

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:

{JUSTICE ANAND PATHAK, J.}

MISC.CRIMINAL CASE NO.14701/2023

Smt. Indu Bora

Vs.

State of Madhya Pradesh & Anr.

Shri Rajmani Bansal – Advocate for the petitioner.
Shri Rajeev Upadhyay – Government Advocate for the
respondent/State.
Shri Yogesh Chaturvedi– Advocate for respondent
No.2/complainant.

ORDER

(Delivered on 2nd day of July, 2024)

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 is preferred by the petitioner seeking quashment of the FIR registered at Crime No.508/2022 at the Police Station Gole Ka Mandir District Gwalior for offence under Sections 354-A, 509, 120-B of IPC.
2. Precisely stated facts of the case are that petitioner was working as Head of the Department (HOD) of Yogic Sciences whereas complainant was working as Yoga Instructor at the relevant point of time. It appears that dispute started when the present petitioner

issued show cause notice dated 09-08-2018 regarding complainant's absence on 09-08-2018 itself and respondent No.2 replied the said show cause notice on 11-08-2018. Thereafter different correspondences also took place between the parties.

3. It appears that respondent No.2 was mainly aggrieved by the action/intention/overtures of the then Vice Chancellor, therefore, she raised certain allegations against the then Vice Chancellor and against the petitioner by way of filing police complaint. When no action was taken by the police authorities, then she filed an application under Section 156(3) of Cr.P.C. before the JMFC, Gwalior for allegations mainly in respect of section 354A of IPC.
4. The JMFC, Gwalior directed the petitioner to make her statement before the Court purportedly under Section 200 of Cr.P.C. and treated the said application as private complaint. Court below rejected the prayer of complainant to direct police to investigate the allegations. Being aggrieved by the said order she preferred a petition under Section 482 of Cr.P.C. vide M.Cr.C.No.63392/2021 which was dismissed by this Court vide order dated 06-01-2022 giving opinion that order of JMFC, Gwalior treating the application under Section 156(3) of Cr.P.C. as complaint is correct and dismissed the petition.

5. Being aggrieved by the said order, respondent No.2 filed SLP which converted into Criminal Appeal bearing No.1184/2022 and vide order dated 05-08-2022 the Apex Court allowed the appeal and set aside the order passed by this Court in M.Cr.C.No.63392/2021 and directed the JMFC, Gwalior to proceed further with direction for registration of case and investigation. Thereafter, police registered the FIR at crime No.508/2022 and after investigation, charge-sheet has been filed in the matter. Petitioner is against this charge-sheet.
6. It is the submission of learned counsel appearing for the petitioner that the instant FIR is nothing but an abuse of the process of law. After direction of the Supreme Court in the matter, case has been registered against the petitioner and without proper investigation challan has been filed in the matter. It is further submitted that in initial complaint, case of complainant was of harassment through departmental procedure and complainant did not level any allegation in relation to Section 354A of IPC. Petitioner is Head of the Department and it is her duty to do the administrative works due to which she issued a show cause notice to the complainant which precipitated the complainant to level false allegations against her.
7. Learned counsel for the petitioner submits that without going into the nature of allegations and without considering the material

aspects of the matter and ulterior motive of complainant, police registered the case against the petitioner and filed charge-sheet.

- 8.** Learned counsel for the respondent/State opposed the submissions advanced by learned counsel for the petitioner and according to him trial shall unfold the truth. Petitioner is facing trial under Section 354A of IPC and it can only be decided by evidence.
- 9.** Learned counsel for respondent No.2/complainant elaborately argued the matter and submits that the Apex Court after considering gravity of the offence shown there indulgence and police rightly registered the case against the petitioner. Petitioner was instrumental in harassing the complainant at the behest of the Vice Chancellor. FIR clearly constitutes offence against the petitioner. In the case in hand, complainant is victim of sexual harassment at workplace in which petitioner played an active role. Thus, prayed for dismissal of this petition.
- 10.** Heard learned counsel for the parties at length and perused the documents as well as synopsis submitted by the parties.
- 11.** This is a case where petitioner who is a lady aged 58 years working as Professor in Laxmibai National Institute of Physical Education (LNIPE) taking exception to the FIR registered against her at crime No.508/2022 at Police Station, Gole Ka Mandir District Gwalior

