petitioner no. 1/accused is a professor of Kalyani University and the petitioner no. 2 is a research scholar in the said University under the same Department of Folklore. The opposite party no. 2/complainant is an M Phil student of the same department in the said University.

The complainant/opposite party no. 2 filed a written compliant with the Kalyani P.S. on 31.07.2018 stating therein that since her admission in Kalyani University, the petitioner no. 1 has misbehaved with her and asked for sexual favours in and outside of the classroom for enabling her to complete her research successfully. The petitioner no. 2 who used to do research under the petitioner no. 1 also did

the same with the opposite party no. 2. Over the said issue, the opposite party no. 2 made two complaints dated 09.11.2017 and 17.11.2017 respectively to the Vice Chancellor and Registrar of the University. However, since no step was taken, she made representation again on 20.03.2018 before the Presiding Officer, Internal Complaints Committee (ICC) and the earlier two authorities. She made another representation on 21.03.2018 to the Hon'ble Governor and to Minister in Charge, Department of Higher Education and also the UGC.

The complaint dated 17.11.2017 made by the complainant to the University was taken up by the Internal Complaints Committee and after a thorough inquiry, the petitioner no. 1 was held 'not guilty' and was discharged from all charges on 02.07.2018.

It is further submitted that the opposite party no. 2 alleged that even during pendency of the said proceedings she received threat calls from different persons. It has also been stated that the petitioner no. 2 since the day of discharge of the petitioner no. 1 by the ICC has been rejoicing on social media.

The petitioner's case before this Court is that on filing of the charge sheet cognizance was taken mechanically by the learned Magistrate. It is also the case of the petitioner that the complaint was only in respect of petitioner no. 2 but the petitioner no. 1 has been falsely implicated. It is further submitted by the petitioner that the internal complaints committee not only discharged the petitioner no. 1 from all charges but also recommended some restrictions upon the complainant. It is the case of the petitioner that the said complaint is false, maliciously instituted with an ulterior motive for wreaking vengeance out of private and personal grudge due to the discharge from sexual harassment charge by the internal complaints committee. It is submitted that the continuation of the present proceedings would be abuse of the process of Court.

Mr. Sibaji Das learned Counsel for the petitioners has submitted that the materials collected during investigation does not show any 'mens rea' on the part of the petitioners. That the ingredients required to constitute the offence as alleged are totally absent in the present case. The allegations are totally false and the cognizance in the case has been taken in a mechanical manner and if the present proceedings are allowed to be continued, there will be serious miscarriage of justice against the petitioners and as such in view of the findings of the ICC and the materials on record the present proceedings are liable to be quashed.

In spite of due service upon the opposite party no. 2 and the appearance of her counsel on 16.11.2022, none has appeared on her behalf before this Court on the date of final hearing that is on 28.11.2022.

Mr. Prasun Kumar Datta learned Counsel for the State has produced a copy of the case diary and has submitted that there is sufficient evidence against both the accused persons/petitioners and from the said evidence collected a prima facie case of a cognizable offence as alleged has been made out against the accused/

petitioners and the charge sheet has been submitted in accordance with law and as such the criminal revision is liable to be dismissed.

Admittedly the ICC of Kalyani University resolved on the basis of evidence before it that "it is hard to substantiate the complaints made by Nabanita Barman against Professor (Dr.) Tapan Kumar Biswas" (Petitioner no. 1).

The said report of the ICC is dated 2nd July, 2018. It is a matter of record that Kalyani P. S. Case no. 288 of 2018 has been initiated on the basis of a complaint filed by the opposite party no. 2 on 31.07.2018, that is 29 days after the report of the ICC finding the petitioner no. 1 "not guilty" in respect of the complaint dated 20.03.2018 filed before the ICC.

The ICC in their final report noted the following points:-

(i) The intention of the complainant becomes questionable because of the fact that she made a false statement about a teacher of the Department, whom she wanted as her witness.

(ii) The ICC also notes with grave concern that the complainant questioned the activities of the ICC and lodged a complaint against the ICC to His Excellency, the Governor of West Bengal and Hon'ble Chancellor of University of Kalyani when the enquiry was in progress. This seems to be an attempt to create obstruction in the process of enquiry.

