

**HIGH COURT OF JAMMU & KASHMIR**  
**AT JAMMU**

CRMC No.620/2018 & IA No.2/2018

Date of order: 01.02.2019

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**D.B. Singh**

vs.

**State of J&K & anr**

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**Coram:**

**Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge**

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**Appearing counsel:**

For petitioner (s) : Mr. Anil Sethi, Advocate.

For respondent(s) : Mr. Sudesh Magotra, GA

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| i/  | Whether to be reported in Press/Media    | : | Yes/No |
| ii/ | Whether to be reported in Digest/Journal | : | Yes/No |
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1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure, the petitioners *inter alia* seeks quashing of FIR No.27/2018 dated 17.09.2018, registered at Police Station, Women Cell, Rajouri, against him.
2. Brief facts of the case are that a false and frivolous complaint came to be lodged against the petitioner by one Anupriya Sharma/Respondent No. 2 herein, who has service dispute with the department and is not working and functioning properly. The petitioner being superior officer is entitled to control functioning of the other employees besides respondent No.2 who was showing signs of insubordination and lack of interest in duties assigned to her. The said lady/respondent no.2 lodged frivolous case with SHO, P/S Women Cell, Rajouri alleging therein that she was allegedly being harassed and victimized. The contents of the complaint reveal that none of the ingredients of Sections 354 D, 506, 500-II or 509 are made out. The respondent no. 2 has cooked a concocted story so

as to meet the requirements of the aforesaid Sections. However, she has miserably failed in doing so. The petitioner submitted that on her complaint, an Inquiry Committee was constituted by the Director, Animal Husbandry vide Order No. DAHJ/Adm-13/6889-92, dated 15.09.2018. The said Committee called upon the petitioner to explain his conduct over the complaint. The post which the respondent no. 2 is holding is that of In-charge Junior Assistant. The petitioner submitted his detailed reply to the said Committee and explained the circumstances under which frivolous complaint was filed against him by the respondent no.2. The perusal of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would reveal that it itself contains penal code which provides provisions for investigation, recording of evidence, mode and manner of forwarding of the complaint and also provides that during the pendency of the inquiry to be conducted by the Committee under the aforesaid Act, the employer/employee can be shifted elsewhere. Sections 8, 9, 10 and 11 deal with the method of dealing with the complaint on Sexual Harassment of Women at Workplace, conciliation and inquiry into such complaint. The Act being promulgated by the State, it is beyond the jurisdiction of police to register a case under Section 354-D since the category of offences defined in 354-D are identical and *pari materia* with the contents of the Women Sexual Harassment is defined in Section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. That in the present case, the Committee constituted by the Head of Department under the provisions of the aforesaid Act has already taken cognizance in the matter on 15.09.2018 and the

petitioner has submitted his reply to the allegations so levelled against the petitioner and has put forth his defence which is required to be further inquired into evidence received and further proceedings are to be conducted by the said Committee in terms of the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; that the registration of the FIR is, therefore, an act which is beyond jurisdiction of the Police. The offences are not cognizable in view of the promulgation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The matter has already taken cognizance of by the committee constituted under the Act which is competent to inquire into the said allegations and find out the correctness/genuineness of the same. It is further stated that in similar controversy, this Hon'ble Court in a petition under Section 561-A No.517/2016 titled 'Devi Dayal Khajuria Versus State' had an occasion to deal with the provisions of Section 354 RPC and also provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. On consideration of the matter, the FIR in the aforesaid case was directed to be stayed. It is also contended that the registration of the FIR in the present case is nothing but abuse of process of law and has visited the petitioner with penal consequences. The petitioner submits that he is entitled to be treated under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and in fact is being treated under the provisions of the said Act of 2013. The lodgment of the FIR and consequent detention of the petitioner in the aforesaid false, frivolous and motivated case is therefore,

