

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 363 of 2018

Reserved on : 19.08.2021

Delivered on : 01.11.2021

Dr. Manish Tiwari, S/o Shri Vijay Kumar Tiwari, Aged About 50 Years,
R/o Village Joki, P.S.- Sakri, District- Bilaspur (C.G.)

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary Ministry of Home, Mantralaya, Naya Raipur, District- Raipur (C.G.)
2. The Superintendent of Police, District- Bilaspur (C.G.)
3. Mahila Thana, Bilaspur, through the Station House Officer, Bilaspur (C.G.)
- 4.

---- **Respondents**

For Petitioner	:	Mr. B.P. Sharma, Advocate.
For State/Res. 1 to 3	:	Mr. Ashish Gupta, Panel Lawyer.
For respondent No. 4	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. The petitioner, who is working as an Assistant Professor in D.P. Vipra College, Bilaspur, has filed present writ petition under Article 226 of the Constitution of India for quashing FIR No. 0036 dated 25.06.2018 (Annexure P/1) registered against him on the basis of complaint made by respondent No. 4 at Women Police Station, Bilaspur (C.G.) for commission of offence punishable under Section 354 (A) of IPC & Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amended 2015) (for short "the Act, 1989).
2. The brief facts, as projected by the petitioner, are that Police Station- City Kotwali, District- Bilaspur (C.G.) has submitted final

report against respondent No. 4/complainant along with 33 other teaching staff of D.P. Vipra College, Bilaspur in connection with Crime No. 52/2012 registered at Police Station- City Kotwali, Bilaspur before Judicial Magistrate First Class, Bilaspur in Criminal Case No. 9555/2014 for committing offence punishable under Sections 147, 294, 506 of IPC. The allegations in the said criminal case were that on 08.02.2012, the accused persons have committed offence of unlawful assembly, used criminal intimidation and force with object to harass Dr. Pawan Kumar Tiwari, Ramesh Pratap Singh & present petitioner- Dr. Manish Tiwari. One of the complainants namely Dr. Pawan Kumar Tiwari has been assaulted by throwing chair on him with criminal intimidation committed by them. On the basis of complaint submitted by the complainant, a criminal case has been registered wherein, the petitioner has deposed before learned Judicial Magistrate First Class and the Judicial Magistrate First Class vide its order dated 22.06.2018 (Annexure P/3) has convicted the accused persons for committing offence under Section 294 of IPC imposed fine of Rs. 500/- each and in default of payment of fine amount to undergo for 20 days simple imprisonment. The operative part of the order dated 22.06.2018 passed by the Judicial Magistrate First Class, Bilaspur is extracted below:-

“15. प्रकरण में प्रार्थी तथा अन्य चच्छूदर्शी साक्षियों के द्वारा यह स्पष्ट कथन किया गया है कि घटना के संबंध में अभियुक्तगण प्राचार्य के कक्ष में घुसे थे। प्रार्थी के द्वारा अपने लिखित आवेदन पत्र तथा न्यायालयीन कथन के अंतर्गत अभियुक्तगण के द्वारा गंदी-गंदी गाली गलौज करना बताया गया है जिसका समर्थन चच्छूदर्शी साक्षी मनीष तिवारी और रमेश प्रताप सिंह के द्वारा किया गया है। साक्षी मनीष तिवारी के द्वारा भी यह बताया गया है कि अभियुक्तगण घटना के समय अश्लील गाली गलौज कर रहे थे तथा साक्षी रमेश प्रताप सिंह के द्वारा भी यह बताया गया है कि अभियुक्तगण गंदी-गंदी गालियां दे रहे थे जिसे सुनकर उन्हें आत्मग्लानी हुई थी और प्राचार्य को दी जा रही गालियों से उन्हें अत्यंत पीड़ा हुई। इस प्रकार घटनास्थल डी.पी. विप्र महाविद्यालय जहां पर लोगों का आना-जाना रहता है ऐसी स्थिति में उक्त स्थान लोग स्थान की श्रेणी में आता है जहां पर अभियुक्तगण के द्वारा प्रार्थी को अश्लील गाली दिया जाना प्रार्थी और चच्छूदर्शी साक्षियों के

