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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07.08.2023
Pronounced on: 28.08.2023

+ **CRL.REV.P. 1032/2018 & CRL.M.A. 48099/2018 & CRL.M.A. 48100/2018 (for delay)**

VARUN BHATIA Petitioner

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal and Mr. Vaibhav Yadav, Advocates.

versus

STATE AND ANOTHER Respondents

Through: Mr. Manoj Pant, APP for the State
Mr. Ajit Kumar, Ms. Nutan Kumari, Ms. Nikita Sharma and Mr. Alok Kumar, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

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SWARANA KANTA SHARMA, J.

1. The instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (*Cr.P.C.*) has been filed on behalf of petitioner seeking setting aside of impugned order dated 05.07.2018 passed by learned Metropolitan Magistrate-05, Patiala House Courts, New Delhi (*Trial Court*) in Criminal case no. 51656/2017 titled “*State vs. Varun Bhatia*”, arising out of FIR bearing no. 79/2015, registered at Police Station R.K. Puram, New Delhi under Section 509 of Indian Penal Code, 1860 (*IPC*).



FACTUAL BACKGROUND

2. The complainant in the present case had lodged a complaint with the police on 31.01.2015 wherein she had stated that she had been working with HDFC Life Insurance and that present accused was her superior officer. She had stated that for the work that she used to do in the course of her employment, she used to get incentives. It was alleged by the complainant that the accused always used to show his power and used to demand money from her, which she had given on some earlier occasions. It was alleged that on 31.01.2015, the accused had demanded money of Rs. 1000/- from her and when she had refused to give him the money and had told him that she would give it to him on some other day, the accused had asked her to show her purse and upon complainant's refusal to do so, the accused had used '*Gandi Bhaasha*' (bad language) against her. As alleged, the accused had also used the words '*Gandi Aurat*' against the complainant and had started quarreling with her after which the complainant had made a phone call on 100 number. It was also stated by her that she had given Rs.4000/- in the past to save her job and the accused had been harassing her for 6 months. On these allegations, the present FIR had been registered.

3. Thereafter, the statement of complainant was recorded under Section 164 Cr.P.C. before the learned Magistrate and after conducting investigation, chargesheet was filed against the accused/petitioner.



4. After hearing arguments on point of notice/charge, the learned Trial Court, *vide* order dated 05.07.2018, held that a prima facie case was made out against the accused/petitioner for an offence punishable under Section 509 of IPC.

ARGUMENTS ADDRESSED BEFORE THIS COURT

5. Assailing the correctness of the impugned order, learned counsel for the petitioner argues that the learned Trial Court had committed an error by framing charges against the accused since the Court has failed to take note of the fact that the complainant has made improvements in her complaint and there discrepancies in her statement recorded under Section 164 Cr.P.C. and initial complaint made to the police. It is stated that petitioner herein was the territory manager supervisor of HDFC Life Insurance, working in Delhi branch and had many sales executives working under him, and the complainant had also started working under him. It is argued that the complainant was an irregular and indisciplined employee and the petitioner had written several emails to her regarding her irregular attendance and below par performance, however, she had never even replied to the same. It is further argued that the complainant has filed the complaint which is totally motivated with malicious and *malafide* intention. It is further argued that no incident as alleged by the complainant had ever taken place, and she had filed the complaint against the petitioner as he was raising the issue of her poor performance with the HR Department of the company. It is stated that the Court cannot act as a post office of the prosecution and it



must appreciate that there is no material on record to frame charges against the petitioner for the alleged offence.

6. Learned APP for the State, on the other hand, argues that the case is merely at the stage of charge and the contentions raised on behalf of petitioner can be raised and dealt with during the trial. It is also stated that pursuant to filing a complaint with the Internal Complaints Committee by the complainant, the Committee had also issued a warning to the accused. It is stated that no ground for discharge of the accused is made out in view of *prima facie* material available against the accused.

7. Learned counsel for the complainant argues that the performance of the complainant was not below the mark as argued by learned counsel for petitioner and in light of material available on record, there are no reasons to interfere with the impugned order.

8. This Court has heard arguments addressed by both the learned counsel for petitioner and learned APP for State duly assisted by learned counsel for complainant. This Court has also gone through the case file including the statements of the complainant.

LAW ON FRAMING OF CHARGE AND DISCHARGE

9. Before delving into the merits of the case, it shall be appropriate to succinctly refer to the settled law on framing of charge, since the essence of the arguments raised on behalf of petitioner is that the no charge could have been framed against him under Section 509 of IPC.



