

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2610 of 2019

**Vs.
The State of West Bengal & Anr.**

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| For the Petitioners | : | Mr. Ayan Bhattacharjee, Sr. Adv. Mr. Md. Zohaib Rauf |
| For the Opposite Party No.2 | : | Mr. Prasenjit Mukherjee Mr. Saptarshi Chkarborty Mr. Rajdeep Bosu |
| For the State | : | Mr. Debasish Roy, Ld PP Ms. Sreyashee Biswas Ms. Puja Goswami |
| Heard on | : | 30.06.2025 |
| Judgment on | : | 28.07.2025 |

Dr. Ajoy Kumar Mukherjee, J.

1. Mr. Ayan Bhattacharya learned Sr. Advocate appearing on behalf of the petitioner submits that on October, 10 2018 the opposite party no.2 herein lodged an FIR alleging commission of offence punishable u/s 354/114 of the IPC against four accused persons including petitioner herein *interalia* on the allegation that the accused persons being aided and abated

with each other, caused harassment to the opposite party no.2/*de facto* complainant at her workplace.

2. Accordingly the instant proceeding being Taltala P.S. case no. 124 dated October 13, 2018 corresponding to GR Case no. 1153 of 2018 was registered for investigation under section 354/114 of the IPC. After completion of investigation, the investigating agency submitted charge sheet under section 509 of the IPC and the learned Court below was pleased to take cognizance and transmitted the same to the court below for trial.

3. Mr. Bhattacharya submits that the present petitioner is innocent and no way connected with any offence, far less the offences alleged herein. The complainant/opposite party no.2 had joined the employment of M/s. Benett Coleman and company Ltd. at its Delhi office as a trainee reporter in the year 2015 and thereafter took a transfer to Kolkata in December, 2015 and quit the establishment at the end of July, 2017.

4. Mr. Bhattacharya further submits that on October, 13 2018 i.e. almost after 1 year and 2 months, she resigned from the establishment and lodged the complaint against the petitioner alleging that she was subjected to harassment at her workplace and that she had also faced severe bullying by the petitioners female cronie.

5. He further submits that on October 22, 2018 the *de facto* complainant also filed a complaint with the internal complaints committee of her former employer, alleging Sexual Harassment by the petitioner on her in terms of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.(in short Act of 2013). Although said complaint before the internal complaints committee was time barred but the said committee

proceeded with the same and conducted a detailed and thorough enquiry into the allegations levelled against the petitioner. However, since no evidence could be gathered against the petitioner, the internal complaints committee exonerated the petitioner of all charges levelled against him.

6. Mr. Bhattacharya further argued that from the FIR and the charge sheet, there emanates no iota of allegation or suspicion against the petitioner. In order to attract the provision of section 509 of the IPC, the complainant ought to have mentioned that specific details of the words, sounds, or gesture by which the petitioner allegedly insulted her modesty or how and when he intruded upon the complainant's modesty.

7. He further submits that the instant FIR was lodged with a view to spite the petitioner herein because of a private and personal grudge such as professional rivalry, strenuous relation and also with an oblique motive of implicating the petitioner in long and arduous criminal proceedings, which amounts to an abuse of the process of law.

8. He further argued that on perusal of charge sheet it can be ascertained that there is no iota of evidence on the basis of which cognizance of the matter can be taken or the matter can be allowed to be proceeded with. From the allegations levelled in the impugned charge sheet it is evident that charges under section 354 of the IPC was substituted by charge under section 509 of the IPC.

9. He further submits that the *de facto* complainant has not challenged the findings of the internal complaint committee although the same is appealable and therefore the same has attained its finality. In this context he relied upon the following judgments:-

- (i) **Vijay Choudhary Vs. State of Maharashtra & Anr.**, reported in **(2023) 3 ABR (Cri) 529**
- (ii) **Ashish Chauhan Vs. State Govt. of (NCT of Delhi) & anr.**, reported in **(2023) SCC Online Del 399**
- (iii) **B. Narsimhan Vs. State & Ors.**, reported in **MANU/TN/6183/2022;**
- (iv) **L. Sushil Kumar & Ors. Vs. State of Karnataka & Ors.**, reported in **MANU/KA/5130/2018**

Accordingly petitioners have prayed for quashing the aforesaid impugned proceeding.