द्वारा तथा अभियोजन के द्वारा युक्तियुक्त संदेह से परे प्रमाणित किया गया है कि अभियुक्तगण के द्वारा दी जा रही गालियों से भी सुनने वाले व्यक्तियों को क्षोभ कारित हुआ ऐसा भी साक्षी रमेश प्रताप सिंह के न्यायालयीन कथन से स्पष्ट है जिसके आधार पर अभियोजन अभियुक्तगण के विरुद्ध धारा 294 भा.द.सं. के अंतर्गत आरोप युक्तियुक्त संदेह से परे प्रमाणित करने में सफल रहा है। अतः अभियुक्तगण को घटना दिनांक 08.02.12 को दोपहर 2.30 बजे यो उसके लगभग डी.पी. विप्र महाविद्यालय आरक्षी केन्द्र सिटी कोतवाली बिलासपुर छ.ग. में अन्य अभियुक्तगण के साथ प्रार्थी पवन तिवारी को अश्लील गाली गलौज करने जिससे प्रार्थी तथा अन्य सुनने वाले को क्षोभ कारित हुआ के संबंध में भा.द.सं. की धारा 294 के अंतर्गत दोषसिद्ध किया जाता है।

16. विचारणीय प्रश्न क्र.-02 अभियुक्तगण को धारा 147, 506 भा.दं.सं. के आरोप से संदेह का लाभ देते हुये दोषमुक्त किया जाता है तथा भा.दं.सं. की धारा 294 के अंतर्गत दोषसिद्ध किया जाता है। अतः अभियुक्तगण को भा.दं.सं. की धारा 294 के अंतर्गत 500-500/- रुपये के अर्थदण्ड से दण्डित किया है। अर्थदण्ड की भुगतान की व्यतिक्रम की दशा में 20 दिवस का साधारण कारावास भुगताया जाये।”

3. Learned counsel for the petitioner would submit that being aggrieved by conviction order dated 22.06.2018 passed by Judicial Magistrate First Class, Bilaspur, respondent No. 4 has lodged FIR No. 0036 dated 25.06.2018 (Annexure P/1) against the petitioner at Women Police Station, Bilaspur for commission of offence punishable under Section 354 (A) of IPC & Section 3(1)(xii) of the Act, 1989. The contents of the FIR is extracted below:-

“7. कक्ष के बाहर आकर डॉ. मनीष तिवारी ने मुझे कहा कि मैडम यदि आप छुट्टी चाहती है तो मुझसे अकेले में आकर मिलें

8. डॉ. मनीष तिवारी के द्वारा उपरोक्त वाक्य जिस असभ्यता के साथ कहा गया उससे मैं अत्यंत अपमानित महसूस की तथा मुझे प्रचण्ड आत्मग्लानि हुई अपने लगभग डेढ दर्याक की प्राध्यापकीय जीवनकाल में आज तक डॉ. मनीष तिवारी को छोड़कर मेरे साथ ऐसा बदत्मीजीपूर्ण असभ्य व्यवहार किसी ने नहीं किया है।

9. उपरोक्त घटना से मर्माहत होकर मैं शाम को घर गई एवं अपने पति से इसका जिक्र किया सुनते ही उन्होंने मुझे ढांडस बंधाया एवं निर्देशित किया मैं महाविद्यालय प्रबंधक को ऐसे असभ्य तथा असामाजिक व्यक्ति के कृत्यों से तत्काल अवगत कराऊं एवं यह विश्वास व्यक्त किया कि महाविद्यालय प्रबंधक ऐसे आपराधिक प्रवृत्ति वाले प्राध्यापक के विरुद्ध अवश्य तत्काल कार्यवाही करेगा।

10. उपरोक्त निर्देशानुसार मैं दिनांक 17.06.2017 को दोपहर लगभग 12.00 बजे अपनी सहकर्मी प्रो. स्मृतिरानी प्रकाश के साथ प्राचार्य के नाम से डॉ. मनीष तिवारी के लिये तैयार किया गया शिकायती पत्र लेकर प्राचार्य कक्ष में पहुंची जहां प्रभारी डॉ. विमल कुमार पटेल के साथ डॉ. मनीष तिवारी भी उपस्थित थे।

11. डॉ. पटेल ने मेरा आवेदन पढ़ने के बाद तत्काल उसे लेने से मना कर छिदया एवं यह समझाइश देने लगे कि ऐसी छोटी-मोटी बातों को सहने की आदत हमें डाल लेनी चाहिए। उनके इस कथन पर मेरे साथ गई प्रो. स्मृतिरानी प्रकाश ने अपनी प्रतिक्रिया व्यक्त करते हुए उन पर प्रश्न दागा कि क्या आप चाहते हैं कि हम अपमान सहकर यहां काम करें? इस पर डॉ. विमल पटेल चुर हो गये।

12. डॉ. पटेल के चुप होने के बाद डॉ. मनीष तिवारी ने मुझसे कहा कि मैडम सॉरी मुझे माफ कर दीजिए मुझसे गलती हो गई है, मैं भविष्य में ऐसा कभी भी नहीं करूंगा और न ही मैं आप से आगे कभी भी बात करूंगा।