10. The law on charge is contained under Sections 227 and 228 of Cr.P.C. for offences triable in Courts of Session and in cases of Trial of Warrant Cases by Magistrates instituted upon a police report, Sections 239 and 240 of Cr.P.C. deals with the same. For reference, Section 239 and 240 of Cr.P.C. are extracted as under:

“239. When accused shall be discharged.—

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.—

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried”

11. The Hon’ble Supreme Court in case of *Sajjan Kumar v. CBI (2010) 9 SCC 368* has considered the powers of Courts in respect of the framing of charge and discharge and the fact that a *prima facie* case would depend on the facts and circumstances of each case. The relevant principles as enunciated in the said decision read as under:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:



(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. **has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.** The test to determine prima facie cases would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) **The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc.** However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, **the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.** For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal..."

(Emphasis supplied)



12. The Hon'ble Apex Court in the case of *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey* (2022) 12 SCC 657, after discussing several judicial precedents, has summed up the law regarding framing of charge as under:

“27. Thus from the aforesaid, it is evident that the **trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law.** However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice...”

(Emphasis supplied)

13. Thus, the fundamental basis for forming an opinion regarding the framing of charges revolves around determining whether there is adequate evidence on record to establish, *prima facie*, the commission of an offence. A ‘*prima facie*’ case would imply that there must be enough material or evidence that, when viewed at its face value, gives rise to a reasonable suspicion that the accused may have committed the alleged offence.

14. Another important factor to be considered is the *sufficiency of material on record*. The Courts have to see as to whether the material placed on record is sufficient enough to establish a *prima*



facie case against an accused and justify initiation of trial against an accused.

15. Thus, it is imperative to determine whether, in the current context, there exists a *prima facie* case against the accused. The central allegation put forth by the prosecution revolves around the accused's use of the term '*Gandi Aurat*', and the contention is that this utterance of the said word has amounted to an outrage of the complainant's modesty, under Section 509 of IPC. Therefore, it becomes crucial to delve into the scope and essence of the term 'Modesty' within the legal framework, and to assess whether, on an initial review, the use of these specific words can be deemed as having *prima facie* transgressed the boundaries of the complainant's modesty. This examination would lay the foundation for determining the validity of the charges and the need for further legal proceedings in the matter.

LAW OF SECTION 509 OF INDIAN PENAL CODE

i. Section 509 of IPC

16. Since the charge in the present case has been framed under Section 509 of IPC, it shall be imperative to refer to the same, which reads 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 such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both...”



ii. Essential Ingredients of Section 509 of IPC

17. The essential ingredients of Section 509 IPC are as under:

- i. Intention to insult the modesty of a woman;
- ii. The insult must be caused by:
 - a. uttering any words, or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or
 - b. intruding upon the privacy of such a woman.

18. Section 509 of the Indian Penal Code delineates two pivotal components for establishing an offence: firstly, the presence of an intention to insult the modesty of a woman, and secondly, the manner in which this insult is perpetrated. The cornerstone of this provision is the requirement of intent, where the accused must possess a deliberate intention to affront or insult the modesty of a woman. This intent sets apart ordinary speech or actions from those that amount to an offence under Section 509. The insult itself can take place through two distinct modes. It can occur verbally or visually by uttering specific words, making sounds, or displaying gestures or objects, with the deliberate intent that these words, sounds, gestures, or objects are heard or seen by the woman involved. Alternatively, insult can manifest as an intrusion upon the woman's privacy, meaning thereby encroaching upon her personal space or violating her sense of privacy intentionally, in a manner that affronts her modesty. In essence, Section 509 emphasizes that intent



is the linchpin of this offence, necessitating a deliberate affront to a woman's modesty for the Section to be invoked.

iii. Difference between Section 354 and Section 509 of IPC

19. While discussing the jurisprudence of outraging the modesty of a woman, the discussion cannot be complete without discussing the difference between Section 354 IPC and Section 509 IPC. Section 354 IPC and Section 509 IPC both use the word ‘Outraging the modesty of a woman’ though by different means.

20. Section 354 IPC reads as under:

“...354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both...”

21. In essence, both Section 354 and Section 509 of Indian Penal Code addressed the issue of outraging the modesty of a woman, but they do so in distinct ways. Section 354 primarily deals with cases involving physical assault or the use of force against a woman, wherein her modesty is violated through actions that involve direct contact or physical harm. On the other hand, Section 509 concerns instances where words, gestures, or acts are employed with the deliberate intent to insult or offend a woman's modesty, without necessarily involving physical force. This distinction in legal provisions reflects the recognition that outraging a woman's modesty can take various forms, both physical and verbal, and the law seeks to address each of these forms distinctly to ensure justice and



protection for women in different situations. In the present case, the complainant has raised allegations solely under Section 509 of the Indian Penal Code against the accused.

iv. Judicial Precedents Apropos ‘Outraging the Modesty of a Woman’

22. The Hon’ble Apex Court in *State of Punjab v. Major Singh 1966 Supp SCR 286* had made observations with regard to outraging the modesty of a woman, and the relevant observations read as under:

“3. I would first observe that the offence does not, in my opinion, depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the section are that the act has to be done “intending to outrage or knowing it to be likely that he will thereby outrage her modesty”. This intention or knowledge is the ingredient of the offence and not the woman's feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same; it varies from woman to woman. In many cases, the woman's sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage “her” modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, in my opinion, the reaction of the woman would be irrelevant.

4. Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be



proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a reasonable man would, on the facts of the case, make it. **The question in each case must, in my opinion, be : will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman.** In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. **The expression “outrage her modesty” must be read with the words “intending to or knowing it to be likely that he will”.** So read, it would appear that though the modesty to be considered is of the woman concerned, the word “her” was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge.

(Emphasis Supplied)

23. The above stated judgment of the Hon'ble Apex Court underscores that the offence of outraging a woman's modesty hinges primarily on the intention or knowledge of the accused rather than the woman's actual reaction. It clarifies that the legal requirement is that the act must be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty." This places the emphasis on the accused's intent or awareness, and the woman's emotional response is not the determining factor. The judgment acknowledges the variability in women's senses of modesty and the impracticality of proving the accused's knowledge of an individual woman's standard of modesty. Instead, it suggests that a reasonable



person, considering the circumstances and the woman's characteristics, should assess whether the accused intended to or knew that the act was likely to outrage the woman's modesty.

24. The Hon'ble Apex Court in *Ramkripal v. State of M.P. (2007) 11 SCC 265* had discussed the essence of woman's modesty. The relevant portion of the judgment has been reproduced as under:

“12. What constitutes an outrage to female modesty is nowhere defined in IPC. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex...”

25. In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194*, the Hon'ble Apex Court while discussing the test for outraging the modesty of a woman under Section 509 of IPC, has observed as under:

“In *State of Punjab vs. Major Singh (AIR 1967 SC 63)* a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question Mudholkar J., who along with Bachawat J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the 'common notions of mankind' referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) it appears to us that **the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one**



which is capable of shocking the sense of decency of a woman...”

(Emphasis Supplied)

26. The Hon'ble Apex Court in the above Judgment emphasized that IPC does not provide a specific definition of what constitutes an "outrage to female modesty." Instead, it emphasizes that the essence of a woman's modesty is inherently linked to her gender. In determining whether an act amounts to an outrage of modesty, the crucial factor is the culpable intention of the accused. The reaction of the woman involved is relevant but not always conclusive. Modesty, as per Section 509 IPC, is a quality associated with female individuals as a group, stemming from their gender. Essentially, the test for ascertaining an outrage to modesty revolves around whether the actions of the offender could reasonably be perceived as capable of shocking a woman's sense of decency.

27. In *Abhijeet J.K. v. State of Kerala* 2020 SCC OnLine Ker 703, the Hon'ble High Court of Kerala had observed that merely insulting a woman is different from outraging her modesty. The relevant portion of the judgment reads as under:

“10. There is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract Section 509 I.P.C, merely insulting a woman is not sufficient. Insult to the modesty of a woman is an essential ingredient of an offence punishable under Section 509 I.P.C. The crux of the offence is the intention to insult the modesty of a woman.”

28. The Hon'ble High Court of Gauhati in *Swapna Barman v. Subir Das* 2003 SCC OnLine Gau 196 had observed that the insult



should be directed towards the femininity of a woman to constitute an offence under Section 509 of IPC. The relevant portion is extracted as under:

“10. Therefore, the minimum thing what is required is that there should be an act of intruding upon the privacy of such woman with the intention to insult her modesty. Learned Single Judge, has not disbelieved the petitioner/informant but was of the opinion that there should be precise abusive or insulting words in order to bring out the offence under section 509 of IPC and was of the opinion that in order to establish the offence the insult should be directed touching the femininity of the woman...

11. It may be observed on a careful reading of the language used in defining the offence under section 509 that the word ‘modesty’ does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency, but does not exclude all other acts falling short of downright indecency. In the instant case, the respondent, from the act of entering house-compound at mid-night and uttering petitioner's name in presence of her husband and coupling her name with his own name intended sufficient insult to disturb her modesty.”

29. In the background of the precedents as discussed above, alongside the provisions laid out in Section 509 of IPC, this Court proceeds to give its findings. These findings aim to provide a comprehensive assessment of the legal context, offering clarity and guidance in light of the complexities associated with the term 'modesty of woman'.

THE TEST OF OUTRAGING MODESTY OF A WOMEN

i. Defining ‘Modesty’



30. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions". Cambridge Dictionary defines modesty as 'Correct or socially acceptable behavior and clothes, representing traditional cultural values'.