totally unwarranted and constitute sheer abuse of process of law and registration of the FIR in the present case is an act of malice at the instance of the private respondent who has grudge with the petitioner to settle since her work and conduct was not up to the mark and was subjected to be corrected by the petitioner being superior officer. The petitioner has a right to face inquiry by the Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and has already supplied detailed reply to the said Committee in response to the notice issued and has belied the assertions of the complainant/ respondent no. 2 which are based on false, frivolous and motivated and concocted facts. The FIR and continuance of the investigation is visiting the petitioner with the adverse consequences and is violative of Fundamental Rights of the petitioner. Lodging of the FIR after the constitution of the Committee and supply of the reply by the petitioner, is nothing but the exercise which is an outcome of non-application of mind and is further conducted by malice in law. The Registration of the case by the police is totally unwarranted and exercise of power to investigate the matter is an act which is required to be struck down being without jurisdiction and without competence. It is therefore, prayed that the petition of the petitioner be allowed and quash FIR No.27/2018 registered with Police Station, Women Cell, Rajouri under Section 354D, 506, 500-II and 509 RPC against the petitioner.

3. I have heard the counsel for parties. The brief facts of the case are that Complainant/respondent no.2 filed a written complaint before

SSP Rajouri against the petitioner; this complaint was forwarded to P/S Women cell by SSP. The complaint reads as under:-

“a. That I belong to village Dhangri Tehsil Rajouri and my husband is serving for the defense of the nation.  
b. That I am serving Jr. Assistant in the office of the chief husbandry officer Rajouri.  
c. That since the time the above named officer joined the said organization in Rajouri in one way or the other he is sexually harassing me in part but in progressive ways. Some instances are listed below:-

1. Initially he used to sit along my official working chair under the pretend of dictation and performed activities which were socially and morally disproved.
2. He also used to play music via his own cell phone at the time of drafting of official letters.
3. He used to give reference of sexual nature of his one/two lady subordinate when he was posted perhaps, as head in stock assistant training institute. Belichana Jammu.
4. Once the staff of this organization attended a launch party and he left his official vehicle as well as the vehicle on which male staff was sitting, instead the said chief board the vehicle in which the lady staff including myself was sitting.
5. I time and again he was found demanding my personal call record unofficially with unhealthy intention.
6. He banned me for several times in visit to other rooms within the same organization building for which like rest of the employees, it becomes sometime mandatory for official guidelines expert opinions and doubt clarification.
7. He got approached the telephonic address of my husband and hired a lady who placed a call to my husband narrating/revealing the essence. I just wrote above but in a displacement way with the purpose to get my martial relationships with my husband disturbed rather discarded, this activity alone determines the intensity of his heinous immorally.
8. He has kept my service record file and service book in his own custody, while the rest of the record and service books and lying with the concerned incharge.
9. Time and again he threaten me of dire consequences such as putting obstacles in my career progression, stoppage of promotion my demotion/reversion etc.
10. He also used vulgar obscene, filthy language rather unethical communication under the cover of proximity increased

and during official dictation work, which was having no link with the day to day official work.

There are severe other instances that are not allowing me to write narrate. In a nut shell the above named officer has out my social like in general and career endeavors in particular in the bottom of the hell. He is a danger to the state department and especially a threat to the female employees sects.

Kindly therefore your august self is requested to please take appropriate view of the epitome so that the individualized unethical conditions created being by the said chief may be prevented disappeared and my healthy employment condition may be resorted for my husband performance and excellence.”

4. The Status Report stands filed by respondent No.1, wherein it is stated that on 17-09-2018, complainant namely Anupriya Sharma W/o Vipin Sharma R/o Dhangri lodged a written report at Women Police Station Rajouri against Dr. D.B. Chief Animal Husbandry Officer Rajouri, the detail of which has already been mentioned above. On this information case FIR No.27/2018 u/s 354-D/509/506/500/RPC was got registered at Women Police Station Rajouri and investigation commenced. During the course of investigation, I.O visited the spot, prepared site plan, recorded statements of witnesses u/s 161 Cr.P.C. I.O. also produced the complainant and other two employees of Animal Husbandry Office Rajouri in the court of law for recording their statement u/s 164-A Cr.P.C. and also obtained the copy of the same. I.O arrested the accused person, presently he is on interim bail. As per the evidence collected by I.O, offence under Sections 354-D/509/506/500/RPC is established against the accused person. The investigation of the instant case is almost complete and charge sheet of the same will be produced in the court of law within two days.
5. I have given my thoughtful consideration to whole aspects of the matter and law on the subject.