13. मैंने पुनः डॉ. पटेल की ओर मुखातिब होकर उनसे शिकायती पत्र को स्वीकार करते हुए कार्यवाही करने की मांग की जिस पर उन्होंने मुझे कहा कि सोचकर बताता हूं।

14. जब मैं कक्ष से बाहर निकलने लगी तब डॉ. विमल पटेल ने मुझे कहा कि मैडम आप उस पत्र को डिस्पेच में दे दीजिये, तदानुरूप मैंने अपना शिकायती पत्र दिनांक 17.6.2017 को प्राचार्य कार्यालय में जमा किया जिसकी एक प्रति आयुक्त उच्च शिक्षा एवं अध्यक्ष प्रशासन समिति को भी दिया था। मुझे पूर्ण विश्वास था कि महाविद्यालय प्रशासन तत्काल मेरी शिकायत के आधार पर वैधानिक कार्यवाही करेगी।

15. दिनांक 19.6.2017 को मेरे साथी प्राध्यापकों ने मुझे सूचित किया कि महाविद्यालय के अन्य वरिष्ठ प्राध्यापकगणों ने मेरे प्रकरण में तत्काल एफ.आई.आर. दर्ज कराने विषयक एक और आवेदन प्राचार्य कार्यालय भिजवाया।

16. आज दिनांक तक प्राचार्य कार्यालय ने डॉ. मनीष तिवारी के विरुद्ध पुलिस थाने में कोई शिकायत दर्ज नहीं की। मेरी सर्वोच्च जानकारी में इसका मूल कारण राज्य शासन के द्वारा महाविद्यालय की जांच हेतु गठित उच्च स्तरीय जांच समिति के प्रस्तुत रिपोर्ट के अनुसार फर्जी प्रवेशकाण्ड में डॉ. मनीष तिवारी एवं डॉ. विमल पटेल को दोषी ठहराया गया है, जिस पर शासन के निर्देशानुसार उनके विरुद्ध एफ.आई.आर. दर्ज कराने विषयक कारण माननीय छ.ग. उच्च न्यायालय में लंबित है। डॉ. विमल कुमार पटेल आपराधिक कृत्य में अपने साथ संलिप्त डॉ. मनीष तिवारी के संरक्षण प्रदान करने के उद्देश्य से एक आदिवासी महिला को अपमानित एवं प्रताड़ित करने वाले आरोपी के विरुद्ध एफ.आई.आर. दर्ज कराने से बच रहे हैं। करबद्ध निवेदन है कि इस सम्य समाज में एक आदिवासी महिला के सम्मान को अपमानित एवं खिलवाड़ करने वाले व्यक्ति डॉ. मनीष तिवारी, सहायक प्राध्यापक डी.पी.विप्र महाविद्यालय, बिलासपुर के विरुद्ध यथाशीघ्र संबंधित थाने

को एफ.आई.आर. दर्ज कर समुचित वैधानिक कार्यवाही करने का निर्देश देने की कृपा करें। ”

4. Learned counsel for the petitioner would further submit that respondent No. 2 without conducting an enquiry, has registered FIR against the petitioner, whereas Hon'ble the Supreme Court has directed all the High Courts for taking steps for protection of witnesses not only from physical abuse but also from false accusation. The petitioner has submitted all the facts to Assistant Superintendent of Police (ASP), Bilaspur and also to Deputy Superintendent of Police (DSP), Bilaspur vide his letter dated 21.06.2017, a copy of the application was forwarded to Director General of Police, Inspector General of Police, but the same has not been taken into consideration.
5. He would further submit that with regard to the complaint made by respondent No. 4, an enquiry has been conducted by committee constituted under the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (for short "the Act, 2013") headed by Dr. Smt. Anju Shukla (President) with Members- Dr. Smt. Shushma Sharma, Dr. Smt. Shikha Pahare, Smt. Abha Tiwari, Smt. Toshima Mishra, who have submitted their report on 11.07.2017 (Annexure P/5) to the Principal, D.P. Vipra College, Bilaspur. He would further submit that the alleged incident as reflected from FIR in column No. 3 is of 16.06.2017 whereas FIR has been lodged on 25.06.2018 i.e. after three days of the judgment passed by the trial Court convicting respondent No. 4 & other accused persons under Section 294 of IPC imposing fine of Rs. 500/- each of them and after lapse of one year of alleged incident. He would further submit that no ingredient of offence under Section 354 (A) of IPC is made out. He would further submit that the offence under the Act, 1989 is also, *prima facie*, not established as the commission of alleged offence has not been committed because of the fact that respondent No. 4 belongs to Scheduled Caste community, as such, no offence under Section 3(1)(xii) of the Act, 1989 and Section 354 (A) of IPC is made out against the petitioner. He

would rely upon the judgment rendered by Hon'ble the Supreme Court in **Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & another**¹, **Haryana Vs. Bhajan Lal**², **Rajiv Thapar Vs. Madan Lal Kapoor**³ & **Vineet Kumar Vs. State of Utter Pradesh & others**⁴.