31. In view of the above, "Modesty," as defined by various dictionaries, encompasses a range of meanings that converge on a common theme of propriety, chastity, and adherence to societal norms. In the context of women, modesty signifies a commitment to, scrupulous chastity in thought, speech, and conduct, and a sense of shame-fastness that arises from an aversion to impure or coarse suggestions. It also implies freedom from coarseness or indecency, emphasizing the importance of adhering to accepted social norms in one's actions and expressions. This multifaceted concept underscores the significance of maintaining moral purity, integrity, and decorum



in one's conduct, reflecting a sense of reserve and propriety that transcends mere modesty and extends to broader cultural and societal expectations.

ii. Defining 'Outrage'

32. The Shorter Oxford English Dictionary (Third Edition) defines 'outrage' as a strong feeling of shock and anger; an act or event that is violent, cruel or very wrong that shocks people or makes them very angry. Cambridge Dictionary defines outrage as '(an unfair action or statement) to cause someone to feel very angry, shocked, or upset'.

33. 'Outrage' is a term that encapsulates the profound emotions of shock and anger in response to actions, events, or statements perceived as morally reprehensible, cruel, unjust, or deeply offensive. It signifies an intense and visceral reaction, often triggered by the violation of accepted societal norms or standards. In essence, outrage is a powerful emotional response that highlights the gravity of perceived wrongdoing, aiming to draw attention to and condemn actions or events that shock people's conscience and evoke a sense of moral indignation.

iii. Defining Outraging Modesty of a Women

34. 'Modesty of women' refers to a culturally and socially defined set of behaviors, manners, and dress codes that are intended to preserve a woman's sense of privacy, decency, and dignity. It encompasses the idea of maintaining a respectful and reserved



demeanor, particularly in terms of appearance to safeguard a woman's personal space, honor, and reputation. The concept of modesty can vary across different cultures and societies and is often associated with norms related to interactions, and conduct in public and private settings. It is rooted in the belief that certain behaviors and appearances are deemed appropriate to protect a woman's honor and prevent any potential harm or exploitation.

35. The intent of the legislature is to safeguard a woman's integrity and ensuring that she is not subjected to any form of unwarranted or inappropriate behavior that could undermine her self-respect or social standing.

36. Modesty often intersects with traditional gender roles and societal expectations. In many cultures, women are held to higher standards of modesty than men, with emphasis placed on covering the body and maintaining a demure demeanor. This can sometimes lead to gender inequality and restrict women's freedoms.

37. Crucially, the interpretation of what constitutes an outrage to modesty can be context-specific, as it depends on societal norms, cultural values, and individual perspectives. What may be considered an affront to one person's sense of modesty might not be the same for another. Therefore, legal systems often rely on objective standards to evaluate these violations, taking into account the reasonable person's reaction in a given situation.

38. In essence, "outraging the modesty of a woman" transcends a mere definition; it is an embodiment of the collective commitment to respect, equality, and the preservation of individual rights. It



underscores the importance of upholding the dignity and self-worth of every woman, acknowledging the unique and multifaceted nature of this concept in different cultural and societal contexts. Ultimately, it reinforces the imperative to protect and empower women, ensuring their right to live free from insults, affronts, or abuses to their feminine sense of propriety and decorum.

iv. Defining Intention in context of Section 509 IPC

39. Outraging modesty has been defined as circumstances involving indecent conduct on the part of the accused, wherein the accused's behaviour or actions are such that they deliberately and egregiously offend or insult the modesty, dignity, and self-respect of a woman.

40. Indeed, an essential aspect of outraging the modesty of a woman is the presence of indecent intention. In legal terms, it's not merely the act itself but the intent behind it that matters. To qualify as an outrage to modesty, the accused must have a deliberate and indecent intention in their actions or behaviour. This means that their conduct is not accidental or innocent but is driven by a specific purpose to offend or insult the modesty, dignity, or self-respect of a woman. The requirement of indecent intention serves as a crucial element in distinguishing between regular interactions and actions that constitute an offence against a woman's modesty, emphasizing the need to prove both the act and the intent in such cases.

41. In the assessment of an accused individual's intention to outrage the modesty of a woman, a comprehensive examination of



numerous factors becomes essential. This evaluation extends beyond the mere act itself, delving into the accused's intent and the context in which the action occurred. Factors such as the nature of the act, the choice of words or gestures, the surrounding circumstances, the accused's background, and the complainant's perspective are all meticulously considered. Furthermore, cultural and social norms, as well as any independent evidence, play pivotal roles in this determination. By scrutinizing these multifaceted elements, the legal system strives to discern whether the accused possessed the indecent intention to insult, offend, or abuse the woman's modesty. Such a thorough approach recognizes the complexity of human behaviour and ensures that justice is met with a comprehensive understanding of the unique circumstances of each case.

42. Indeed, a delicate balance must be struck when construing the intention of the accused in cases of outraging the modesty of a woman. It is not appropriate to automatically presume the existence of this intention without thoroughly considering the multifaceted elements mentioned above. Precise and context-specific assessments are required to ensure that justice is both fair and accurate. This balanced approach acknowledges the need to protect the rights and dignity of women while also recognizing the complexities and nuances of human behaviour, as well as the importance of considering the specific circumstances and background of each case.