10. Mr. Prasenjit Mukherjee learned Counsel appearing on behalf of the opposite party no. 2 submits that the opposite party no.2 herein was not only harassed by the petitioner but was also pushed into the shallowness of depression. She was publicly abused, humiliated and harassed causing her mental agony that affected her health. Infact this is a vicious cycle of sexual harassment at the workplace by the boss, aided and abated by some woman. Several trainees like the opposite party no. 2 also lodged complaints of continuous harassment against the petitioner.

11. There are several ingredients in the case diary which establishes the offence under section 509 of IPC and as such proceeding cannot be quashed without giving opportunity of adducing evidence by the charge sheeted witnesses during trial.

12. He further submits that the Act of 2013 has been introduced to protect the women from the sexual, physical and mental harassment at the work place. In view of the fact that several complaints have been filed

against the petitioner, the involvement of the petitioner in such allegations at work place cannot be brushed aside. Materials on record discloses prima facie case against the petitioner's regarding his involvement of such offences against the complainant and other working girls.

13. He also argued that though the petitioners counsel much stated about the exoneration of the petitioner by the internal committee but the proceeding and the exoneration from the departmental charges under the Act of 2013 before the internal committee will not stand in the way from continuing the criminal proceeding already started under section 509 of the IPC. If a delinquent has been discharged from the departmental proceeding at the instance of the internal committee, the same discharge cannot be a ground for quashing of the criminal proceeding arising out of a same cause of action because two proceedings are separate.

14. Furthermore, the recommendations made in the said internal committee report is barred under section 16 of the Act of 2013 and the petitioner has been debarred from relying upon said recommendations. Moreover in terms of section 17 of the said Act there is a provision of imposing penalty for publication of the said report. He further argued that the judgments relied by the petitioner have no binding effect in the facts and circumstances of the present case. The petitioner is a habitual offender and several instances of the same kind of allegation have been levelled against the petitioner. Accordingly he prayed for the dismissal of the instant revisional application.

15. I have considered submissions made by both the parties.

16. The victim/complainant in her FIR alleged that while she was working at her workplace the accused/petitioner harassed her at the workplace and she also suffered server bullying abated by his female cronie and this incident happened during the period of 2016 – 2017, when she was working in that office. Before going to further details let me quote essential ingredients to constitute an offence under section 509 of the Indian Penal Code which are as follows:

1. *Intention to insult the modesty of a woman*
2. *The insult must be caused*
 - (I) *by uttering any word 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 women, or*
 - (II) *by intruding upon the privacy of such woman*

17. Accordingly to constitute an offence under section 509 I.P.C., there must be an allegation that the action complained of has insulted the modesty of some particular woman or women and not merely of any class or order or section of women, however small. Accordingly in the FIR though the complainant wanted to agitate that a section of women namely trainee journalists had allegedly suffered due to the act of the petitioner but for the instant proceeding, I am concerned with the allegation relating to the action complained of, in connection with the particular complainant/FIR maker. The word “modesty” has not been defined anywhere in the IPC nor in the section 509. The question of infringing the modesty of a women would of course depend upon the custom and habits of the people and no particular yardstick of universal application can be made for measuring the amplitude of modesty of women as it is varied from place to place and case to case. in ***Rupan Deol Bajaj (Mrs.) and another Vs. Kanwar Pal Sing Gill and***

another, reported in **(1995) 5 SCC 194.**, the supreme court viewed the term “modesty” in the following manner :-

“14. Since the word ‘modesty’ has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (3rd Edn.) 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 Edn.) 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”.

18. I have already stated above that in the FIR, the complainant has only stated about suffering harassment at the workplace by the petitioner herein and about suffering of severe bullying abated by petitioner’s alleged female cronie. Infact the FIR, the charge sheet and also materials collected during investigation does not suggest any specific details of the words, sounds or gesture by which the petitioner allegedly insulted her modesty nor it suggest how and when he intruded upon the complainants modesty. The *de facto* complainant resigned from her service form the said office in the month of July, 2017 but she lodged the FIR on 10th October 2018 and she did not assign any probable explanation for such delay. Infact during investigation police could not seize any document or collected cogent evidence to substantiate the essential ingredients required to constitute offence under section 509 of the IPC. It is apparent that on the basis of allegation the investigations was started by police for committing offence under section 354 of the IPC, but thereafter police submitted charge sheet

against the petitioner under section 509 of the IPC. Neither in the FIR nor in the materials collected during investigation, including the statements recorded under section 161 of Cr.P.C, there is any allegation of making any sound or gesture or exhibiting any object. On the contrary some of the witnesses, who were examined under section 161 of the Cr.P.C have stated before the police that though the petitioner used to create pressure for more work to the officials, but they never find him to misbehave either with the complainant or with other staff. When the complainant was examined under section 164 of the Cr.P.C she has only stated that the petitioner abused her regularly during the period 2016 – 2017, but she has not stated anything, not even before the magistrate about nature of harassment or how she was abused by the complainant for ascertaining as to whether the materials placed before the court *prima facie* constitute offence under section 509 of IPC or not.