6. On the other hand, learned counsel for the State/ respondent No. 1 to 3 has filed their return, in which, they have stated that after registration of FIR, statement of respondent No. 4 under Section 164 of the Cr.P.C. has been recorded before the Judicial Magistrate First Class, wherein, she has narrated the incident and cognizance has been made out. It has been further contended that statement of Smt. Rajni Kujur, Smt. Snehlata Mishra, Smt. Dr. Urja Ranjan Sinha, Smt. Smritirani Prakash & Mr. Sonal Tiwari have also been recorded. The police after investigation, lodged the FIR and after due investigation charge-sheet has been filed against the petitioner before the trial Court, therefore, there is no illegality or irregularity in the order passed by the trial Court as well as in registration of FIR against the petitioner, therefore, the present petition is liable to be dismissed. In support of his arguments, learned State counsel would rely upon the judgment passed by Hon'ble the Supreme Court in **M.C. Abraham & another Vs. State of Maharashtra & others**⁵ and would submit that when the investigation is going on, the Court should not normally interfere in the investigation.
7. This Court vide its order dated 10.07.2018 directed that no coercive steps shall be taken against the petitioner till the next date of hearing which is continued till date, therefore, respondent No. 4 has filed application on 10.09.2018 for vacating the interim order passed by this Court on 10.07.2018 mainly contending that the incident took place on 16.06.2017 and since then respondent No. 4 has been making all efforts to ensure that an investigation

1 (2018) 6 SCC 454 / Criminal Appeal No. 416 of 2018 (decided on 20.03.2018)

2 1992 Suppl. (1) SCC 335

3 (2013) 3 SCC 330

4 (2017) 13 SCC 369

5 (2003) 2 SCC 649

into commission of offence is being looked into. Respondent No. 4 is a professor in D.P. Vipra College, Bilaspur and if she cannot perform her duties without fear, it shall be highly unfortunate for the entire academic faculty. The accused shall gather more courage and confidence and there shall be a sense of fear in the mind of the students as well. If the faculty members are unsafe in such an unhealthy working environment in the college, then the students are the most vulnerable class existing there. He would further submit that the complaint made by respondent No. 4 on 20.06.2017 requires thorough investigation by the officer of rank of Deputy Superintendent of Police and it was only after a thorough investigation, FIR has been registered. He would further submit that Respondent No. 4 has made complaint before Assistant Superintendent of Police (ASP), Bilaspur and Deputy Superintendent of Police (DSP), Bilaspur on 21.06.2017, therefore, the FIR has been registered according to the established procedure of law.

8. Learned counsel for the petitioner would submit that the remarks made by the petitioner against respondent No. 4 cannot be termed as sexual coloured remarks as the petitioner has only said that मैडम यदि आप छुट्टी चाहती है तो मुझसे अकेले में आकर मिलें it may be have some confidentiality and inference cannot be drawn that it is sexual coloured remarks. He would further submit that the factual foundation of the dispute between the parties, is ongoing criminal proceeding and finally conviction of respondent No. 4 and other teachers by imposing fine of Rs. 500/- each. He would further submit that the petitioner and respondent No. 4 are working as Assistant Professors in the same college in the same capacity, therefore, it cannot be presumed that the petitioner is in a position to dominate the will of respondent No. 4, who belongs to Scheduled Caste and petitioner can use to exploit her sexually to which, she would not have otherwise agreed. In such circumstances, it cannot be presumed as sexual coloured remarks, but it can be held to be

counter-blast of the criminal proceeding, therefore, continuation of the criminal proceeding against the petitioner is nothing but an abuse of process of law, which is liable to be quashed.

9. Learned counsel for the petitioner has also filed written submission reiterating the stand taken in the writ petition.
10. Learned counsel for respondent No. 4 has also filed written submission contending that the petitioner himself has apologized her, which also establishes the offence. He would further submit that respondent No. 4 has already submitted complaint before Superintendent of Police, Police Station- City Kotwali on 20.06.2017 for registration of FIR against the petitioner whereas the incident took place on 16.06.2017 and she has submitted representation on 21.06.2017 to Assistant Superintendent of Police (ASP), Bilaspur and also to Deputy Superintendent of Police (DSP) for registration of FIR against the petitioner/accused, but after thorough investigation FIR has been registered on 25.06.2018 at Police Station- City Kotwali, Bilaspur, therefore, it cannot be said that the FIR is a counter blast of order of conviction by the trial Court. There is no delay and after a long persuasion made hereinabove, FIR has been registered. He would further submit that the police after submission of complaint conducted enquiry and then only FIR has been registered. He would further submit that the statement made by the petitioner to respondent No. 4 that मैडम यदि आप छुट्टी चाहती है तो मुझसे अकेले में आकर मिलें which made the complainant/ respondent No. 4 to feel humiliated and caused grievance, as such, statement felt as an attack to the dignity and modesty of the complainant. It is the feeling perceived by the victim that is of the paramount consideration and not what the accused states. This proposition is validated/ substantiated by the judgment rendered by Hon'ble the Supreme Court in case **Additional District and Sessions Judge 'X' Vs. High Court of Madhya Pradesh**⁶.