for offence under Section 354-A, 509, 120-B of IPC as well as charge-sheet filed against her. Dispute between petitioner and respondent No.2 has chequered history. So far as present petitioner is concerned dispute started when as Head of the Department of Department of Yogic Sciences, she gave show cause notice dated 09-08-2018 to respondent No.2 about her absence on 09-08-2018 from assigned duty. Presumably this did not go well with respondent No.2 because she replied to the show cause notice on 11-08-2018 and raised her anxiety about treatment meted out to her by the institute. Said letter and reply are part of record as Annexure P/2 and P/3 respectively. Thereafter, on 13-08-2018 (Annexure P/4) she again wrote a letter to the petitioner in which she withdrew herself from additional duties assigned to her. That letter was duly acknowledged by the petitioner vide acknowledgment letter dated 20-08-2018 (Annexure P/5). Thereafter certain letters/WhatsApp chats and correspondences are available on record to show that respondent No.2 made some comments on WhatsApp group about petitioner which were unacceptable to the petitioner and therefore, she objected such indecent behaviour of respondent No.2.

- 12.** Petitioner made a complaint on 13-08-2019 (Annexure P/8) to the then Vice Chancellor also about the conduct of respondent No.2

because petitioner was working as HOD and respondent No.2 was Yoga Instructor in the institute. Complainant tried to disrespect the petitioner, therefore, petitioner made a complaint to the then Vice Chancellor to take appropriate remedial measure as deem fit.

13. It appears that this departmental discord was the fault line which grew deeper with time and led to circumstances which resulted into registration of FIR and thereafter filing of charge-sheet against the petitioner.
14. This Court intends to deal the allegations against the petitioner as per the different allegations reflected through different provisions of law in charge-sheet.

Regarding Section 354-A of IPC

15. From the contents of FIR it appears that respondent No.2 has levelled the allegations in respect of offence under Section 354-A of IPC against the then Vice Chancellor (co-accused). No allegations are made against the petitioner in respect of offence under Section 354-A of IPC. No evidence is made available about the charge-sheet to bring home any allegation of offence under Section 354-A of IPC against the petitioner.
16. To bring clarity in the discussion this Court intends to reproduce Section 354-A of IPC:

“354A. Sexual harassment and punishment for sexual

harassment -(1) *A man committing any of the following acts--*

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

17. Perusal of Section 354A reveals that offence under Section 354A of IPC is made out when a Man committed any of the following acts as mentioned in the Section. Said Section 354A of IPC was inserted by the Amendment Act 2013 (w.e.f. 03-02-2013) and legislature in its wisdom used the word Man and understandably so because the acts which have been prescribed in clause (i) to (iv) in sub-section (1) of Section 354A are apparently reflecting disposition of Man in

such eventuality. In all the three sub-sections, word Man has been used. Not only this, by this Amendment Act, **Section 354B - Assault or use of criminal force to woman with intent to disrobe, Section 354C - Voyeurism, 354D - Stalking** all refer commission of offence by any Man. Surprisingly, original Section 354 IPC does not reflect so. Section 354 as well as Section 509 of IPC used the word “Whoever”. Therefore, legislative intent is clear in this regard where it takes cognizance of an act committed by a Man when offence is made out under Section 354A, 354B, 354C and 354D.