43. In the background of the above analysis, this Court proceeds to judge on the touchstone of such analysis as to whether the allegations leveled in the complaint by the complainant can be considered



sufficient material along with the statement under section 164 Cr.P.C. to *prima facie* make out a charge under Section 509 IPC against the present accused.

ANALYSIS AND FINDINGS

i. The Material on Record

44. Dealing with the argument of the learned counsel for the petitioner that there was no sufficient material on record even to *prima facie* make a case under Section 509 IPC, this Court deems it appropriate to refer to the material on record. The first step in the initiation of any criminal case is the registration of FIR based on a complaint lodged by a complainant. Thus, in the present case it will be useful to refer to the FIR as refers the first point of time. The relevant portion of the FIR reads as under:

To, The SHO, Police Station Sec 12, R K Puram. Dear sir निवेदन है कि मैं सुरजीत कौर W/o Davinder Singh Add S2/61 3rd Floor Tilak Nagar और मैं Bikhaji Cama Place में काम करती हूँ। As a (R.M) की post पर हूँ (HDFC Life Insurance) में। जो हम कार्य करते हैं। हमें उस काम का Enisitive मिलता है। कंपनी की तरफ से जो मेरे Boss Varun Bhatia (Manager) की post पर है। तो वो अपना रोब दिखाते हैं। पैसे की मांग करते हैं। Mentle परेशान करते हैं। मैंने कई बार मना किया तो मुझे नौकरी से निकालने की धमकी देते हैं जो मैंने अपनी नौकरी के डर से पीछले भी कही बार पैसे देए हैं। Varun Bhatia को जो आज 5.20PM भी मुझे 1000 Rs की डीमांड कर रहा था। मैंने बोला की Sir मेरे पास आज नहीं है। मैं Monday को दे दूगी। तो मुझे कहने लगे। आप अपना परस दिखो मैंने मना किया तो मुझे गन्दी भाषा से बोलते हुये कहने लगे की गन्दी औरत तू जँहा से जब तक घर नहीं जा सकती जब तक मुझे 1000/- Rs नहीं देगी। मैंने कहा मैं सर Monday को दे दूगी। तो उन्होने मेरा परस Cheque करना चाहिया। जो मैंने उन्हे नहीं करने दिया। और फिर मुझे गन्दी भाषा का प्रयोग करते हुं कहीं office से बाहर निकल जा। मेरे साथ झगडा करने लगए। तो मैंने 100 नं० पर call कर दिया। मैंने पीछले 4000/- Rs दिये हैं अपनी नौकरी बचाने के लिये और मुझे 6Month से परेशान कर रहे हैं क्यों की साहब मैंने आज पैसे देने से मना कर दिया है सारा सटाफ उसके अनेडर काम करता है कोई भी उसके खिलाफ नहीं बोलता। Varun Bhatia के खिलाफ मे कंपनी के ऊपर तक इस बात को Complai करी गी। Varun Bhatia के खिलाफ इस बारे मे कानूनी कार्यवाई की जाए। आपकी घन्यवाद हेगी। Thanking You Sd/- English Surjit Kaur 9899321096 Date 31/1/2015. Attested By SI Bansi Lal PS R K Puram Dt 31/1/15. Sir, Duty officer थाना R K Puram बकार सरकार निवेदन इस प्रकार है कि इनरोज मन SI को DD No 34A मिलने पर मन SI मय हमराही Ct Pawan No 2012/SD जाय मौका Ansal Chamber 1, BhiKaji Cama Place 1st floor पर HDFC Life Insurance office पहुचा। जहा पर शिकायतकर्ता Surjit Kaur W/O Sh Davinder Singh R/O S2/61 3rd floor, Tilak Nagar, New Delhi. मुलाकी हुई जिसने दरियापत पर अपनी लिखित शिकायत मन SI को पेश की जो शिकायत मजबूत से ब हालात से सरदेस्त सूरत जुर्म U/S 509 IPC का सरजद होना पाया जाता है लिहाजा तहरीर हजी बगर्ज कायमी मु० बदस्त Ct Pawan No 2012/SD अरसाल थाना हैं मु० दर्ज रजि० करके नं० मुकदमा से इतला दी जावे। मन SI मौका पर मशरूफ बातफतीश हु। ता० व वक्त वकुआ -31/1/15 at about 5.20PM जाय वकुआ HDFC office Ansal chamber 1, BhiKaji Cama Place ND. ता० व वक्त रवानगी तहरीर 31/1/15 at 6.50PM Sd/- English SI Bansi Lal, D-4954, PS R K Puram PIS No 28070200 Dt 31/1/15. कार्यवाही पुलिस अज थाना तहरीर की मौसूलगी पर मुकदमा हजा बाजुर्म U/S 509 IPC का दर्ज कमप्यूटर किया जाकर नकल मिसल computerized FIR copy मय असल तहरीर बाहुकम जनाब SHO साहब हवाले SI साहब खुद के की गई जो आईन्दा तफतीश अमल में लायेंगे। दीगर नकुलात बजरिये डाक अफसरान वाला कि छिदमत में अरसाल होगी। बकलम HC/DO.