(iii) In a letter dated 21.06.2018, the complainant mentioned that the then HoD left the venue of fieldwork without informing the students. Deposer 10 (In Case No. 5 of the ICC), who is a teacher of the Department, stated that the HoD had some important work for which he had to leave early. Also it was known that the complainant's supervisor was present there over the entire period for taking care of the fieldwork. The ICC feels that it is not the prerogative of a student or a research scholar to question the movement of a teacher. The complainant as a research scholar has crossed her limit by her statement.

In addition the ICC recommended the following action against the complainant. As per Clause 10(2), Sub-clauses (a) and (b) of the UGC Regulations, 2015 the complainant may be:-

(i) Barred from accessing the library, auditoria, halls of residence, transportation, scholarships, allowances and identity card.

(ii) Restricted entry into the campus for six months.

On perusal of the findings of the ICC the relevant findings are as follows:-

(a) Habitually using indecent language while teaching in the M.Phil course work classes.

Deposers 1,2,3,4,5,6,7,8,9,10,11, – all of them have attended M.Phil lectures of the respondent and they did not find his teaching indecent or obscene. Only deposer 12 told the ICC that the respondent said to the complainant "Tor bal

peke tal tolai galo tao buddhi holo na” [Even with grey hair she has not matured]. Deposer 14 said that the complainant later told her about it.

(b) Making obscene comment about her in the class; even commenting on her physical appearance outside the class.

Deposers 1,2,3,4,5,6,7,8,9,10,11 did not know anything about this allegation. Deposer 12 reported that the respondent once made obscene comment about the complainant outside the class room. He reported that the respondent said “Tor to pode e nai” [You don’t have buttock]. Deposer 14 corroborated the complainant’s allegation that the respondent referred to a part of her anatomy outside the class room.

The other findings being (d), (e) and (f) are contradictory and subject to further proof.

The observation of the ICC is as follows:-

(1) It was noted that though the alleged harassment of the complainant by the respondent has been taking place for quite some time she did not complain to the HoD of the Department or any other person in authority when it was happening. She only confided in some friends who are also research scholars working under the same supervisor as her. When asked why she did not report it earlier she said that it was her prerogative to decide the time of action.

(2) The ICC also notes the long delay and timing of the complaint. The complaint was lodged at a time just after another case of sexual harassment was lodged against her M.Phil supervisor. The complainant failed to give proper explanation why she did not complain immediately after the incidents. The complainant has issued self-contradictory statement when she said that only after they were called to depose before an enquiry committee that probed allegation of misconduct against their supervisor and another teacher of the Department that the respondent started to misbehave with her. This does not fit into the narrative of sustained misbehavior of the respondent since September 2015 when the complainant was admitted to the M.Phil programme.

(3) It is also to be noted that she brought the charge of sexual harassment against the respondent only after she was admitted to the PhD programme on 20.03.2018 and her proposed supervisor was sent on forced leave on charges of sexual misconduct.

(4) The ICC notes that for every complaint there is only a particular set of person cited as witnesses. No other deposer has corroborated any of the complaints. Thus it may seem to be an orchestrated effort on the part of the complainant and a group of research scholars to malign people who in their perception belong to a hostile group in the Department.

(5) It is also to be noted that the complainant has lodged a complaint of sexual harassment against a research scholar of the Department who happens to be the

supervisee of the respondent and in her complaint has alleged that the respondent has incited the supervisee to heckle her. From the evidence collected for an earlier case it becomes clear that complaint and counter-complaint is a strategy freely used by these students.

The learned Counsel for the petitioner relied upon the judgment of the Supreme Court in *Vishaka vs. State of Rajasthan* (1997 AIR) (SC) 3011. This was a landmark case regarding the protection of woman against sexual harassment at workplace. The case laid down several guidelines and requirement which need to be fulfilled by the employer as well as other responsible person or institutions.

This judgment led to the enactment of Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which came into force from 9th December, 2013 (hereinafter referred to as 'SHWW Act of 2013').

Section 2(n) of the SHWW Act of 2013 defines:-

"2(n) "Sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;"

The following alleged comments clearly comes within the purview of Section 2(n) of the SHWW Act, 2013:-

(a) Habitually using indecent language while teaching in the M.Phil course work classes.

