

(2002) 02 DEL CK 0073

In the Delhi High Court

Case No : Criminal M. (M) No's. 31 and 264 of 1997

Rear Admiral(Retd) Balakrishnan Ravi Manon

APPELLANT

Vs

Ms. Vandana Jhingan and Others
 Cdr. (Retd.) Ahkeel
Sheikh Vs Ms. Vandana Jhingan and Others

RESPONDENT

Date of Decision : 18-02-2002

Acts Referred:

Citation : (2002) 3 AD 1051 : (2002) 97 DLT 286 : (2002) 62 DRJ 318 : (2002)
2 RCR(Criminal) 630

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : J.C. Gupta, for the Appellant; S.C. Chawla and Rajesh Chugh, for the
Respondent

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—This order will dispose of two petitions under Sections 482 Cr.P.C. directed against the order dated 7th December, 1996 passed by the court of Metropolitan Magistrate, Shahdara summoning the petitioner for the offences under Sections 354/509/500/506 IPC for the alleged sexual harassment of the complainant.

2. Briefly stated the facts are the respondent Ms. Vandana Jhingan filed a complaint stating that after doing M.A. in Public Administration and Post Graduate Diploma in Marketing and Sales from Delhi University in 1986, she was appointed as Assistant in M/s. Goa shipyard Limited for Delhi Office only. She worked under four different Chairmen and Managing Directors without any problem. On 8th November, 1994, Balakrishnan Ravi Menon was appointed as the CMD. Akheel Sheikh was the DGM (P&A). In the complaint several incidents of sexual harassment and attempt to outrage her modesty between October 1994 and 3rd April, 1995 were detailed. It is alleged that at the time of introduction, Mr. Menon, in an objectionable tone remarked "So you are the young lady working in Delhi Office. i have heard a lot about you"; that on

30.10.1994, he visited the office while she was leaving the office and remarked "So young lady, you are going home. I am your new Chairman & Managing Director and he desired that the complainant should stay more in the office". The complainant replied that since she had to catch the chartered bus, she leaves immediately after the office hours. It is alleged that between 31st October and 7th November, 1994, Mr. Menon called the complainant twice at his office from Bombay and in a sinister tone tried to implore on the complainant that he would like a young girl like the complainant to be posted in CMD's Secretariat at Goa. Complainant replied that she had to look-after her old parents as her brother was in America; that on 11.11.1994, Mr. Menon telephoned from Goa and told the complainant that he would be sending Akeel Sheikh with some proposal and asked her to discuss with him. The complainant was on duty at Pragati Maidan where GSL stall was put for exhibition at India International Trade Fair, 1994. Mr. Sheikh visited the stall at about 19.00 hours in an inebriated state. He in the presence of Sh. S.C. Sharma, Manager, Delhi Office asked the complainant that he would like to talk to the complainant separately and asked her to meet at the Hotel. She was threatened that in case the complainant does not accept the proposal she would be harassed. On 22.11.1994 CMD Mr. Menon came to Delhi and visited the stall in Pragati Maidan at about 5.00 P.M. He met the complainant and in a sarcastic tone remarked "So young lady, you did not listen to the advise of CDR. Sheikh and have decided not to come to Goa". He further said that in case the complainant accepts the transfer to Goa and joins there, he would make her P.R.O." The request was declined. Mr. Menon again visited Delhi on 1.12.1994 and asked her to meet him at Hotel Taj Palace where he was staying. The complainant did not go. CMD ordered the Finance Department to recover the residential telephone bill expenses from her salary which were earlier reimbursed. It is alleged that on 18.1.1995 a presentation on Hover Craft was organized by GSL in Bharat Electronics Ltd. Conference Room in Chanderlok building in Janpath, New Delhi and the complainant was deployed to receive the guests and to look-after the arrangements. After the function, the complainant was asked to stay on. Mr. Menon again doled out allurements with regard to advancement of complainant's career and covertly in a patronising manner tried to rest his hand on the complainant's shoulder when the room was deserted. The complainant came out and narrated the incident to Mr. S.C. Sharma, Manager (PR), who was quite sympathetic. It is also alleged that on 9.9.1995, there was a Public Notice in Hindustan Times that complainant had deserted job. The complainant addressed a complaint to Shri Vijay Kapoor, the then Secretary, Department of defense (Production & Supplies), Ministry of defense, South Block, New Delhi and to DCP, Women Cell. no action was taken. It is inter alias pleaded that the remarks made by the petitioners were willful and deliberate and amounted to assault as defined u/s 351 of the Indian Penal Code. From the remarks and gestures made by the petitioners, it was clear that they were bent upon outraging her modesty. Mr. Sheikh was sharing the secrets with Mr. Menon. He was instrumental in supplementing the scandalous and motivated plan of Mr. Menon. The complainant in support of her case examined herself as CW-1, Mr.