6. In 2008 (3) SCC 753 in case titled **Som Mittal v. Govt. of Karnataka**, it has been held as under:-

“(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under [Section 482](#) of the Code in a routine manner. It has been consistently held that the power under [Section 482](#) must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under [Section 482](#) of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under [Section 482](#) of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice. (13) [In State of Bihar v. J.A.C. Saldanha](#) (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more. (14) [In Hazari Lal Gupta v. Rameshwar Prasad](#) (1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under [Section 561-A](#) of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions [of the Criminal Procedure Code](#), the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions [of the Criminal Procedure Code](#).(15) [In Jehan Singh v. Delhi Administration](#) (1974) 4 SCC 522 the application filed by the accused under [Section 561-A](#) of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) [In Kurukshetra University v. State of Haryana](#) (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under [Section 482](#) of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.(emphasis supplied) (17) [In State of Bihar v. Murad Ali Khan](#) (1988) 4 SCC 655 this Court held that the jurisdiction under [Section 482](#) of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.”

7. From bare perusal of contents of the complaint, it is evident that a case of cognizable offence has been made out, for which, police has statutory duty to investigate and complete investigation as per law.
8. The only foremost ground taken is that Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,

2013 would reveal that it itself contains penal code which provides provisions for investigation, recording of evidence, mode and manner of forwarding of the complaint and also provides that during the pendency of the inquiry to be conducted by the Committee under the aforesaid Act, the employer/employee can be shifted elsewhere; under Sections 8, 9, 10 and 11 deal with the method of dealing with the complaint on Sexual Harassment of Women at Workplace, conciliation and inquiry into such complaint.

9. I have considered this aspect of matter; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 deals with sexual harassment of a women at work place. Sexual harassment has been defined under section 2 (n) of Act. It reads as under:-

**“2. Definitions**

..... (n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:- (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”

10. Section 3 of Act reads as under:-

**“3. Prevention of sexual harassment**

**(1) No woman shall be subjected to sexual harassment at any workplace.**

**(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:--- (i) implied or explicit promise of preferential treatment in her employment; or (ii) implkd or explicit threat of**

**detrimental treatment in her employment; or (iii) implied or explicit threat about her present or future employment status; or (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.”**

11. In this Act, there is complete procedure provided in chapters II, III, IV and V for dealing with complaint of sexual harassment, if any, made by complainant. It also provides right to file appeal before competent forum by aggrieved person. But section 28 of Act reads as under:-

**“28. Act not in derogation of any other law**

**The provisions of this Act shall be in addition to and not in derogation of the provisions or any other law for the time being in force.”**

12. In terms of this section, it is evident that provisions of this Act are in addition to any other laws in force. Offences against women under penal code deal with all types of women whether employed or not. But Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, deals with complaint by woman at work place only. One of the duties of the employer provided by Section 19 is that Every employer shall- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.
13. Accordingly, it must be held that the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are to be construed widely to give effect to the object and purpose of the Act. In terms of section 28 of this Act, the provisions of the Act are in addition to and are not in derogation of

any other law in force. While legislating this Act, framer of Act is aware of the provisions of the penal law and this Act and the consequential remedy available under the Act provides the additional remedy. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the women at work place better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/ extended jurisdiction, particularly when Section 28 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.

14. In this light of the matter, there is no manner of doubt that the said Act is in addition to RPC and there is no conflict between them. So it can be held that provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are not in derogation of the provisions or any other law for the time being in force, including that of RPC.

15. In view of above, this petition is **dismissed**.

**(Sanjay Kumar Gupta)**  
**Judge**

**Jammu:**  
01.02.2019  
Vijay