Deposers 1,2,3,4,5,6,7,8,9,10,11, – all of them have attended M.Phil lectures of the respondent and they did not find his teaching indecent or obscene. Only deposer 12 told the ICC that the respondent said to the complainant "Tor bal peke tal tolai galo tao buddhi holo na" [Even with grey hair she has not matured]. Deposer 14 said that the complainant later told her about it.

(b) Making obscene comment about her in the class; even commenting on her physical appearance outside the class.

Deposers 1,2,3,4,5,6,7,8,9,10,11 did not know anything about this allegation. Deposer 12 reported that the respondent once made obscene comment about the complainant outside the class room. He reported that the respondent said "Tor to pode e nai" [You don't have buttock]. Deposer 14 corroborated the complainant's allegation that the respondent referred to a part of her anatomy

outside the class room.

The internal complaint committee of the Kalyani University conducted an enquiry and held as discussed above. It is the case of the petitioners that after being discharged by the internal complaints committee, the petitioners have been framed in this criminal case by the complainant with malafide intention.

In Civil Appeal No. 5848 of 2021 (Union of India & Ors. vs. Dalbir Singh) the Supreme Court held (relevant paragraphs are reproduced herein):-

"25. This Court in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.*, (2005) 7 SCC 764 held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".

It was held as under:-

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled.

Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

(Emphasis Supplied)

26. This Court in *Noida Entrepreneurs Association v. NOIDA & Ors.* (2007) 10 SCC 385, held that the criminal prosecution is launched for an offence for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public, whereas, the departmental inquiry is to maintain discipline in the service and efficiency of public service. It was held as under:

“11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental inquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. [See *Tata Cellular v. Union of India* [(1994) 6 SCC 651] and *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh* [(2004) 2 SCC 130] .] The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to *Kendriya Vidyalaya Sangathan v. T. Srinivas* [(2004) 7 SCC 442 : 2004 SCC (L&S) 1011], *Hindustan Petroleum Corpn. Ltd. v. Sarvesh Berry* [(2005) 10 SCC 471 : 2005 SCC (Cri) 1605] and *Uttaranchal RTC v. Mansaram Nainwal* [(2006) 6 SCC 366 : 2006 SCC (L&S) 1341] .

“8. ... The purpose of departmental inquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offense for violation of a duty, the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in the criminal cases against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offense generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When the trial for a criminal offense is conducted it should be in accordance with proof of the offense as per the evidence defined under the provisions of the Indian Evidence Act, 1872 [in short ‘the Evidence Act’]. The converse is the case of departmental inquiry. The inquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the departmental inquiry

would seriously prejudice the delinquent in his defense at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

27. This Court in *Depot Manager, A.P. State Road Transport Corporation v. Mohd. Yousuf Miya & Ors.*, (1997) 2 SCC 699, held that in the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment. It was held as under:

“7. ...There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.” (Emphasis Supplied)

28. Mr. Yadav, learned counsel for the writ petitioner has submitted that during the pendency of the writ petition before the High Court, 9 (1997) 2 SCC 699 the appellants were given opportunity to produce the registers of the entrustment of S.L.R. to the writ petitioner. But it was stated that record was not available being an old record as the incident was of 1993. The enquiry was initiated in 2013 after the acquittal of the writ petitioner from the criminal trial. Therefore, in the absence of the best evidence of registers, the oral evidence of use of official weapon stands proven on the basis of oral testimony of the departmental witnesses.

29. The burden of proof in the departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct. The delinquent such as the writ petitioner could examine himself to rebut the allegations of misconduct including use of personal weapon. In fact, the reliance of the writ petitioner is upon a communication dated 1.5.2014 made to the Commandant through the inquiry officer. He has stated that he has not fired on higher officers and that he was out of camp at the alleged time of incident. Therefore, a false case has been made against him. His further stand is that it was a terrorist attack and terrorists have fired on the Camp. None of the departmental witnesses have been even suggested about any terrorist attack or that the writ petitioner was out of camp. Constable D.K. Mishra had immobilized the writ petitioner whereas all other witnesses have seen the writ petitioner being immobilized and being removed to quarter guard. PW-5 Brij Kishore Singh deposed that 3-4 soldiers had taken the Self-Loading Rifle (S.L.R.) of the writ

petitioner in their possession. Therefore, the allegations in the chargesheet dated 25.2.2013 that the writ petitioner has fired from the official weapon is a reliable finding returned by the Departmental Authorities on the basis of evidence placed before them. It is not a case of no evidence, which alone would warrant interference by the High Court in exercise of power of judicial review. It is not the case of the writ petitioner that there was any infraction of any rule or regulations or the violation of the principles of natural justice. The best available evidence had been produced by the appellants in the course of enquiry conducted after long lapse of time."