Suresh Sharma, Manager, Delhi Office as CW-2. She also proved on record copies of the report sent by her as CW-3/A, CW-3/B and CW-3/C. On the basis of the record, learned trial court vide impugned order dated 7.12.1996 summoned the accused persons. This order is under challenge.

3. I have heard the learned counsel for the parties and have been taken through the record.

4. Learned counsel for the petitioners argued that complainant filed her first complaint on or about 6th April, 1996 and the same was withdrawn on technical grounds, thereafter, on the same facts the complainant filed a fresh complaint on 15th May, 1996. He argued that second complaint on the basis of same facts is not permissible and, Therefore, the summoning order is liable to be quashed. I am unable to agree. Admittedly, the first complaint was not dismissed on merits. It was allegedly withdrawn on some technical grounds, which are not clear from the record, with permission to file fresh. Therefore, the second complaint on the same set of facts was maintainable as was held by the Supreme Court in *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, . Therefore, I find no merit in this contention. Learned counsel for the petitioners next argued that allegations against the accused persons are totally false and they were involved because the complainant was transferred from Delhi to Goa where she never wanted to join. He argued that they are highly respectable and responsible persons and on the face of it, the allegations cannot be accepted. Learned counsel for the Complainant argued to the contrary.

5. As noticed above, immediately after the incidents complainant sent the complaint to various authorities against the accused persons including Secretary, Ministry of defense, DCP, Crime Branch and also reported the matter to the other persons working in the office who have been cited as witnesses. Trial court on the basis of pre-summoning evidence summoned the accused persons. As per the settled law, at the stage of summoning, the court is only to see whether there is sufficient ground to proceed with the matter. The evidence of witnesses is entitled to reasonable degree of prudence. At this stage, the court is only to see whether prima facie there is sufficient ground for proceeding with the complaint and not whether the allegations in the complaint can lead to conviction. Reference in this regard can be made to the Supreme Court decision in *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, wherein it was held:

"Under Section 203, he may dismiss the complaint, if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, u/s 202, there is in his judgment "no sufficient ground for proceeding". The words "sufficient ground" used also in Section 209 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. (See *Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay*, . In *Vadilal Panchal Vs. Dattatraya Dulaji*

Ghadigaonker and Another, this Court considered the scheme of Sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process."

6. Learned counsel for the petitioner also argued that even basic ingredients of offences are not made out. I find no merit in this contention. In case of alleged sexual harassment by the superior officers, narrow technicalities should not come in the way.

7. The questions raised by the petitioners are questions of fact, which cannot be examined at this stage. The pleas sought to be raised here, can be pleaded before the trial court at an appropriate stage. To conclude at the stage of summoning, the court is only required to see whether there are sufficient grounds to proceed with the complaint. In this case averments made in the complaint cannot be said to be inherently improbable or unworthy of the credence. The defense raised by the petitioners cannot be considered at this stage.

8. For the foregoing reasons, I find no merit in the above two petitions and the same are dismissed. Any observations made herein shall not affect the merits of the case during the trial.