- 18.** Even otherwise contents of FIR/charge-sheet nowhere reveals involvement of any action of petitioner so far as offence of Section 354A of IPC is concerned. Even the Internal Complaints Committee of Ministry of Youth Affairs and Sports constituted for redressal of sexual harassment at workplace vide its report dated 21-09-2020 found the charges against the then Vice Chancellor proved but no finding has been given pertaining to petitioner for committing offence which may fall under Section 354A of IPC.
- 19.** Further, departmental letters and correspondences show that there was some discord amongst the petitioner and respondent No.2 regarding work atmosphere. That cannot be construed as an attempt on part of petitioner to outrage the modesty of respondent No.2 in

such manner where offence of Section 354A of IPC could have attracted. This was the domain of Senior Professor/HOD/ Principal of any college to ensure discipline and proper administration. Therefore, on all these counts it appears that this is a frivolous complaint filed against the petitioner so far as allegation under Section 354A of IPC is concerned.

20. Therefore, in the considered opinion of this Court when petitioner is a woman and acted throughout in the capacity of HOD of Yog subject and no *mens rea* was found in the allegations regarding offence under Section 354A of IPC then keeping the trial pending for petitioner to face wrath of proceedings would itself be a punishment. For such occasion, the Apex Court discussed in detail in the case of **State of Gujarat Vs. Kishanbhai and others, (2014) 5 SCC 108**) and delineated the issue in detail. Therefore, this Court invokes extraordinary jurisdiction vested into it under Section 482 of Cr.P.C. for quashment of this allegation.

Regarding offence under Section 120-B of IPC

21. For bringing offence under Section 120-B of IPC, one has to go through Section 120-A of IPC which defines Criminal Conspiracy. Section 120 A of IPC is reproduced for ready reference:

“120A. Definition of criminal conspiracy.—

When two or more persons agree to do, or cause to be done,—

- (1) an illegal act, or*
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.— It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

- 22.** Similarly punishment of Criminal Conspiracy is prescribed in Section 120-B of IPC. Same is reproduced as under:

“120 B. Punishment of Criminal Conspiracy:- (1)

Whoever is a party to a criminal conspiracy to commit an offence punishable with death, or imprisonment for a term of 2 years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punishable with for 10 years and with fine.”

- 23.** To bring the case under the purview of Section 120-B of IPC,

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prosecution had to bring the allegation of conspiracy made on account of petitioner with other co-accused to constitute offence under Section 354A of IPC. Contents of FIR, statements and other documents of charge-sheet including the Internal Complaints Committee report dated 21-09-2020 reflects that there was no prior meeting of mind between prime accused and the present petitioner, so as to commit offence under Section 354A of IPC. Main allegations are against prime accused the then Vice Chancellor not against the present petitioner. In fact petitioner was working as HOD in LNIPE and apparently she was trying to enforce discipline and proper administration. She may have appeared stickler but certainly she did not harbour any *mens rea* and never had prior meeting of mind with prime accused to help him in commission of offence as tried to be projected.

24. A lady aged 58-59 years old has to be given such benefit of doubt and it is not based upon subjectivity but the very allegations, investigation and legal provisions infuse the objectivity. In the case of **Union of India Vs. Prafula Kumar Samal and another, (1979) 3 SCC 4** has dealt with the ingredients to form offence under Section 120-B of IPC and observed in following words:

“14. We have mentioned this fact because this forms the

very pivot of the case of the appellant in order to assail the judgment of the courts below. A perusal of this letter clearly shows that respondent No. 1 made no attempt to conceal that the land in question was, a Government land which was leased out to his vendor. A copy of the original agreement which also has been filed shows that under the terms of the lease, the same is entitled to be renewed automatically at the option of the lessee and unless the lessee violates the conditions of the lease, there is no possibility of the lease being resumed. As it is, the lease had been continuing from the year 1943 and there was no possibility or its not being renewed on 1-9-1973 when the period expired. In these circumstances, therefore, it cannot be said that the letter written by respondent No. 1 [referred to above](#) was an evidence of a criminal intention on the part of respondent No. 1 to grab the huge compensation by practising fraud on the Government. Respondent No. 1 a high officer of the Government and was a lessee of the Government, a fact which he never concealed and if he was able to get a good customer for purchasing his land or acquiring the same, there was no harm In writing to the concerned authority to fix the proper valuation and take the land. There, was no question of any concealment or malpractice committed by respondent No. 1.