In the present case also the investigating authority has found clear evidence against the petitioners. The conduct of the petitioner no. 2 is clear from the WhatsApp chats made part of the case diary. There is also sufficient material in the case diary and also in the findings of the ICC against the petitioner no. 1.

The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. On the other hand in a departmental proceedings penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability" as the degree of burden of proof is different. (Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corporation Ltd. Haldia and Ors. (Supra).

The criminal case initiated by the police on the basis of the complaint filed by the opposite party no. 2 wherein charge sheet has been filed is in accordance with law as the proceedings under taken is in a different forum where a case leads to trial only on collection of evidence. Such proceedings should not be quashed or set aside (police case).

The Supreme Court in Union of India and Ors. vs. Dalbir Singh (Supra) has very clearly laid down the guidelines in such cases.

The fact that charge sheet has been submitted and also considering the materials in the case diary, it is found that there is sufficient evidence to proceed against the petitioners in accordance with law in the said case before the learned Magistrate. As the degree of burden of proof is different in a criminal proceeding from that in a departmental proceedings, there would be no bar to proceed even simultaneously in both the proceedings. And these facts thus does not warrant interference by the High Court in exercise of its inherent powers, as it is clear that there has been no violation of the principle of natural justice or abuse of process of law.

On perusal of the findings of the ICC it is found that the said findings in points no. a, b, c are findings of the ICC which are contradictory and reasonably not supported by evidence and the said findings are also totally against the nature of evidence (clear evidence) produced before the ICC, against the petitioners. The

ICC has come to a finding which is contrary to the materials and evidence on record. The said findings are also contrary to the evidence before the ICC, which is clearly illegal and irregular and vitiates the said process by which the decision has been arrived at. The decision making process of the ICC in this case is clearly against the principle of natural justice and not in accordance with law and the complainant before the ICC has clearly not received fair treatment. The manner in which the decision was arrived at by the ICC was passed without following the principles established by law and the rules of natural justice and thus the complainant has clearly not received a fair treatment.

The observation of the ICC and the important points noted by the ICC are repeated here for easy reference:-

(1) It was noted that though the alleged harassment of the complainant by the respondent has been taking place for quite some time she did not complain to the HoD of the Department or any other person in authority when it was happening. She only confided in some friends who are also research scholars working under the same supervisor as her. When asked why she did not report it earlier she said that it was her prerogative to decide the time of action.

This court:- In such cases friends are taken into confidence first.

(2) The ICC also notes the long delay and timing of the complaint. The complaint was lodged at a time just after another case of sexual harassment was lodged against her M.Phil supervisor. The complainant failed to give proper explanation why she did not complain immediately after the incidents. The complainant has issued self-contradictory statement when she said that only after they were called to depose before an enquiry committee that probed allegation of misconduct against their supervisor and another teacher of the Department that the respondent started to misbehave with her. This does not fit into the narrative of sustained misbehavior of the respondent since September 2015 when the complainant was admitted to the M.Phil programme.

This Court:- It is to be noted that there was another case of sexual harassment lodged against the petitioner no.1. The complainant/opposite party herein had deposed in that case before the enquiry committee after which the alleged harassment started.

(3) It is also to be noted that she brought the charge of sexual harassment against the respondent only after she was admitted to the PhD programme on 20.03.2018 and her proposed supervisor was sent on forced leave on charges of sexual misconduct.

This Court:- Such complaints are normally made after a lot of thought, having to overcome one's fear, fear for self, for one's future, fear of society and finally the stigma attached.

(4) The ICC notes that for every complaint there is only a particular set of person cited as witnesses. No other deposer has corroborated any of the complaints.

Thus it may seem to be an orchestrated effort on the part of the complainant and a group of research scholars to malign people who in their perception belong to a hostile group in the Department.

This Court:- This is clearly a case of presumption.