45. The relevant portion of the impugned order dated 05.07.2018 reads as under:

“As per case of complainant, she works in HDFC life insurance, and accused is his boss. It is alleged that accused demands money from her. It is alleged that on 31.01.2015 accused demanded Rs.1000/- from her and when complainant refused then accused used vulgar language against her. He used the words "Gandi Aurat" against complainant and started quarreling with her, on which complainant made call at 100 no. It is submitted on behalf of accused that present chargesheet has been filed on the basis of sole testimony of prosecutrix/complainant. It is alleged that false case has been lodged by complainant as she was not working in the office properly and accused being the supervisor in the office raised such issue with complainant time and again. Ld. Counsel for accused has relied upon judgment of Higher courts.

This court is of the considered view that at the time of framing of charge/notice court has to see the material produced by prosecution and whatever defence is of accused he can bring the same on record at the time of defence evidence. This court is of the further view that argument of Ld. Counsel that the chargesheet has been filed only on the basis of sole testimony of prosecutrix/complainant has no force as Court has to see the quality of evidence rather than quantity of evidence. So, in view of the statement of complainant, prima facie case u/s 509 IPC is made out against accused.

Put up for framing of charge against accused on 27.11.2018.”

46. Apart from the FIR, statement under Section 164 of Cr.P.C of the complainant was recorded, the relevant portion of which reads as under:

“...Before the entire office staff, Varun Bhatia insulted me. Forcibly he took my purse and checked. He told one employer named Mantosh to give me 1000/- Rs. so that I could give him. Then he insulted me very much...”



ii. Sufficiency of Material To Attract Criminality under Section 509 of IPC

47. A perusal of the material on record reveals that the learned Trial Court has based its findings primarily on the use of word ‘*Gandi Aurat*’ against the complainant to reach a conclusion that the petitioner is liable to face trial for outraging the modesty of complainant. The learned Trial Court has relied on the complaint lodged by the complainant with the police and the statement given by the complainant under Section 164 Cr.P.C. to the Magistrate. The statement under Section 164 Cr.P.C. does not mention use of these words by the accused. In this regard, the meaning of the word ‘*Gandi Aurat*’ has to be examined as to whether it has the potential to outrage the modesty of a woman.

48. At the outset, this Court notes that in the FIR, the complainant had alleged that the present petitioner had called her ‘*Gandi Aurat*’. However, a reading of the statement of complainant recorded under Section 164 of Cr.P.C. before the Magistrate reflects that the only allegation in the said statement is that “Varun Bhatia has insulted me in front of the entire staff” and the words ‘*Gandi Aurat*’ have not been stated to have been used by the petitioner.

49. Since the word ‘*Ganda*’ or ‘*Gandi Aurat*’ is a Hindi word which is the focal point of the entire edifice of the present case, it is essential to translate the meaning of this word to English language to decide the present case. This Court, while taking reference from Oxford Hindi-English Dictionary, understands that the Hindi word ‘*Ganda*’ or *Gandi*’ means ‘dirty’, and the word ‘*Aurat*’ means



‘female’. Thus, the literal translation of the word ‘*Gandi Aurat*’ is dirty woman and in common parlance, it does not specifically relate to a woman’s modesty.

50. The word ‘dirty’ is used, therefore, in context of an intangible or tangible thing to mean dirty, and in context of a human being, it may also connote one being unclean, or for the purpose of chiding someone even affectionately as one uses the word ‘*Ganda Baccha*’.

51. Moving further, the term ‘outrage’ implies a strong feeling of shock, often linked to acts or events characterized by violence, cruelty, or grave wrongdoings that deeply disturb individuals and elicit their strong disapproval.

52. In light of the meaning of the words ‘*Gandi Aurat*’, which can be translated as ‘dirty woman,’ it becomes evident that these words, when objectively assessed, do not have the potential to elicit a strong feeling of shock in a reasonable person, whether male or female. The term ‘outrage’ implies a profound emotional response, often associated with a feeling of shock. In this context, the words used, ‘*Gandi Aurat*,’ while certainly impolite and offensive, do not rise to the level of criminal intent driven words that would typically provoke shock in a woman so as to be covered in the definition of criminal offence under Section 509 of IPC. It is essential to consider the threshold of emotional response that is required for an act to be considered as an outrage.

53. As laid down in the case of *Ram Kripal v. State of MP* (*supra*), the culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is



not always decisive. Modesty in this provision is an attribute associated with female human beings as a class. It is a virtue which attaches to a woman owing to her sex.