6 (2015) 4 SCC 91

11. It has been further contended by learned counsel for respondent No. 4 that since respondent No. 4 belongs to Scheduled Caste community, therefore, she preferred a complaint to Chhattisgarh Rajya Anusuchit Janjati Ayog and after making an enquiry, vide its letter dated 02.07.2018 (Annexure P/2) has advised the petitioner/ accused to maintain good behaviour with the complainant/ respondent No. 4. He would further submit that from bare perusal of the letter dated 02.07.2018, it is evident that no such finding of issuance of clean chit to the petitioner, has been given.
12. It has been further contended that the learned Judicial Magistrate First Class, Bilaspur vide its judgment dated 22.06.2018 has found respondent No. 4 & other co-accused guilty of offence under Section 294 of IPC and imposed fine of Rs. 500/- each and thereafter, FIR has been registered against the petitioner after three days i.e. on 25.06.2018. From bare perusal of chronology of facts of the instant *lis*, it is evident that the contention raised by the petitioner is not tenable as the date of incident is 16.06.2017 and complaint was preferred immediately on 20.06.2017, therefore, submission made by learned counsel for the petitioner is not correct and liable to be rejected. He would rely upon the judgment rendered by Hon'ble the Supreme Court in **Mahesh Chaudhary Vs. State of Rajasthan**⁷, **Mohd. Akram Siddiqui Vs. State of Bihar**⁸ & **Rajeev Kourav Vs. Baisahab**⁹.
13. Learned counsel for respondent No. 4 would also refer to the judgment rendered by Hon'ble the Supreme Court in **Additional District and Sessions Judge 'X' Vs. Registrar General, High Court of Madhya Pradesh & others**¹⁰, wherein it has been held as under:-

“26.....“The interjections by the learned senior counsel for the petitioner, are always delightful”.

7 (2009) 4 SCC 439

8 (2019) 13 SCC 350

9 (2020) 3 SCC 317

10 (2015) 4 SCC 91

Learned senior counsel for the petitioner, had serious objection to the term, "delightful" used, with reference to "her". She questioned, the use of the term, "delightful" by posing to the learned senior counsel, whether similar interjections by men, were also considered by him as delightful. Why then, she questioned, should "her" interjection be found "delightful". In expressing her view, she went on to describe the response of the learned senior counsel as "sexually coloured". Having given our thoughtful consideration to the response, of the learned counsel for the petitioner, we may only say, that she may well be right. There is a lot to be learnt, from what she innocuously conveyed. Her sensitivity to the issue, one may confess, brought out to us, a wholly different understanding on the subject. It is, therefore, that we have remarked above, that the evaluation of a charge of sexual harassment, would depend on the manner in which it is perceived. Each case will have to be decided on its own merits. Whether the perception of the harassed individual, was conveyed to the person accused, would be very material, in a case falling in the realm of over-sensitivity. In that, it would not be open to him thereafter, to defend himself by projecting that he had not sexually harassed the person concerned, because in his understanding the alleged action was unoffending."

14. He would further submit that there is, *prima facie*, offence made out against the petitioner, therefore, the FIR registered against him cannot be quashed as it is well settled by Hon'ble the Supreme Court that the FIR can be quashed in rarest of rare case, which is not the present one, therefore, the present petition is liable to be dismissed by this Court.
15. I have heard learned counsel for the parties and perused the documents appended thereto with utmost satisfaction.
16. The point required to be determined by this Court is (i) whether the offence under Section 3(1)(xii) of the Act, 1989 is, *prima facie*, made out against the petitioner ?

(ii) whether the contents of FIR *prima facie* establish that the offence under Section 354(A) of IPC is made out against the petitioner or not ?
17. For better understanding of facts of the case, it is expedient by

this Court to examine the provision of Section 3(1)(xii) of the Act, 1989, which is extracted as under :-

“Section 3(1) (xii)- being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed.”