(5) It is also to be noted that the complainant has lodged a complaint of sexual harassment against a research scholar of the Department who happens to be the supervisee of the respondent and in her complaint has alleged that the respondent has incited the supervisee to heckle her. From the evidence collected for an earlier case it becomes clear that complaint and counter-complaint is a strategy freely used by these students.

This Court:- Welfare of the students should be paramount in such institutions.

(i) The intention of the complainant becomes questionable because of the fact that she made a false statement about a teacher of the Department, whom she wanted as her witness.

This Court:- (?)

(ii) The ICC also notes with grave concern that the complainant questioned the activities of the ICC and lodged a complaint against the ICC to His Excellency, the Governor of West Bengal and Hon'ble Chancellor of University of Kalyani when the enquiry was in progress. This seems to be an attempt to create obstruction in the process of enquiry.

This Court:- (?)

(iii) In a letter dated 21.06.2018, the complainant mentioned that the then HoD left the venue of fieldwork without informing the students. Deposer 10 (In Case No. 5 of the ICC), who is a teacher of the Department, stated that the HoD had some important work for which he had to leave early. Also it was known that the complainant's supervisor was present there over the entire period for taking care of the fieldwork. The ICC feels that it is not the prerogative of a student or a research scholar to question the movement of a teacher. The complainant as a research scholar has crossed her limit by her statement.

This Court:- (?)

And the finally the recommendation of the ICC against the complainant, in a case of alleged sexual harassment was as follows:-

As per Clause 10(2), Sub-clauses (a) and (b) of the UGC Regulations, 2015 the complainant may be:-

(i) Barred from accessing the library, auditoria, halls of residence, transportation, scholarships, allowances and identity card.

(ii) Restricted entry into the campus for six months.

The Supreme Court in Criminal Appeal no. 1184 of 2022 (X,Y,Z vs. State of Madhya Pradesh & Ors.) on 5th August, 2022, held (relevant paragraphs are reproduced here):-

"15. First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in *Lalita Kumari v Government of Uttar Pradesh* has laid out the position of law as summarized in the following extract of the decision:

"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is 5 (2014) 2 SCC 1 7 mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.

30. Finally, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in *Virender v State of NCT of Delhi*, 8 2009 SCC Online Del 3083 courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of 8 2009

SCC OnLine Del 3083 14 ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:

22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix, witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse.

(emphasis supplied)

31. While the Delhi High Court made these observations while dealing with a case of rape, courts must remain alive to their duty to treat victims sensitively in cases alleging all forms of sexual harassment and sexual assault. The Courts must try to ensure that the process of attempting to bring alleged perpetrators to justice is not onerous for the victims. Aggrieved persons should not have to run from pillar to post for the mere registration of a complaint and initiation of investigation especially when a cognizable offence is *prima facie* made out in their complaint.

32. In *Aparna Bhat v State of Madhya Pradesh*, 9 2021 SCC Online SC 230 a two-judge Bench of this Court took note of the “entrenched paternalistic and misogynistic attitudes that are regrettably reflected at times in judicial orders and judgments.” In that case, Justice S. Ravindra Bhat observed and we reiterate:

31. The role of all courts is to make sure that the survivor can rely on their impartiality and neutrality, at every stage in a criminal proceeding, where she is the survivor and an aggrieved party. Even an indirect undermining of this responsibility cast upon the court, by permitting discursive formations on behalf of the accused, that seek to diminish his agency, or underplay his role as an active participant (or perpetrator) of the crime, could in many cases, shake the confidence of the rape survivor (or accuser of the crime) in the impartiality of the court. The current attitude regarding crimes against women typically is that “grave” offences like rape are not tolerable and offenders must be punished. This, however, only takes into consideration rape and other serious forms of gender-based physical violence. The challenges Indian women face are formidable : they include a misogynistic society with entrenched cultural values and beliefs, bias (often sub-conscious) about the stereotypical role of women, social and political structures that are heavily male-centric, most often legal enforcement structures that either cannot cope with, or are unwilling to take strict and timely measures. Therefore, reinforcement of this stereotype, in court utterances or orders, through considerations which are extraneous to the case,

would impact fairness.

...

43. The instances spelt out in the present judgment are only illustrations; the idea is that the greatest extent of sensitivity is to be displayed in the judicial approach, language and reasoning adopted by the judge. Even a solitary instance of such order or utterance in court, reflects adversely on the entire judicial system of the country, undermining the guarantee to fair justice to all, and especially to victims of sexual violence (of any kind from the most aggravated to the so-called minor offences).