54. In this context, this Court, therefore, notes that the reaction of a woman to a word or gesture will differ, and therefore, necessarily, the Court will have to consider the peculiar circumstances of the case, as in the present case where obscene or ludicrous words were not used but these two words '*Gandi Aurat*' were used, which can mean different things to different people. In such cases, the Courts will have to apply the test of a reasonable person's reaction to determine the impact and intent behind the words or gestures in question. The Courts will also have to consider, while adjudicating the cases of Section 509 IPC, the background of the complainant before it, as that can also guide the Courts in deciding as to what the complainant in a case, in given circumstances, would have interpreted or would the complainant's modesty with those words could be said to be outraged.

55. What follows from the above discussion is that it will be crucial for this Court to appreciate evidence placed before it to reach a conclusion as to whether there is material which portrays intention and knowledge on part of petitioner to outrage the female modesty.

56. This Court, while reading the word '*Gandi Aurat*' in background of overall circumstances of the case, is of the opinion that the petitioner's actions, when evaluated objectively, did not exhibit the level of intent or knowledge necessary to reasonably



anticipate that they would provoke such a strong and adverse emotional reaction as to qualify as an outrage to a woman's modesty.

57. The word '*Gandi Aurat*' read in isolation, without context, without any preceding or succeeding words indicating intent to outrage modesty of a woman will not bring these words within the ambit of Section 509 IPC. Had there been any mention of any other words used, context given or any other gesture etc. made accompanying, succeeding or preceding these words, reflecting criminal intent to outrage the modesty of a woman, the outcome of the case would have been different.

58. When examining the act attributed to the petitioner within the context of the current case, particularly taking into account the statement recorded under Section 164 of Cr.P.C. and other available evidence, it becomes evident that the petitioner lacked the requisite intention or knowledge to conclude that the alleged use of the term '*Gandi Aurat*' would meet the criteria for outraging the modesty of a woman by the reasonable person's standard.

59. It was also argued by learned APP for the State that the complainant had also filed complaint before the Sexual Harassment Committee of her office, after which a warning had been issued to the present applicant for using derogatory language against the complainant, as a verdict of the committee. It was also stated that the complaint before the Committee was filed after a period of more than four months from the date of registration of the FIR, which should also be taken into consideration by the Court.



60. In this regard, this Court is of the opinion that the proceedings which have taken place before the Sexual Harassment Committee were filed separately subsequent to filing of the present case after termination of her services. The proceedings before the Sexual Harassment Committee have already culminated into a verdict of the committee and a warning had been issued on the basis of material on record. It was concluded that the present accused/applicant had used derogatory language against the complainant. Those proceedings which have already attained finality cannot have a bearing on the present case since the present case was registered much prior to filing of the said complaint i.e. on 31.01.2015 and therefore, this Court will independently decide as to whether criminal charge is made out against the present accused/applicant or not solely on the basis of material collected in the present FIR by the investigating officer concerned. This Court also takes note of the fact that departmental enquiry is a separate proceeding and does not have bearing on the criminal trial, which is to be adjudicated independently guided by the principles of criminal justice system as in the present case on the basis of sufficiency of material against the accused on record for the purpose of framing of charge.

61. Needless to say, every case has to be judged in the background of the peculiar facts and circumstances not only of the case, but also of the people who are involved in the alleged incident.

62. It is also not in dispute that where the allegations in the FIR or complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute the offence alleged or



make out a case against the accused or where the criminal proceedings are manifestly attended with *mala fide* or where the proceedings are 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, the proceedings are liable to be set aside.

63. In the present case, the complainant and the accused were in the capacity of employee and superior officer respectively. There is no mention apart from a single word that the accused had called her dirty woman, since they were having dispute which is apparent from a number of e-mails shared by them wherein he be being her boss and continuously asking her to attend meetings and office. She was neither attending the meetings nor coming to office on time nor complying with any of her duties as she was required to do.

64. Thus, the case has also been examined in the backdrop of the conduct of the complainant herself whose not attending the office and continuous absence from the office as well as not even replying to the official mails was of a great concern to the petitioner who was the superior officer of the complainant herein. Though this is not the sole reason to base the findings of the present order, it is important to note that there is no evidence of any behavior on the part of the petitioner herein indicating that he persisted in any unwanted social conduct, but it is at best a case of vexatious comments which may reasonably be taken as unwelcome by the complainant herein. The language used is not profane or vulgar or sexually colored but may hinge on harsh, derogatory language.



65. Insulting a woman or being rude to her and not behaving with her as she would have expected you to behave in a chivalrous manner will not be covered under the definition of outraging the modesty of a woman, depending on facts and circumstances of each case.

66. In a criminal case, even at the stage of charge, the Court has to draw a definition between there being *prima facie* material for framing charge and there being no material of the nature which will be sufficient to frame charge under the Section 509 IPC by fulfilling its basic ingredients.