18. Respondent No. 4 & other persons whose statement has been recorded by the police, have not stated anything about alleged commission of offence under Section 3(1)(xii) of the Act, 1989. The statement of respondent No. 4, Smt. Snehlata Mishra, Smt. Dr. Urja Ranjan, Smt. Smriti Rani Prakash, are extracted below:-

Respondent No. 4-प्राचार्य कक्ष में उस समय उपस्थित डॉ. मनीष तिवारी भी पीछे-पीछे कक्ष से बाहर आये और मुझसे बोले कि अगर आपको अवकाश चाहिये तो मुझसे अकेले में आकर मिलो। मैं यह शब्द सुनकर इस्तब्ध रह गई। क्योंकि उसने इतने गलत तरीके से कहा था जिससे मुझे बहुत ही ज्यादा तकलीफ हुई इसके बाद मैं शाम को घर वापस आई इस संबंध में अपने पति से चर्चा की मुझे महाविद्यालय के कर्म. के द्वारा मनीष द्वारा के द्वारा इस प्रकार के शब्दों का प्रयोग किया गया है तो मेरे पति डी.पी. विप्र महाविद्यालय बिलासपुर के प्राचार्य से इस संबंध में अवगत करायेंगे। दिनांक 17/6/2017 को अपने सहकर्मी स्मृति रानी प्रकाश की साथ प्राचार्य कक्ष में डॉ. मनीष तिवारी के खिलाफ प्रभारी प्राचार्य डॉ. विमल कुमार पटेल को दिया एवं मुंह जबानी अवगत कराया। प्रभारी प्राचार्य द्वारा मेरे द्वारा दिये गये आवेदन को बाद लेने से मना किये और मुझे समझाईस देने लगे कि स्टॉफ में छोटी मोटी बातें होती रहती है। सहने की आदत डालिये, तब मेरे साथ गई प्रोफेसर स्मृति रानी ने भी बोली कि हम अपमान सहन कर काम करें तब प्रभारी प्राचार्य विमल पटेल चुप हो गये.....

Smt. Snehlata Mishra- तो प्राचार्य ने मुझे अवकाश हेतु अध्यक्ष प्रशासन समिति से मिलने के लिये कहा उसके उपरांत तब मैं प्राचार्य कक्ष से बाहर आयी तो मेरे पीछे-पीछे डॉ. मनीष तिवारी भी आया और प्राचार्य कार्यालय के सामने बरामदा में कहा कि मेडम आप यदि छुट्टी चाहती हैं तो मुझसे अकेले में आकर मिले और बतायी कि यह शब्द सुनकर स्तब्ध रह गयी क्योंकि उसने (मनीष तिवारी) इतने गलत तरीके से कहा था जिससे रजनी मेडम को काफी तकलीफ हुई.....

Smt. Dr. Urja Ranjan Sinha-फिर रजनी कुजूर ने यह भी बताया कि वह जब प्राचार्य कक्ष से बाहर निकली तो डॉ. मनीष तिवारी भी पीछे-पीछे बाहर निकला और कहा कि अगर आपका अवकाश चाहिये तो मुझसे अकेले में आकर मिले। यह बालते हुए रजनी एकदम रूआंसी हो गई थी तब मैंने उसे

कहा कि अरे उसकी हिम्मत कैसे हुई तमुसे इस तहर बात करने की। फिर मैने भी कहा कि इस चीज का विरोध बहुत जरूरी है.....

Smt. Smriti Rani Prakash-और उसी अर्जित अवकाश के संबंध में बात करने दिनांक 16/6/17 को प्राचार्य कक्ष गई थी तो प्राचार्य ने मुझे अध्यक्ष प्रशासन समिति से चर्चा करें। यह सुनकर वे उठी और बाहर जाने लगी उसी समय प्रो. मनीष तिवारी और उनके पीछे-पीछे आकर बरामदा में उससे कहा कि मैडम यदि आप छुट्टी चाहती हैं तो मुझसे अकेले में आकर मिले कहा ऐसा बतायी तब पता चला है मैं दिनांक 17/6/17 को कालेज आयी तब प्राचार्य कक्ष में रजनी मेडम अपनी शिकायत पत्र मनीष तिवारी के विरुद्ध में देने के कोइ गई उसके साथ मैं भी गयी थी

19. From bare perusal of Section 3(1)(xii) of the Act, 1989, in order to attract the ingredient of this Section, the following ingredient must be satisfied.

- (i) The accused must belong to either member of Scheduled Tribe/ Scheduled Caste
- (ii) The victim woman must belong to a member of Scheduled Tribe/ Scheduled Caste.
- (iii) The accused must be in a position to dominate the will of the victim woman.
- (iv) The accused must use such position to exploit the victim woman sexually to which, she would not have otherwise agreed.