33. The legislature has, at places, moulded criminal procedure to enable victims of sexual crimes to seek justice. This has been done in recognition of the gravity of sexual crimes and the need to handle such cases in an appropriately sensitive manner. For instance, Section 327 CrPC provides for in camera trials to be conducted with respect to offences punishable under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code 1860.

34. This Court, too, has had its role to play in ensuring that justice does not remain inaccessible. In *State of Maharashtra v. Bandu @ Daulat*, 10 (2018) 11 SCC 163 this Court directed that special centres be set up in each state in order to facilitate depositions by vulnerable witnesses, including victims of sexual offences. In *Smruti Tukaram Badade v. State of Maharashtra*,¹¹ a two judge bench of this Court (of which one of us, Dr. DY Chandrachud, J. was a part)

supplemented the directions issued in *Bandu @ Daulat* (supra) with respect to setting up such special centres.

35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:

a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment / violence;

b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;

c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;

d. Completing cross-examination in one sitting, as far as possible."

From the said view and guidelines of the Supreme Court and the discussion and findings of this court as made above, this Court finds that the written complaint before the police in this case clearly makes out a prima facie case of cognizable offence against the petitioners and on collection of clear evidence, charge sheet has also been submitted.

The Supreme Court in the case of Apparel Export Promotion Council vs. A.K. Chopra on 20th January, 1999 (AIR 1999 Supreme Court 625) held:-

"The High Court in writ jurisdiction may not normally interfere with those factual findings (disciplinary authority) unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable....."

The Court further held:-

"Lord Halton in Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141, observed : The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court.

Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the Court while exercising the power of Judicial Review must remain conscious of the fact that if the decision has been arrived at by the Administrative Authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the Court cannot substitute its judgment for that of the Administrative Authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

From the report of the ICC as discussed earlier, it is clear that the complainant did not receive a fair treatment. The Supreme Court in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2021) SCC online SC 315, the Court held:-

".....

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide

power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

.....”

In *Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr.*, Special Leave petition (CRL.) No. 2953 of 2022, the Court held :-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

In *Umesh Kumar Vs State of Andhra Pradesh and Anr.* (Supra) the Supreme Court held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide *Pepsi Foods Ltd. v. Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128], *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796], *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and *Padal Venkata Rama Reddy v. Kovvuri*

Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

"68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to 'killing a stillborn child'. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report."

(emphasis supplied)

23. The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In *Sheonandan Paswan v.*

State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)

"16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

"74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

"8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

(See also K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/altered at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is

altered or added by the court.”

30. In *State of Maharashtra v. Salman Salim Khan* [(2004) 1 SCC 525 : 2004 SCC (Cri) 337 : AIR 2004 SC 1189] this Court deprecated the practice of entertaining the petition under Section 482 CrPC at a premature stage of the proceedings observing as under : (SCC pp. 527-29, paras 4 & 12)

“4. ... The arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as in this case, proceedings get protracted by the intervention of the superior courts.

In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. ...”

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned; the committal proceedings have not yet taken place. There after the trial shall commence.

The Supreme Court in *State of Maharashtra vs. Salman Salim Khan* (2004) 1 SCC-525, held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

At present the only material before this Court is the charge sheet included in the case diary and at this stage, it is premature to come to a clear finding. The materials in the case diary and the charge sheet there in makes out a cognizable offence against the accused/petitioners and there is sufficient materials for proceeding against the accused/petitioners towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court).

The Charge Sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court.

Applications against charge sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial, amounts to pre trial of Criminal trial. (*State of Bihar Vs P.P. Sharma*, AIR 1991 SC 1260).

The ultimate test therefore, is whether the allegations have any substance (*Prakash Singh Badal Vs State of Punjab*, AIR 2007 SC 1274).

In the Present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant in a cognizable offence,

which is triable by a court of sessions and as such the proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

Accordingly, the criminal revisional application being CRR 56 of 2020 stands dismissed.

No order as to costs.

Case diary be returned all connected applications stands disposed of interim order if any stand vacated.

Let a copy of this judgment sent to the Trial Court for compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.