19. The court is first required to consider whether modesty of the complainant has been insulted or not. Infact in the instant case there appears to be no material to establish the intention and knowledge of the petitioner to insult the modesty of the complainant nor any act of petitioner has been described to establish that the petitioner intended to shock the sense of decency of the complainant, being a women.

20. The term “abused” and/or “harassed” when examined in isolation and without mentioning any occurrence or accompanying words or gesture to show that the petitioner had an intention to insult the complainant’s modesty, it does not come within the definition of offence punishable under section 509 of the IPC. Unless there has been reference to specific words

used, contextual details or any gesture, it is hardly possible to demonstrate that the petitioner had criminal intent to insult the modesty and/or to establish any case against the petitioner herein. Infact mere using the words “harassed” or “abused”, in the overall conspectus of the case, does not demonstrate the requisite intention or knowledge which can lead to the conclusion that any alleged act of the petitioner constitute an insult to the complainant’s modesty.

21. At the cost of repetitions I am constrained to say that even the complainant does not disclose that the petitioner abused her, it only refers the word harassment. In the statement recorded under section 164 of the Cr.P.C, the *de facto* complaint had only alleged of abusing her that too without detailing the mode and manner of such abuse. Mere harassment at workplace or abusing her at workplace per se may not constitute an offence under section 509 of IPC, unless essential ingredients are fulfilled. It is also surprising to note that according to the charge sheet the prosecution proposes to examine five witnesses to bring whom the charge under section 509 of IPC and three of whom are the petitioner, investigating officer and the magistrate (who recorded the petitioner statement under section 164 of the Cr.P.C). The statement of other two witnesses as recorded under 161 Cr.P.C appears to be not in conformity with the statement of the *de facto* complainant recorded under section 164 Cr.P.C and as such their statement either singularly or cumulatively may not be able to satisfy the ingredients of section 509 of IPC and as such even if instant proceeding is allowed to continue, the chance of conviction of the petitioner is bleak.

22. Though learned counsel appearing on behalf of the opposite party strenuously argued that whether petitioner had any guilty mind or not, can only be adjudged after trial and without giving the prosecution a chance to establish the *mens rea* of the petitioner during trial, it would not be prudent to exercise jurisdiction under section 482 of the Code but I am not agreeable to such contention, in view of the well settled principle of law that to establish *mens rea* something better than vague statement is to be produced before the Court. From the available documents, including the FIR and the materials collected during investigation, as also from the concluding part of the charge sheet, no direct allegation nor any evidence in support of specific words or gesture or intruding upon the complainant's modesty, can be found attributing intent to the petitioner herein, for which, it can be said that a case under section 509 of I.P.C has been made out against the petitioner.

23. There is also other aspect of the matter, An internal complaint committee has also conducted enquiry on the self-same allegation and they have exonerated the present petitioner, with the observation that her allegation of sexual harassment and/or unwanted phone calls are unfounded in the absence of specific evidence.

24. Needless to say that the standard of proof required to establish the guilt in a criminal case is of much higher than the standard of proof required to establish the guilt in a departmental proceeding. In the instant case as the allegations were found to be inadequate in establishing a charge of harassment, as defined under section 3 of the Act of 2013, the petitioner herein was exonerated.

25. In ***Radheshyam Kejriwal Vs. State of West Bengal and another***, reported in **(2011) 3 SCC 581** the ratio which was culled out is that

“in case of exoneration (adjudication proceeding/departmental proceeding) on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of fact and circumstances cannot be allowed to continue underlying principle being the higher standard of proof in criminal cases.”

26. Since it is not the case of the opposite party that the allegation in the departmental proceeding as well as the instant criminal proceeding is not identical nor it is in dispute that the exoneration of the petitioner herein in the departmental proceeding was on merit, the further continuation of trial of the present petitioner shall be in abuse of the process of the court.

27. In view of aforesaid discussion **CRR 2610 of 2019** is allowed. The instant criminal proceeding being G.R. case no. 1153 of 2018 arising out of Taltala P.S. case no. 124 dated October 13, 2018 pending before the court of the Learned Metropolitan Magistrate, Calcutta is hereby quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)