'Position to dominate' means 'commanding and controlling' position. **The position of the accused coupled with the use of such position to exploit the victim woman sexually are important criteria from the caste/tribe factor of the victim/ accused.**

20. From perusal of the statement of the complainant & other witnesses, it cannot be, *prima facie*, established the offence has been committed with racial prejudice and respondent No. 4 and witnesses had never stated that the petitioner was in a position to exploit respondent No. 4 sexually, petitioner and respondent No. 4 are working as Assistant Professors in the same college, therefore, it cannot be presumed that the petitioner was in a position to dominate the respondent No. 4 or to command or

control her. Apart from the fact that the prosecutrix belongs to the Scheduled Caste community and the accused belongs to different communities, there is nothing on record to show that the crime was perpetrated by the petitioner for the sole reason that the prosecutrix belonged to Scheduled Caste community. Therefore, prima facie, no offence under Section 3(1)(xii) of the Act, 1989 is made out against the petitioner. Hon'ble the Supreme Court in case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra & others**¹¹, has held as under:-

“22 Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged.”

21. Hon'ble the Supreme Court in **Dr. Subhash Kashinath Mahajan (Supra)**, has issued certain direction in this regard in paragraph No. 77 & 79, which are as under:-

“77. Accordingly, we direct that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, without written permission of the Senior Superintendent of Police of the District. Such permissions must be granted for recorded reasons which must be served on the person to be arrested and to the concerned court. As and when a person arrested is produced before the Magistrate, the Magistrate must apply his mind to the reasons recorded and further detention should be allowed only if the reasons recorded are found to be valid. To avoid false implication, before FIR is registered, preliminary enquiry may be made

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whether the case falls in the parameters of the Atrocities Act and is not frivolous or motivated.

Conclusions

79. Our conclusions are as follows:

79.1. Proceedings in the present case are clear abuse of process of court and are quashed.

79.2. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in Pankaj D. Suthar Vs. State of Gujarat [(1992) 1 Guj LR 405] and N.T. Desai Vs. State of Gujarat [(1997) 2 Guj LR 405] and clarify the judgments of this Court in State of M.P. Vs. Ram Kishna Balothia [(1995) 3 SCC 221]

79.3. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

79.4. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

79.5 Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.

79.6. The above directions are prospective.”

22. Hon'ble the Supreme Court in **Union of India Vs. State of Maharashtra & others**¹², has held as under:-

“52. There is no presumption that the members of the Scheduled Castes and Scheduled Tribes may misuse the provisions of law as a class and it is not resorted to by the members of the upper Castes or the members of the elite class. For lodging a false report, it cannot be said that the caste of a person is the cause. It is due to the human failing and not due to the caste factor. Caste is not attributable to such an act. On the other hand, members of the

12 (2020) 4 SCC 761

Scheduled Castes and Scheduled Tribes due to backwardness hardly muster the courage to lodge even a first information report, much less, a false one. In case it is found to be false/unsubstantiated, it may be due to the faulty investigation or for other various reasons including human failings irrespective of caste factor. **There may be certain cases which may be false that can be a ground for interference by the Court, but the law cannot be changed due to such misuse. In such a situation, it can be taken care in proceeding under section 482 of the Cr.PC.**

23. Now the second point requires to be determined by this Court is whether the contents of FIR prima facie establishes that the offence under Section 354 (A) of IPC is made out against the petitioner or not ?
24. For better understanding of facts of the case, it is expedient by this Court to examine the provision of Section 354 (A) of IPC, which is reproduced hereunder:-

“Section 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.”

25. Learned counsel for the petitioner would submit that the petitioner asked respondent No. 4 as reflected in the FIR that मैडम यदि आप छुट्टी चाहती है तो मुझसे अकेले में आकर मिलें and would submit that such statement made by the petitioner does

fall within the ambit of Section 354 (A) of IPC. Learned counsel for respondent No. 4 has tried to make out the case under Section 354 (A) of IPC and whether such words can be used as sexually coloured remarks. Learned counsel for the petitioner would submit that no offence is made out from the complaint made by respondent No. 4, statement of the witnesses, recorded under Section 161 of the Cr.P.C. for commission of offence of sexually coloured remarks. It has been contended by learned counsel for the petitioner that the criminal proceeding has been initiated by the complainant in a malafide intention to harass and humiliate the petitioner, as criminal case against all the teachers are going on and vide order dated 25.06.2018, learned Judicial Magistrate First Class imposed fine of Rs. 500/- to all the teachers of the institution.

26. Learned counsel for respondent No. 4 would submit that the offence under Section 354 (A) of IPC is made out against the petitioner as it is sexually coloured remarks falling within ambit of sexual harassment, which is punishable under Section 354 (A) of the IPC. He would refer to paragraph 14, 17 & 23 of the judgment rendered by Hon'ble the Supreme Court in **Rupan Deol Bajaj Vs. Kanwar Pal Singh Gill**¹³ has held as under:-

“14. Since the word `modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. 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

13 (1995) 6 SCC 194

thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions."