THE ROLE OF COURTS WHILE DEALING WITH GENDER-SPECIFIC LAWS: STRIKING A NEUTRAL CHORD

67. As this Court approaches this case's conclusion, it will be crucial to note that while the Court is tasked with interpreting and applying gender-specific legislation, it is important to emphasize that this should not translate into a biased approach. Instead, the Court should be firmly guided by the fundamental principles of criminal jurisprudence and judicial precedents on the basis of which order on charge is to be passed, ensuring a balanced judicial perspective in line with the legislative intent. **The mere fact that legislation is designed to address specific gender-related concerns should not be misconstrued as being inherently biased against the opposite gender or being anti-men wherever applicable. To repeat, it is**



crucial to recognize that gender-specific laws are not meant to be "anti-opposite gender" but rather serve the purpose of addressing unique issues faced by a particular gender.

68. Furthermore, the **existence of gender-specific legislation does not empower the Court to relax the golden principle of availability of sufficiency of 'material on record' at the stage of framing of charge. The foundation of any legal proceeding, regardless of the specific gender it pertains to, rests on the availability of adequate evidence and adherence to due process of law. In essence, gender specificity should not compromise the fundamental principles of fairness and justice.**

69. Section 509 of IPC does not inherently introduce a presumption in favor of women, and it is essential for the Courts to apply the principles of charge and discharge objectively, without being unduly influenced by the fact that this section is gender-specific, however, without forgetting the intent behind enactment of such section. The mere gender specificity of a legal provision does not automatically create a presumption in favor of that gender, unless such a presumption is explicitly articulated within the legislation itself. In other words, the Court should approach cases under Section 509 IPC with a neutral and impartial stance, treating and testing them in accordance with long established criminal legal principles of law and procedure. Every Court of law has to uphold the principles of justice, fairness, and objectivity in its proceedings, regardless of the gender-specific nature of the law in question.



i. The Necessity for Court To Remain Gender Neutral While Adjudicating Even Gender Specific Offences

70. **As a Court of Law, the scale of balance has to be in favour of justice, and not just one party.** The fundamental duty is to maintain a delicate equilibrium that invariably tilts in favour of justice, rather than favouring any single party. This balance is the bedrock upon which the judicial system rests, ensuring that the principles of fairness, impartiality, and the rule of law are upheld. This commitment to an impartial balance underscores the essence of the legal system, serving as a safeguard against bias, prejudice, or any undue advantage for any party. The Court's unwavering dedication to the pursuit of justice ensures that the rights and interests of all individuals involved are respected and upheld, fostering public trust and confidence in the judicial process.

71. **The fact that a piece of legislation is gender-specific should not be misconstrued to mean that the role of a judge also changes from being neutral to tilting towards a particular gender. Irrespective of the gender-specific nature of a law, the judicial duty fundamentally requires unwavering neutrality and impartiality. The judge's role is to objectively interpret and apply the law, free from any form of gender bias or predisposition. Gender-specific legislation exists to address the unique concerns and challenges faced by particular genders within society. However, this does not imply that the judge is to be influenced or swayed by gender-related factors when**



administering justice unless specific presumptions are legislated in favour of a particular gender in law. In essence, judicial neutrality is an indispensable cornerstone of the legal system, ensuring that all parties, regardless of gender, are treated fairly and equitably.

72. In India, the criminal justice system is adversarial in nature. However, it cannot be seen as adversarial between men and women *per se*. Instead, it should solely revolve around two individuals: one being the complainant and the other being the accused irrespective of the gender, however, at the same time, while adjudicating the cases firmly remembering and appreciating the social context and situation of a particular gender who may be in a lesser advantageous situation than the other.

CONCLUSION

73. Every criminal case has to be treaded upon with caution and care as it also has an impact on the life of the person facing it. A criminal adjudicatory process must be balanced as the judge has to balance the scales of justice between the complainant as well as the accused. Though, it is a very delicate and difficult task especially in cases where the definitions of certain words which are crucial in a section are absent, this duty has been in the past performed by the Courts in the light of judicial precedents and peculiar facts and circumstances of the case. Similarly, this case also needed balancing the right of the accused and the complainant to a fair hearing at the



time of framing of charge and while adjudicating the same, a balance had to be maintained.

74. This Court notes that the Sexual Harassment Committee has already issued a warning to the petitioner for using derogatory language against the complainant after a complete inquiry. The sexual harassment committee's verdict already stands closed without being challenged by the complainant. The insufficiency of material on record has resulted in the petitioner succeeding before this Court. This Court, however, expresses that the petitioner herein should have been careful in use of harsh language against the complainant and should have been more courteous, even if they were having a tiff with each other.

75. Therefore, in view of the reasons recorded in the preceding discussion and the observations made therein, and considering the overall facts and circumstances of the case, the impugned order dated 05.07.2018 passed by the learned Trial Court is set aside.

76. Accordingly, the present petition alongwith pending applications stands disposed of.

77. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 28, 2023/ns