26. *Lastly, there does not appear to be any legal evidence to show any; meeting of mind between respondents No. 1*

and 2 at any time. Although the Collector at the time of the acquisition was a distant relation of respondent No. 1 he had himself slashed down the rate of compensation recommended by the Revenue officer from Rs. 2,10,000 to Rs. 2,00,000 and it was never suggested by the prosecution that the Collector was in any way a party to the aforesaid conspiracy.”

25. Similarly in the case of **Sherimon Vs. State of Kerala, (2011) 10 SCC 768**, the Apex Court observed that when a person is tried under Section 120-B of IPC and no prior meeting of mind was proved so also evidence available on record is totally inadequate (rather absent) to draw the conclusion about conspiracy then such offence is not made out. Therefore, in cumulative analysis no case for offence under Section 120-B of IPC also is made out.

Regarding Section 509 of IPC

26. Section 509 of IPC contemplates certain acts intended to insult modesty of a woman. For ready reference same is reproduced as under:

“509. Word, gesture or act intended to insult the modesty of a woman:-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by

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such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”

27. Here, the word “Whoever” is mentioned like in Section 354 of IPC, therefore, a woman (as species) can also be included in generic term “**Whoever**” but the contents of charge-sheet nowhere indicates that petitioner ever insulted modesty of respondent No.2 or utter any word or did anything which constitute insulting modesty of any woman. As submitted earlier this was departmental discord in which schism deepened and mutual disharmony persuaded respondent No.2 to engulf petitioner also.
28. From the charge-sheet it is nowhere disclosed that how petitioner insulted the complainant. Asking for attendance and/or ensuring discipline in the campus cannot be termed as an intention to insult respondent No.2. Petitioner may have exceeded her disposition but that was confined to realm of administration/service related situation. Those correspondences or any action cannot be converted into criminal liability. Therefore, on this count also, no offence is made out so far as Section 509 of IPC is concerned.
29. One more aspect deserves consideration is that the Apex Court while deciding Cr.A.No.1184/2022 filed at the instance of

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respondent No.2 discussed against the then Vice Chancellor who is one of the accused in the present case. Role of present petitioner is nowhere discussed in the said Criminal Appeal by the Apex Court in its order dated 05-08-2022. Therefore, it appears that investigating officer in undue haste filed the charge-sheet against the petitioner whereas no case was made out against the petitioner so far as criminal liability is concerned. Even otherwise this discussion is confined to the challenge made by the petitioner to the criminal case registered against her.

30. Hon'ble Apex Court in the matter of **State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604** laid down the different exigencies under which interference under Section 482 of Cr.P.C. can be made. Following exigencies are as under:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of

a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

- (c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;*
- (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for*

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Thus, the present case falls and covered by exigencies No. (a), (e) and (g) as enunciated by Hon'ble Apex Court in the matter of **Ch. Bhajan Lal and others (supra)**.

31. In cumulative analysis and after considering the facts and circumstances of the case, this Court deem it fit to invoke powers under Section 482 of Cr.P.C. to meet the ends of justice and to do substantial and complete justice between the parties.
32. In view of the above discussion, this Court comes to the conclusion that no case is made out against petitioner for trial. Case has been registered against the petitioner because of departmental discord. On the basis of allegations so made against the petitioner, she cannot be permitted to suffer wrath of criminal proceedings. The Apex Court deprecated such tendency of prosecution in **Kishanbhai and others (supra)**.
33. *Resultantly*, the petition preferred by the petitioner is allowed. FIR registered at Crime No.508/2022 at the Police Station Gole Ka Mandir District Gwalior for offence under Sections 354-A, 509, 120-B of IPC against the petitioner is hereby quashed and petitioner is discharged from all the charges and allegations levelled against

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her.

34. Petition stands allowed and disposed of.

Anil*

**(Anand Pathak)
Judge**