17. It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under Section 354 IPC - an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj.

23. We are constrained to say that in making the above observations the High Court has flagrantly disregarded - unwittingly we presume - the settled principle of law that at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. Of course as has been pointed out in Bhajan Lal's case (supra) an F.I.R. or a complaint may be quashed if the allegations made therein are so absurd and inherently improbable that no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused but the High Court has not recorded such a finding, obviously because on the allegations in the FIR it was not possible to do so. For the reasons aforesaid we must hold that the High Court has committed a gross error of law in quashing the FIR and the complaint. Accordingly, we set aside the impugned judgment and dismiss the petition filed by Mr. Gill in the High Court under Section 482 Cr.P.C.”

27. He would also refer to the judgment rendered by Hon'ble the Supreme Court in **Mohd. Akram Siddiqui, Vs. State of Bihar**¹⁴, wherein it has been held as under:-

“5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in [Yin Cheng Hsiung Vs. Essem Chemical Industries, 2011 (15) SCC 207; State of Haryana & Ors. Vs Bhajan Lal & Ors., 1992 Supp.(1) SC 335 and Harshendra Kumar D. Vs. Rebatilata Koley Etc., (2011) 3 SCC 351] to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.”

28. Learned counsel for the petitioner relied upon the order passed by the Judicial Magistrate First Class to substantiate that the present FIR is counter blast of ongoing criminal proceeding against the petitioner and other teaching staff of the college, the same has been objected by learned counsel for respondent No. 4 stating that the same cannot be taken into consideration by this Court while hearing the case under Section 482 of the Cr.P.C. This contention of learned counsel for respondent No. 4 is not acceptable as Hon'ble the Supreme Court has held in case of **Mohd. Akram Siddiqui (Supra)** that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

14 (2019) 13 SCC 350

29. Section 354 (A) of the Act, 1989 has been inserted with effect from 03.2.2013 which provides that 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. 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.
30. Learned counsel for the petitioner would submit that since there is no physical contact and advances; or any demand or request for sexual favours, therefore, the offence is not made out against the petitioner. From bare perusal of Section 354 (A) of IPC, it is evident that the aforesaid ingredients should be involved in the complaint for commission of offence under Section 354 (A) of IPC, which are not available in the present case, therefore, the offence under Section 354 (A) of IPC is not made against the petitioner. As there was no demand or request for sexual favours as such offence under Section 354(A)(ii) is also not made out against the petitioner. From perusal of statement made by the complainant as also the other witnesses and the contents of the FIR that no allegation of showing pornography against the will of a woman has been made out, therefore, offence under Section 354 (A)(iii) is also not made out against the petitioner
31. If we see that the contents of the complaint wherein respondent No. 4 has stated that the petitioner has said that मैडम यदि आप छुट्टी चाहती है तो मुझसे अकेले में आकर मिलें which cannot be inferred that there is any sexual coloured remarks against respondent No. 4. The remarks made by the petitioner towards respondent No. 4 in their conversation do not fall within ambit of sexual harassment in order to prosecute the petitioner for commission of offence under Section 354 (A)(iv) of IPC.
32. The contention of learned counsel for respondent No. 4 that she has already made complaint on 17.06.2017, which is prior to

judgment passed by learned Judicial Magistrate First in Criminal Case No. 9555/2014, therefore, the petitioner cannot take advantage of the judgment passed by learned Judicial Magistrate First Class. Submission made by learned counsel for respondent No. 4 is not acceptable as the criminal case has been registered on 14.06.2012 on the basis of criminal case registered against respondent No. 4 and other teachers of the institution bearing Criminal Case No. 9555/2014. It means before filing of the complaint by respondent No. 4 itself, criminal proceeding is going on and judgment was passed on 25.06.2018, therefore, this Court can certainly reach to a prima facie opinion that since the criminal case is going on, therefore, it is counter-blast on the part of respondent No. 4, as such, adjudication of the proceeding against the petitioner for commission of offence under Section 354 (A) of IPC will be nothing, but an abuse of process of law.

33. In view of the above-stated legal proposition as well as the judgment rendered by Hon'ble the Supreme Court, FIR No. 0036 dated 25.06.2018 (Annexure P/1) registered against the petitioner by respondent No. 4 at Women Police Station, Bilaspur (C.G.) for commission of offence punishable under Section 354 (A) of IPC & Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, deserves to be and is hereby quashed.
34. In view of the above, the present petition is allowed.

Sd/-
(Narendra Kumar Vyas)
Judge